STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Forestry and Wildlife Honolulu, Hawaii 96813

November 8, 2019

Board of Land and Natural Resources State of Hawaii Honolulu, Hawai'i

MOLOKA'I

Acquisition of Private Lands; Issuance of Management Right Of Entry to Division of Forestry and Wildlife; Set Aside to the Division of Forestry and Wildlife for Wildlife Sanctuary Purposes; and Authorization to Division of Forestry and Wildlife to Conduct Public Hearings on the Island of Moloka'i for Proposed Addition to Moloka'i Forest Reserve, Pua'ahala, Moloka'i, Tax Map Keys: (2) 5-6-005:001, 012, 036; 5-6-006:002; 5-6-007:001, 002, 004, 068, 069, 070.

Request for Mutual Termination of General Lease No. S-4269; K&H Horizons Hawaii. Lessee; Pua'ahala, Molokai; Tax Map Key: (2) 5-6-005:035.

PRIVATE LANDOWNER:

K&H Horizons Hawaii ("Seller")

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Privately-owned lands of K&H Horizons Hawaii situated at Pua'ahala, Moloka'i identified by Tax Map Keys: (2) 5-6-005:001, 012, 036; 5-6-006:002; 5-6-007:001, 002, 004, 068, 069, 070, (the "Property") as shown on the attached map labeled **Exhibit A**.

AREA:

(2) 5-6-005:001	16.440 acres, more or less		
(2) 5-6-005:012	19.190 acres, more or less		
(2) 5-6-005:036	7.891 acres, more or less		
(2) 5-6-006:002	674.751 acres, more or less		

39.255 acres, more or less	
0.250 acres, more or less	
0.230 acres, more or less	
39.821 acres, more or less	
0.009 acres, more or less	
2.920 acres, more or less	

TOTAL:

800.757 acres more or less

ZONING:

State Land Use District:

Agriculture and Conservation

County of Maui CZO:

Agriculture

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

\$3,190,000.00

PURPOSE:

Forest Reserve and Wildlife Sanctuary purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of <u>unimproved</u> real property. As the subject lands are <u>unimproved</u>, an EA is not required. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

ACQUISITION REQUIREMENTS:

- 1) Obtain an appraisal to determine the value of the properties to be acquired;
- 2) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards;
- 3) Obtain a title report for the privately-owned property subject to review and approval by the Department;
- 4) Conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the

standards required by the Federal Environmental Protection Agency and/or the State Department of Health (DOH), all at no cost to the State and to the satisfaction of the Department.

BACKGROUND:

The Pua'ahala property comprises approximately 800 acres from the top of the mountain to the ocean - an entire ahupua'a. The forests here are some of the most pristine remaining in Mana'e on the Island of Moloka'i. State acquisition of this property is a final attempt to protect these forests as well as the Paialoa wetland located on the makai side of the Property. The East Moloka'i Watershed Partnership (EMoWP) is working with the State to protect the island's remaining watershed forests and cultural resources from threats, as well as safeguard freshwater resources that sustain the people of Moloka'i. This protection can only be achieved by gaining the access to manage large areas across landowner boundaries. From west to east, a contiguous network of protected areas is being establishing to encircle the island's main mountain. Pua'ahala is in the center of this chain. Without acquisition, it would be a missing link in the protection of the entire region. Upon acquisition, the DLNR Division of Forestry and Wildlife (DOFAW) plans to add the lands to the State Forest Reserve and Wildlife Sanctuary systems and implement natural resource management actions across the entire ahupua'a that may include watershed protection, endangered species recovery, trails and access, reforestation, fencing, and wetland management. DOFAW plans to engage community participation to determine the appropriate management and use of this potential new forest reserve and wildlife sanctuary. Acquisition of this strategic parcel is critical for conservation on Moloka'i for the following reasons:

A new fenced unit (Pākuʻi) that will protect roughly 2,080 acres of important watershed forest is in the process of being built (see map **Exhibit B**). The fence line must cross the mauka portion of the Puaʻahala parcel. Currently, without the landowner providing a right of entry for management, this proposed fence line will not be possible. Upon acquisition of the Puaʻahala property, the State will be able to complete the fence line and connect it to the existing Kapualei/Kamalo fence. Extensive community outreach, including an Environmental Assessment (EA) and Cultural Impact Assessment (CIA) were done for the Pākuʻi watershed protection project. In FY19 the State Legislature awarded \$1,180,998 in Capital Improvement Project (CIP) funds to build the 5.5 mile Pākuʻi fence. Acquisition is the only option to gain access to build the Pākuʻi fence and manage the area in perpetuity.

The road access to this parcel, as well as its mountain-sea orientation, makes the management of this parcel strategic for fire prevention and control. Ownership of the lower elevation sections will provide the State the option for establishing a network of firebreaks and allow for immediate wildfire response. More than 10,000 acres of Moloka'i's south slope have been consumed by wildfire in the last 25 years.

Watershed protection is part of the mission of the Division of Forestry and Wildlife. Pua'ahala is a critical and contiguous watershed that significantly contributes to the 'Ualapu'e Aquifer - designated as the "Moloka'i Sole Source Aquifer". This aquifer sits below Pua'ahala and

supplies water to East Moloka'i residents for domestic (drinking) and agriculture use. The 'Ualapu'e Aquifer is entirely replenished by rainfall. Acquisition of Pua'ahala will ensure the protection of the intact upland forests that help capture and store this rainfall, replenishing the underground aquifer.

Protection would also reduce erosion into the State's longest fringing coral reef. In adjacent areas that have been protected through fencing and hooved animal control, the recovery of native species has been dramatic. Since efforts to remove ungulates beginning in 2009, large tracts of land in the adjacent area at Kawela have recovered from less than 1% groundcover to over 75% groundcover, predominantly from passive restoration of native species. Preliminary estimates from ongoing studies at Kawela, Moloka'i show that this management and vegetation increase can reduce sediment from six metric tons per year down to two metric tons. This type of response could occur in the lower elevation sections of the Pua'ahala parcel with management, underscoring the importance of acquiring the entire parcel to provide benefits for the whole watershed.

The property is designated critical habitat for 44 endangered plant species. The main threats to these species are browsing and grazing by hooved animals. Thus, the fencing of the Pāku'i unit, which includes the upper portion of the Pua'ahala property, will enable the protection and recovery of numerous endangered species that are found nowhere else in the world. The makai portion of the property includes Moloka'i's largest freshwater pond (Paialoa), which provides habitat for multiple species of endangered Hawaiian water birds, including the ae'o, 'alae ke'oke'o, and alae 'ula. Acquisition would enable the establishment of the second wetland habitat State Wildlife Sanctuary on the island of Moloka'i.

Moloka'i is a rural island with a population of approximately 7,400 people. The community is excited about the State's acquisition of the Pua'ahala property because it will help preserve the rural character of Moloka'i, prevent development of a scenic wilderness area, and ensure the public ownership of this high-quality area.

REMARKS:

Total Purchase Price: \$3,190,000

Land Division and the Attorney General's Office assisted DOFAW in conducting due diligence for this acquisition. The purchase price was determined by an independent appraisal conducted by Medusky & Co., Inc. dated August 31, 2019. An appraisal review conducted by ACM Consultants, Inc. dated October 21, 2019 concluded that the fair market value determined by the Medusky & Co., Inc. appraisal was reasonable, and that the appraisal report was in compliance with both the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). The U.S. Fish and Wildlife Service (USFWS) accepted the market value conclusions of the appraisal and appraisal review on October 21, 2019. The acquisition is funded by grants from the USFWS and the State Legacy Land Conservation Program (LLCP) in the amounts noted in the table below:

Contributing Partner	Amount	% of total
U.S. Fish and Wildlife Service-	\$1,566,875	49%
Recovery Land Acquisition		
U.S. Fish and Wildlife Service –	\$1,000,000	31%
Coastal Wetlands		
State of Hawai'i Legacy Lands	\$623,125	20%
Program/DLNR		
Total	\$3,190,000	100%

As required by the funding programs, the warranty deed shall include language that obligates the State to manage the property in compliance with the respective grant program requirements¹. The deed language is included as **Exhibit E**. DOFAW will develop a comprehensive management plan, guided by community and stakeholder input, that includes thorough documentation (with maps and photos) of the resource values to be protected in accordance with the purposes of the grant award received from the Legacy Land Conservation Program (LLCP).

Seller is obligated by a prior quiet title agreement to designate access easements to neighboring kuleana. The prior agreement requires that certain kuleana be put up for sale upon execution of the easements. However, the Seller has agreed to waive this requirement. A letter from the Seller to the kuleana owners detailing the process for conveying the easements was sent to kuleana owners in 2018. Seller has successfully resolved this issue prior to conveying the Property to the State and will provide a new Title Report after the easements are recorded with Land Court. Furthermore, the State upon acquiring the property, shall not exercise any right it may have to require the sale of any of the kuleana.

Seller is also a lessee of submerged lands under General Lease (GL) S-4269 (**Exhibit D**) that is located seaward of TMK (2) 5-6-005:036. The purpose of the lease was to develop a small boat harbor and marina as part of the development of the larger Property. No development has occurred and as the Seller will divest all their assets in the area with the sale of the Property, Seller has requested a mutual termination of the submerged land lease simultaneous with the closing of the acquisition. As a result of the lease termination, Seller will have no further obligations to develop the lease area. DOFAW has consulted with Land Division and Land Division is agreeable to the lease termination provided that the lease area is returned in a condition satisfactory to Land Division.

A Phase I Environmental Site Assessment (ESA) was prepared by Lehua Environmental Inc. in April 2018 and subsequently updated in November 2018². The ESA found no *historical* recognized environmental conditions (REC), but did reveal evidence of a current REC on the

¹. In accordance with Sections 13-140-24 and 13-140-30, Hawai'i Administrative Rules, the disbursement of State grant funds from the Legacy Land Conservation Program (LLCP) requires satisfactory completion of LLCP requirements, as accepted by the Administrator, Division of Forestry and Wildlife. Key requirements for completion include the LLCP Resource Value Documentation Form and Project Accounting forms.

². Given the extensive remediation undertaken by the Seller to clean-up the property, a new Phase I ESA was not conducted.

makai portion of the Property. The report also noted a few areas of environmental concern and potentially hazardous materials, including the presence of lead and asbestos in two abandoned residential structures and buried trash (see map Exhibit C). As a follow-up to these findings, DOFAW contracted with Lehua Environmental Inc. to produce a Hazardous Materials and Soil Screen Report outlining the recommended testing, analysis and estimated cost. The Seller agreed to pay for the recommended testing of the REC, areas of environmental concern and the clean-up. Testing and clean-up took place between February and May 2019 at a cost of over \$270,000. The Seller shared the results of the testing and clean-up in a detailed Solid Waste Clean-Up and Remediation Report (July 2019). The report noted all but one site was below the DOH Environmental Action Levels (EALs) and no human or environmental consequences are anticipated. The sampling results at one site (Location 5) did indicate lead and mercury levels above the DOH EALs and soil removal (20 tons) was conducted at the site for an area approximately 400 square feet. Analytical results from the confirmatory soil samples determined that remaining concentrations of total lead and mercury were below both the unrestricted and commercial/industrial EALs. Although the samples came back below the EAL threshold, the Seller was required to file a report with the DOH Hazard Evaluation and Emergency Response Office. DOH issued a No Further Action (NFA) letter on October 24, 2019. Furthermore, the Seller has agreed to the State's standard warranty deed, including the hazardous materials indemnification language.

Post-closing, DOFAW will remove the abandoned structures (Locations 4 and 7 **Exhibit C**) and dispose of the hazardous materials (lead and asbestos) in accordance with all local, State and Federal regulations, by qualified contractors. An adjacent property owner on the east side of the Property has encroachments that include a pig pen and other personal belongings located on a small portion of the sale parcel (near Location 1). DOFAW is working with the adjacent property owner for the owner to remove all encroachments from the Property and the submerged land lease area (to the extent such encroachments may be located in the lease area). The acquisition will not close until all encroachment issues are resolved to the satisfaction of both DOFAW and Land Division.

RECOMMENDATION: That the Board:

- 1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current deed document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Authorize issuance of a management right of entry to the Division of Forestry and

Wildlife covering the subject area under the terms and conditions cited above, effective immediately upon acquisition by the State, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right of entry permit form as may be amended from time to time;
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 3. Pursuant to Section 183-11, HRS, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Moloka'i regarding the proposed addition of the subject lands identified as Tax Map Keys (2) 5-6-005:001, 002 and 5-6-007:068, 070 to the Molokai Forest Reserve. Further, pursuant to Section 183-12, HRS, authorize the Chairperson to:
 - A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
- 4. Approve and recommend to the Governor the issuance of an executive order setting aside the subject lands identified as Tax Map Keys (2) 5-6-005:012, 036 and 5-6-007:001, 002, 004, 069 to the Division of Forestry and Wildlife for wildlife sanctuary 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 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.
- 5. Authorize the mutual termination of General Lease No. S-4269 requested by K&H Horizons Hawaii, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation 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.

Respectfully Submitted

David G. Smith Administrator

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

Attachments:

Exhibit A - Map of Property

Exhibit B - Pāku'i Fence

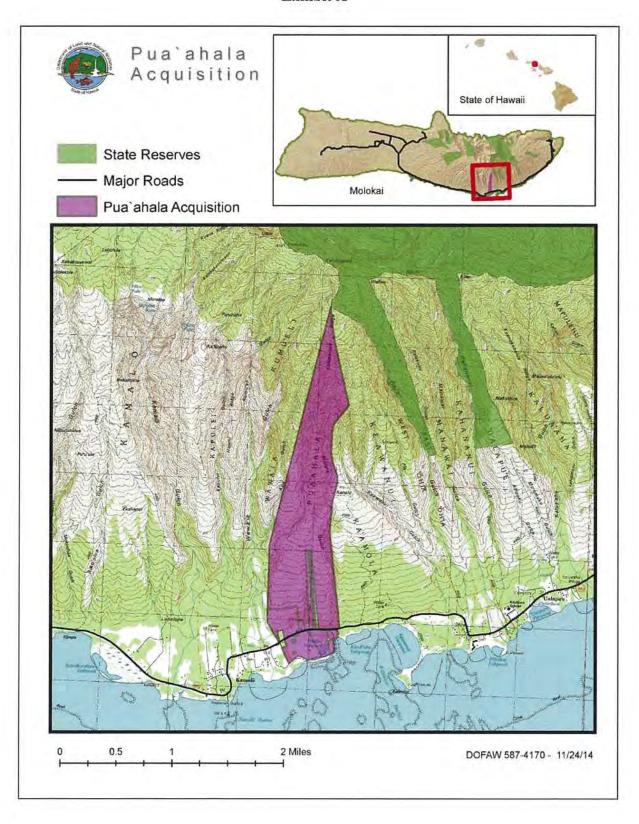
Exhibit C - Environmental Remediation Map

Exhibit D - Submerged Land Lease

Exhibit E - Deed

Exhibit F – Draft Purchase and Sale Agreement

Exhibit A





Aerial view of Pua'ahala property (mauka to makai)



Paialoa wetland (makai)

Exhibit B

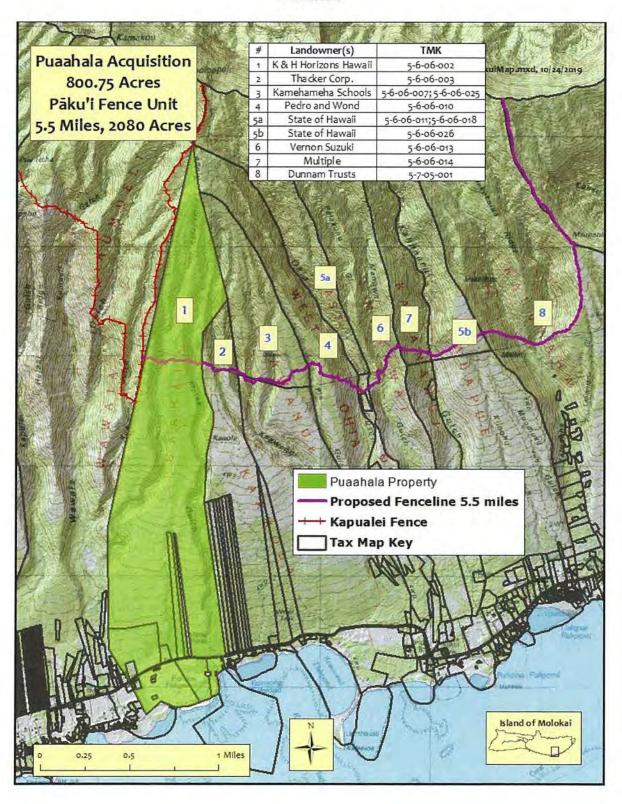


Exhibit C

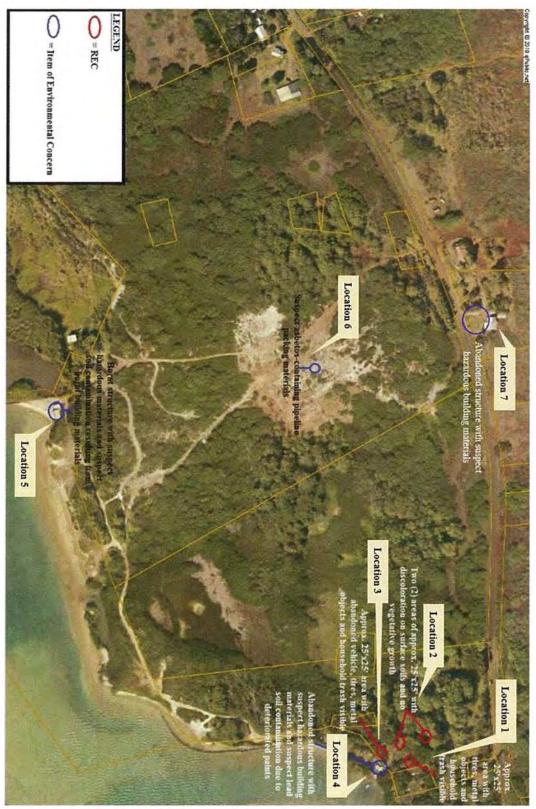


Figure 1. Pua'ahala Watershed, Makai Portion - Approximate Locations of REC and Items of Environmental Concern

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4269

THIS INDENTURE OF LEASE, made this 8th day of November, 1969, by and between the STATE OF HAWAII, hereinafter referred to as the "LESSOR", by its Board of Land and Natural Resources, called the "BOARD", and PAUL B. NOEL, husband of Norma R. Noel, whose residence and post office address is Star Route, Kaunakakai, Molokai, Hawaii; LeROY E. AUSTIN, husband of Jean Austin, whose residence and post office address is 2940 Virginia Street, West Covina, California; HERBERT W. AUSTIN, husband of Patricia Austin, whose residence and post office address is 16297 Santa Bionea Drive, Hacienda Heights, California, and AUSCO INCORPORATED, a California corporation, registered in the State of Hawaii, whose principal place of business is Suite 212, Olsen Road, Thousand Oaks, California, doing business as a duly registered partnership under the name of "PUAAHALA COMPANY", a General Partnership, hereinafter referred to as the "LESSEE";

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor a portion of the submerged lands fronting the Ahupuaas of Puuhala and Kaamola, Molokai, being Parcel A, situate at Molokai, Hawaii, more particularly described in Exhibit "A" and shown on the map marked Exhibit "B", hereto attached and made parts hereof.

TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of sixty-five (65) years, commencing on the 8th day of November, 1969, up to and including the 7th day of November, 2034, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a net annual rent as provided hereinbelow.

RESERVING UNTO THE LESSOR THE FOLLOWING:

Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such 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 such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, 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, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale (b) All surface and ground waters appurtenant to to others. the demised land 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 demised premises as may be 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

just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

I. Rent

- A. Rental for and during the first year of said term from November 8 , 1969 , to November 7 1970 , shall be waived pursuant to Section 171-6(7), Hawaii Revised Statutes.
- B. For the next nineteen (19) years of said term, commencing November 8 , 19 70 , the Lessee shall pay to the Lessor, without notice or demand, in equal quarterly installments, in advance, but not more than one year in advance, on the first day of January, April, July and October of each and every year of said term, a fixed minimum annual rent for the premises demised in the amount of EIGHT THOUSAND FIVE HUNDRED AND NO/100

 DOLLARS (\$8,500.00

or an annual percentage rent, as hereinafter computed, whichever is the higher.

- C. Percentage Rent. The percentage rent shall be an amount equal to the total of the product of multiplying the Lessee's total annual gross proceeds, as hereinafter defined, by 1-3/4%. The percentage rent in excess of said minimum annual rent for each and every calendar year or fraction thereof of said term shall be paid within sixty (60) days following the close of the calendar year for which said rent is due.
- D. Gross Proceeds. As used herein, the term "gross proceeds" shall mean and include all receipts from operations, sales, orders taken, services rendered

and all revenues of any kind and nature, and whether the same shall be paid or unpaid in, from, about or by reason of the operation of the demised premises and each and every part thereof, by the Lessee; provided, however, that the following shall be excluded from the computation of any such gross proceeds:

- Any and all retail sales taxes or related direct taxes upon the consumer and collected by the Lessee on such sales.
- 2. Receipts from the sale or trade-in value of any furniture, fixtures, or equipment used upon the premises and owned by the Lessee.
- 3. The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of the Lessee where such exchanges or transfers are not made for the purpose of avoiding a sale by the Lessee which otherwise would be made at or from the premises.
- Refunds or discounts received from sellers, suppliers or manufacturers of merchandise, supplies or fixtures.
- The selling price of merchandise returned for which cash has been refunded or credited.
- Discounts, trade-ins or other allowances on the sale of merchandise.
- 7. Receipts from the sales of uniforms or clothing to Lessee's employees where such uniforms or clothing are required to be worn by such employees.
- The cost or value of free meals given to the Lessee's employees pursuant to any employment contracts.

- 9. The amounts of any gratuities paid or given by patrons or customers to employees of the Lessee.
- 10. Any sums or credit received in settlement of claims for loss or damage to persons or property.

E. Business Records

- 1. The Lessee shall furnish the Lessor, at the times and at Lessor's address hereinabove provided, with a written statement certified by a Certified Public Accountant as true and correct, showing the amount of the gross proceeds received by the Lessee or attributable to the use of the premises hereunder during the preceding year.
- 2. The Lessee shall keep full, true and correct books of accounts and records in accordance with accepted accounting practices in which shall be entered in detail the gross proceeds. Such books and records shall include all tax reports of every kind.
- 3. The Lessee shall grant unto the Lessor the right at all reasonable times to have access to all books, accounts, records and reports, including said tax reports, and at any reasonable time on twenty-four (24) hours' notice will permit a complete audit to be made by the Lessor or its representatives of the Lessee's entire business affairs and records relating to the business conducted on the premises demised for the term of this lease.
- F. Reopening. The minimum annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the twentieth (20th), fortieth (40th) and sixtieth (60th) years of said term. The rental

for any ensuing rental period shall be the rental for the immediately preceding rental period or the fair market rental of the premises as though submerged at the time of reopening, whichever is higher, with due consideration being given to all of the terms, covenants and conditions contained herein and the specific use or uses for which the premises are demised; provided, that the value of the land, as reclaimed, and improvements constructed by or at the cost of the Lessee shall not be considered in the determination of said rental. The fair market rental on reopening shall be determined by an appraiser whose services shall have been contracted for by the Lessor; provided that should the Lessee fail to agree to such fair market rental, Lessee may appoint its own appraiser who, together with the Lessor's appraiser, shall promptly appoint a third appraiser and the fair market rental shall be determined by arbirtation as provided by Chapter 658, Hawaii Revised Statutes. The Lessee shall pay for the services of its own appraiser and the cost for the services of the third appraiser shall be borne equally by the Lessor and Lessee.

The Lessor hereby covenants and agrees with the Lessee that upon payment of the said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the

Lessor or any other person or persons lawfully claiming by, through and under it, except as otherwise noted herein.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

- 1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.
- 2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, 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, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.
- 3. Utility services. That the Lessee 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 said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

- 4. Covenant against discrimination. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.
- 5. <u>Sanitation</u>, etc. That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.
- 6. Waste and unlawful, improper or offensive use of premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof.
- 7. Compliance with laws. That the Lessee shall comply with all of the lawful requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, pertaining to the said premises or the use thereof.
- 8. Inspection of premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.
- 9. Liens. That the Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvements thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses relating thereto.

- 10. Character of use. That the Lessee shall use the demised premises solely for small boat harbor and marina purposes, and uses usual, accessory or incidental thereto. Without limiting the generality of the foregoing, the Lessee shall be permitted to construct, maintain and operate buildings, structures and facilities for yacht clubs and retail type commercial activities, such as fuel docks, ship stores, and/or restaurants.
- 11. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made in accordance with the provisions of Section 171-36(5), Hawaii Revised Statutes.
- 12. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.
- 13. Mortgage. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof or this lease or any interest

therein without the prior written approval of the Board and any such mortgage, hypothecation or pledge without such approval shall be null and void.

- 14. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition and will reimburse the Lessor for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.
- shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

- 16. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, with an insurance company or companies acceptable to the Lessor, a policy or policies of comprehensive public liability insurance, if and when the same shall be required by the Board, in an amount acceptable to the Board, insuring against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit its liability under this lease.
- 17. Bond, performance. That the Lessee shall, at its own cost and expense, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants,

conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

- 18. Lessor's lien. That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee and for the payment of all money as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.
- 19. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever, except in accordance with plans and specifications which shall be submitted to and approved by the Chairman of the Board of Land and Natural Resources, as hereinafter also provided.
- shall, at its own cost and expense, within three (3) years from the commencement date of this lease, expend not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the development and construction of the small boat harbor and marina, all in accordance with plans and specifications which shall be submitted to and approved by the Chairman of the Board of Land and Natural Resources, and which shall conform to all laws, ordinances, rules and regulations applicable thereto:

- (a) Preliminary plans. Preliminary design sketches shall be submitted to the Chairman within ten (10) days following the commencement date of this lease.
- (b) Final plans and specifications. Final plans and specifications for all construction and on-site improvements, together with dredging, landfill, grading and landscaping plans, shall be submitted to the Chairman within twenty (20) days following the commencement date of this lease.

Development and construction of the small boat harbor and marina shall commence within six (6) months following the date of approval by the Chairman of the final plans and specifications. All submerged lands to be reclaimed hereunder shall be reclaimed at the Lessee's own cost and expense, and title thereto shall remain in the Lessor.

- 21. Repairs. That the Lessee shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.
- 22. Utility and sewer lines and services. That the Lessee shall, at its own expense, bring or cause to be brought to the premises such utility and sewer lines and services as may be necessary or required. Further, the Lessee shall be responsible for the construction of all on-site utilities in accordance with laws and ordinances of the State of Hawaii and the County of Maui applicable thereto; provided, that all on-site utility lines shall be located underground.

No failure, delay or interruption in the providing of such lines and services shall relieve or be construed to relieve the Lessee of any of its obligations hereunder or shall be or construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the rentals, fees or charges provided for herein, or grounds for any claim by the Lessee against the Lessor for damages, consequential or otherwise.

- 23. Access. That the Lessee shall, at its own cost and expense and in accordance with applicable ordinances of the County of Maui, construct a road providing vehicular and pedestrian access to the premises from Kamehameha V Highway. The general public shall be permitted full and unrestricted access to the premises over said road, and over such rights-of-way to the premises as the Chairman shall otherwise designate without prejudice to the Lessee.
- 24. <u>Signs</u>. The Lessee may install, place, use and maintain advertising, directional and/or identification signs at or upon said premises, but the number, general type, size, design or location of any such signs shall be subject to the prior written approval of the Chairman.
- 25. Bond, improvement. That the Lessee shall, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor a surety bond in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), acceptable to the Chairman, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the improvement and development requirement contained herein, the completion of such improvements free from all liens and claims and that the Lessee shall save and hold

the State harmless from all liens, suits, actions or damages arising out of, caused by or attributable to such work performed pursuant to said improvement and development requirement.

26. <u>Insurance</u>. That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee (if any) as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in a company or companies approved by the Lessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee and Mortgagee (if any) as their interests may appear, and shall be deposited with the Mortgagee (if any); and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Chairman; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the Lessor to retain the balance of said proceeds.

The Lessee shall furnish to the Lessor and Mortgagee (if any) with a certificate showing such policy or policies

to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor and Mortgagee (if any) of any intention to cancel any such policy or policies, prior to the actual cancellation.

27. Surrender. That the Lessee shall and will at the expiration or sooner termination of this lease peaceably and quietly surrender and deliver possession of the demised premises to the Lessor, together with all buildings and improvements of whatever name or nature, now on or hereafter erected or placed upon the same, in good order and condition, reasonable wear and tear excepted.

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

- 28. Docking fees, etc. That the Lessee shall have the right to set the rates for docking and mooring fees, boat slip rentals and other maritime activities for which rates are customarily established, subject, however, to the approval of the Chairman.
- 29. Mortgage. That upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the demised premises. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including any mortgagee, without regard to whether or not the purchaser is qualified to lease,

own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

30. Breach. That time is of the essence of this agreement and if the Lessee shall fail to yield or pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after receipt by Lessee of a written notice of such breach or default delivered by the Lessor by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a

security interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter said premises or any part thereof, and upon or without such 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 such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

31. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and restrictions or conditions of this lease, capable of performance by the holder, as determined by the Board, within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any monies 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 said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of said interest or estate upon

payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and thereupon use its best efforts to redispose of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any redisposition effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with such redisposition, second, to discharge in full any indebtedness owing the Lessor in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

32. Condemnation. That, if at any time, during the term of this lease, any portion of the demised premises should be condemned for public purposes by the State or any county or city and county or any governmental agency or subdivision thereof, the rental shall be reduced in proportion

to the value of the portion of the premises condemned. Lessee shall be entitled to receive from the condemning authority the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. going rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that, the Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

- 33. Right to enter. The Lessor shall have the right to itself and to the agents and representatives of the county in which said demised premises are situated, to enter and cross any portion of said premises for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.
- 34. <u>Inspection by prospective bidders</u>. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed disposition; <u>provided</u>, <u>however</u>,

that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this lease.

- 35. Acceptance of rent not a waiver. That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.
- 36. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.
- 37. <u>Justification of sureties</u>. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided

in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

38. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee of the terms, covenants and conditions herein contained on its part

to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

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- 39. No partnership created. It is understood and agreed that the Lessor is not, and has no intention of, participating in the business of the Lessee named herein either as a partner, joint venturer or otherwise; nor shall the percentage method of computing the rent to be paid hereunder be construed to indicate any such intention and the Lessor shall in no wise be liable for any debt, obligation or other liability of the Lessee for any reason whatsoever.
- 40. Consents by Lessor. Such consents or approvals as may be required by this lease to be obtained by the Lessee from the Lessor, the Board, the Chairman, or any of their respective representatives, shall not be unreasonably or arbitrarily withheld.
- 41. Representations. The Lessee does hereby covenant, agree and affirm that it has entered into this lease after an inspection and examination of the demised premises and that no statement or representations have been made by the Lessor and that this lease states and includes the entire agreement between the parties.

As used herein, unless clearly repugnant to the context:

- (a) "Board" shall mean the Board of Land and Natural Resources, State of Hawaii.
- (b) "Chairman" shall mean the Chairman of the Board of Land and Natural Resources, State of Hawaii.
- (c) "Lessor" shall mean the State of Hawaii, its successors or assigns.
- (d) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the text hereof.
- (e) "Holder of record of a security interest" shall mean a person who is the owner or possessor of a security interest in the land demised 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 such interest.
- (f) "Premises" shall mean the submerged land hereby demised and all buildings and improvements now or hereinafter constructed or installed upon its reclamation.
- (g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.
- (h) The marginal headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, the STATE OF HAWAII, the Lessor herein, 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 these presents to be duly executed

day of _ , 19 70, and PAUL B. NOEL, LeROY E. AUSTIN, HERBERT W. AUSTIN, and AUSCO INCORPORATED, the Lessee herein, have caused these presents to be executed this _ 2 1d day of _ both effective on the day and year hereinabove set forth.

STATE OF HAWAII

Chairman and Member

Board of Land and . Natural Resources

And By

Member Board of Land and

Natural Resources

LESSOR

PAUL B. NOEL

LeROY E. AUSTIN

HERBERT W. AUSTIN

ÁUSCO INCORPORATE

By:

PAUL B. NOEL

General Partner and

Attorney-in-Fact for LeRoy E. Austin, Herbert W. Austin and

Ausco Incorporated

LESSEE

APPROVED AS TO FORM:

Deputy Attorney General Dated: //- 28-69

Octy COUNTY OF Honoluly; ss

On this 2md day of Accember, 19 69, before me personally appeared PAUL B. NOEL, to me known to be the person who executed the foregoing instrument on behalf of LeROY E. AUSTIN, HERBERT W. AUSTIN and AUSCO INCORPORATED, acting under that certain Power of Attorney, dated May 29, 1969, recorded on Page 61 of Liber 6568 in the Department of Land and Natural Resources, Division of Conveyances at Honolulu, Oahu, and acknowledged that he executed the same as the free act and deed of said LeRoy E. Austin, Herbert W. Austin and Ausco Incorporated.

Notary Public, / Judicial Circuit, State of Hawaii

My Commission expires: 12/14/69

mm Proofed by: mh

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

on this 2nd day of December, 1969,

before me personally appeared PAUL B. NOEL

to me known to be the person described in and who executed
the foregoing instrument and acknowledged that he executed
the same as his free act and deed.

Notary Public, First Judicial Circuit, State of Hawaii

My Commission expires: 12/14/69

EXHIBIT "A"

PARCEL A

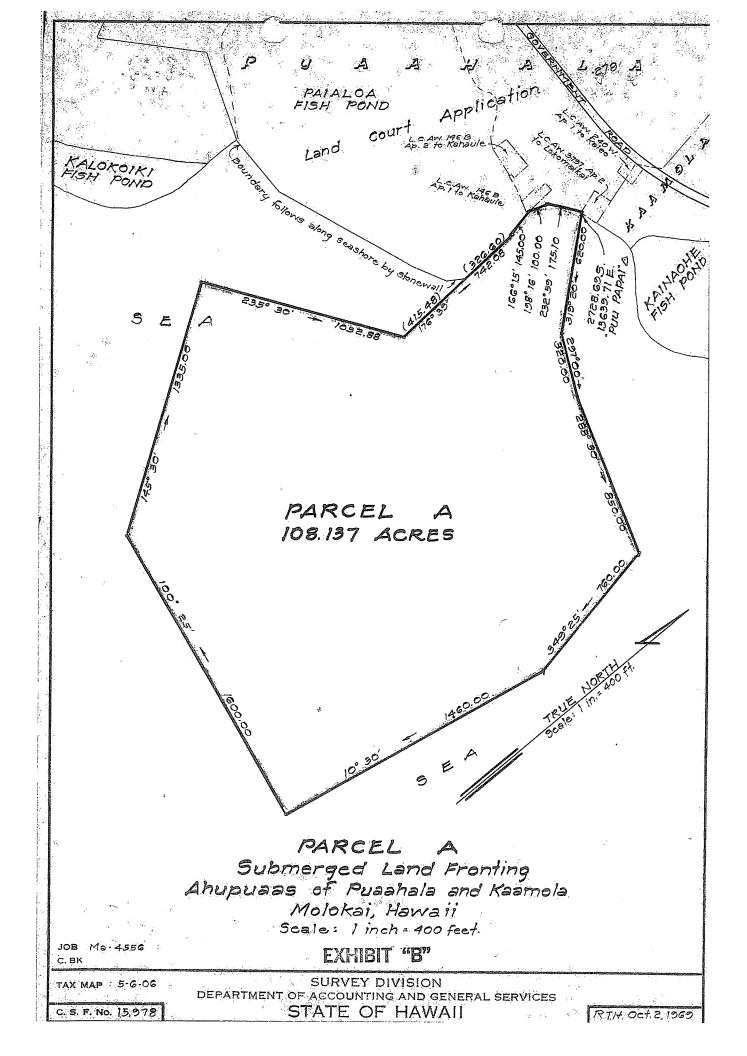
Submerged Land Fronting Ahupuaas of Puaahala and Kaamola Molokai, Hawaii

Beginning at the north corner of this parcel, the south corner of L.C. Award 3797, Apana 2 to Lokomaikai being also the end of Course 19 of Land Court Application 278, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PAPAI" being 2728.69 feet South and 13,639.71 feet East, as shown on Government Survey Registered Map 1724, thence running by azimuths measured clockwise from True South:-

1	. 319°	20'	620.00	feet	;
2	. 297°	00 *	320.00	feet	;
3	. 288°	30'	850.00	feet	;
4	. 349°	25'	760.00	feet	;
5	. 10°	301	1460.00	feet	;
6	. 100°	251	1600.00	feet	;
7	. 145°	30 t	1335.00	feet	;
. 8	. 235°	30 '	1052.88	feet	,
9.	. 176°	39'	415.48	feet	
10.	. 176°	39'	326.60	feet	along seashore by stonewall of Paialoa Fish Pond (Course 23 of Land Court Application 278);
11.	. 166°	15'	145.00	feet	along seashore by stonewall of Paialoa Fish Pond (Course 22 of Land Court Application 278);
12.	198°	16'	100.00	feet	along seashore by sand beach (Course 21 of Land Court Application 278);

13. 232° 59'

175.10 feet along seashore by stonewall (Course 20 of Land Court Application 278), to the point of beginning and containing an AREA OF 108.137 ACRES.



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Return by Mail () Pickup () REGULAR SYSTEM) To:			
receiling mail () lickup (, 10.			
	Total Number of Pages:			
LOD No.	Tax Map Key Nos. (2) 5-6-005:001,			
	012, 036; (2) 5-6-006:002; (2) 5-6-007:001, 002, 004, 068,			
	069, 070			
WARRAN	TY DEED			
KNOW ALL MEN BY THESE PRESENTS:				
THAT, effective as of				
2019, K&H HORIZONS HAWAII, a Hawai'i domestic general partnership, whose address is 5601 6th Avenue South, Suite 350,				
Seattle, Washington 98108, herei	nafter referred to as the			
"Grantor," for and in considerat				
ONE HUNDRED NINETY THOUSAND AND				
and other good and valuable cons				
sufficiency of which are hereby				
bargain, sell and convey onto the of Land and Natural Resources, w				
Street, Honolulu, Hawai'i 96813,				
"Grantee," the Grantee's success	ors and assigns, those certain			
parcels of land and improvements				
	, designated as "Pua'ahala,			

Watershed Acquisition," containing an area of 800.757 acres, more
particularly described in Exhibit "A" and delineated on Exhibit
"B," both 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 Hawai'i, designated as C.S.F. No.
and dated (hereafter, the "Property").

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anyways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as noted herein. (INSERT ENCUMBRANCES.)

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property, that it has a good and lawful right and title to sell and convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to release, indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

Document1 2

For the purpose of this warranty deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, as amended, Chapter 128D, Hawaii Revised Statutes, as amended, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

NOTICE OF STATE PARTICIPATION

The Property shall be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant and Chapter 173A, Hawaii Revised Statutes. Whenever the Property is sold, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, equal to the proportion that the Legacy Land Conservation Program grant bears to the original cost of the Property, shall be paid to the State of Hawai'i and redeposited in or credited to the Land Conservation Fund or its successor. In the event the Property is leased, rented, or otherwise disposed of, other than by sale, that portion of the gross proceeds of such disposition, equal to the proportion that the Legacy Land Conservation Program grant bears to the original cost of the Property, shall be paid to the State of Hawai'i.

NOTICE OF FEDERAL PARTICIPATION

The Grantee acknowledges that the Pua'ahala Watershed Acquisition, located on the Island of Moloka'i, Maui County, State of Hawai'i (the "Property"), was acquired, in part, with funds awarded by the U.S. Department of the Interior, Fish and Wildlife Service (the "Service") including: (1) grant funds received from the Recovery Land Acquisition Grant Program (CFDA #15.615), established under the authority of the Endangered Species Act of 1973 16 U.S.C. 1531 et seq., through Federal Assistance Award Identifier #F15AP00904 dated September 8, 2015 and (2) grant funds received from the National Coastal Wetlands Conservation Grant Program (CFDA #15.614), established under the authority of the Coastal Wetlands Planning, Protection, and Restoration Program 16 U.S.C. 3954 Sec 302, through Federal

Document1 3

Assistance Award Identifier #F15AP00146 dated September 9, 2015. The property is subject to all the terms and conditions of Grant Awards ("Awards") #F15AP00904 and #F15AP00146, the purpose of which is to acquire habitat in support of federal recovery goals for threatened and endangered species and protect, restore and enhance coastal wetland ecosystems. Copies of Federal Assistance Award Identifiers #F15AP00904 and #F15AP00146 are kept on file at:

U.S. Fish and Wildlife Service Division of Wildlife and Sport Fish Restoration 911 NE 11th Avenue Portland, Oregon 97232

and

Department of Land and Natural Resources Division of Forestry and Wildlife 1151 Punchbowl Street, Room 325 Honolulu, Hawaii 96813

The Grantee acknowledges that the Property was acquired in part for the Service-approved purpose of protecting in perpetuity 800 acres for the benefit of endangered species, migratory birds, coastal ecosystems, and other wildlife habitat and to provide for conservation and wildlife-based recreation. The Property shall be managed in perpetuity for the protection of habitat and conservation of listed endangered species. The Service will be consulted during the development of the multiresource management plan to ensure the forest management and other activities will consider impacts to listed species, migratory birds, and wildlife habitats. The Property possesses significant natural and open space values associated with habitat for fish and wildlife, and associated wildlife-based recreation. The perpetual protection of these values in accordance with the Awards will yield a significant public benefit. The Grantee's responsibilities and the federal interest shall last in perpetuity and pass to any successors unless provided for otherwise through disposal pursuant to 2 C.F.R. §200.311.

The Grantee, as a recipient of Award funds, hereby confirms its obligations and responsibilities with regards to the Property pursuant to the terms and conditions associated with the Awards, including the obligation to obtain the consent of the Service prior to the conveyance of any interest in the Property or the use of the Property for any purpose inconsistent with the Service-approved purpose. In the event the Property is no longer

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necessary for the purpose of the Awards, the Grantee will request disposition instructions from the Service, which will be provided in accordance with 2 C.F.R. §200.311(c).

Funding contributions toward the total purchase of the Property are as follows:

Contributing Partner	Amount	% of total
U.S. Fish and Wildlife Service - Recovery Land Acquisition	\$1,566,875	49%
U.S. Fish and Wildlife Service - Coastal Wetlands	\$1,000,000	31%
State of Hawai'i Legacy Lands Program - Department of Land and Natural Resources	\$623,125	20%
Total	\$3,190,000	100%

The Grantee shall not authorize or tolerate any activities on the Property that are incompatible with its originally authorized purpose, and will endeavor while working with partners, to stop these activities immediately should they occur without the Grantee's permission.

The Grantee acknowledges that there must be no discrimination during the useful life of the project (43 C.F.R. 17.204(c)(2)).

The Grantee, as grant recipient of the Awards, hereby confirms its obligations and responsibilities with regard to the Property pursuant to the terms and conditions associated with the Awards.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according

to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

TN	WITNESS	WHEREOF,			
ada ab V	***************************************	WILLIAM ,	 		_′

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	d these presents to be executed	
day of	, 2019, and the STATE OF HAWA	Ι'Ι,
by its Board of Land and Natu:	$\overline{}$, 2019, and the STATE OF HAWA ral Resources, the Grantee herei	n,
has caused the seal of the Dep	partment of Land and Natural	
Resources to be hereunto affi	xed and these presents to be	
executed this day of _	, 20, both effection first above written.	ve
as of the day, month, and year	r first above written.	
	MOII HODIFONG HALATI	
	K&H HORIZONS HAWAII,	
Approved by the Board of	ву	
Land and Natural Resources		
at its meeting(s) held on	Its	_
•		
Ar	nd By	
		_
	Its	
	GRANTOI	>
	GIGANTOI	
APPROVED AS TO LEGALITY,		
FORM, EXCEPTIONS, AND		
RESERVATIONS:		
	STATE OF HAWAI'I	
JULIE H. CHINA	_	
Deputy Attorney General	Ву	And the State of Concession of
Datad	SUZANNE D. CASE	
Dated:	Chairperson	
	Board of Land and	
	Natural Resources	

GRANTEE

STATE OF HAWAL'I)
) SS.
COUNTY OF)
On this	day of, 20,
before me appeared	3
	and , to me personally known,
who, being by me duly sworn	n, did say that they are the
	, respectively,
~	
corporation, and that said	, a, a, instrument was signed in behalf of
	ity of its Board of Directors, and the
acknowledged said instrumen	and nt to be the free act and deed of said
corporation.	
	Notary Dublic Chata of Harri's
	Notary Public, State of Hawaiʻi
	My commission expires:
STATE OF HAWAI'I)
•) SS.
COUNTY OF)
	,
On this day of	, 20 , before me
personally appeared	and
	, to me known to be the
nerson(s) described in and	who executed the foregoing instrument
fine acknowledged that	executed the same as
free act and deed.	
	<u> </u>
	Notary Public, State of Hawai'i

STATE OF HAWAI'I COUNTY OF) SS.)
On this	day of, 20,
before me personally appear	red
and	, to me personally known,
who, being by me duly sworn	or affirmed, did say that such
person(s) executed the fore	going 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 Hawaiʻi
1	My commission expires:

•			

AGREEMENT OF SALE (Pua'ahala Watershed Property)

This is an Agreement of Sale ("Agreement") dated	, 2019, between
K&H HORIZONS HAWAII, a Hawai'i domestic general partnership ('	'Seller"), and the State
of Hawai'i, by its Board of Land and Natural Resources ("Buyer").	

RECITALS

A. The address and telephone numbers of the parties to this Agreement are as follows:

SELLER:

K&H HORIZONS HAWAII 5601 6th Avenue South, Suite 350 Seattle, Washington 98108 Attn: Jeff Bashaw jeffb@hadleyproperties.com Tel: (206) 441-1800

BUYER:

State of Hawai'i
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809-0621
Attn: Suzanne D. Case, Chairperson
suzanne.case@hawaii.com
Tel: (808) 808-587-0405

Copies of any notices to Buyer should also be sent to:

State of Hawai'i
Dept. of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawai'i 96813
Attn: Ian C. Hirokawa
ian.c.hirokawa@hawaii.gov

Tel: (808) 808-587-0385

- B. Seller owns certain real property commonly called the Pua'ahala Watershed located on the Island of Molokai, Hawai'i, Tax Map Key Nos. (2) 5-6-005:001, 012, 036; (2) 5-6-006:002; (2) 5-6-007:001, 002, 004, 068, 069, 070, totaling approximately 800.757 acres, described in Exhibit A and depicted in Exhibit B both attached to this Agreement and incorporated herein by this reference, together with Seller's interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to the Property, including but not limited to timber rights, water rights, grazing rights, access rights, and geothermal rights, if any, which will be referred to in this Agreement as the "Property."
- C. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

- 1. <u>Purchase and Sale</u>. Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller on the terms and conditions set forth herein.
- 2. <u>Purchase Price</u>. The purchase price for the Property is Three Million One Hundred Ninety Thousand Dollars (\$3,190,000.00) (the "Purchase Price"). The Purchase Price will be payable on Close of Escrow, as defined in Section 7.
- 3. <u>Effective Date</u>. This Agreement will be effective on the date that it is signed by both parties hereto and approved as to form and legality by the Attorney General, as shown on the signature pages to this Agreement (the "Effective Date").
- 4. <u>Conditions Precedent to Closing</u>. The parties' respective obligations to close the purchase and sale of the Property are conditioned upon all of the following happening at the time set forth below, or if not set forth below, then at least one (1) business day before the Close of Escrow or ______, whichever is sooner:
- (a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller's Partners, which approval is subject to their sole discretion;
- (b) Buyer's approval of the title, physical, and structural condition of the Property not later than ______, 2019 (the "Review Deadline");
- (c) Buyer receives approval by the State of Hawai'i, Board of Land and Natural Resources to enter into this Agreement and to acquire the Property, which approval is subject to the Board's sole discretion;
- (d) Buyer receives confirmation from all sources of grant funding that they are compatible with each other and may be used together to purchase the Property and the funds are released to Buyer;
- (e) Seller has provided Buyer with copies of the preliminary title report. To the best of Seller's knowledge the title report contains all encumbrances, restrictions, and obligations pertaining to the Property;
- (f) Satisfaction of all obligations stated in this Agreement by both Buyer and Seller, within the periods provided in this Agreement (if any).

If any condition precedent is not satisfied or waived by the benefited party, Seller or Buyer may terminate this Agreement by written notice to the other party and to the Escrow Holder; in which event the Parties will have no further obligation to each other under this Agreement and Buyer will not be liable for any damages.

5. Condition of the Property.

(a) Buyer and Seller agree that, before the Review Deadline, as defined in Section 4(b) above:

- (i) Buyer will have had the opportunity to study all aspects or circumstances of the Property which Buyer deems material or relevant;
- (ii) Buyer will have received from Seller the preliminary title report for the Property;
 - (iii) Buyer will have had access to the Property; and
- (iv) Buyer will have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.
- (b) Except as otherwise expressly provided in this Agreement, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent, or employee of Seller has made, or will make, and except for Seller's representations and express warranties set forth in this Agreement, Seller specifically negates and disclaims, any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning or with respect to the Property.
- 6. <u>Due Diligence</u>. Seller has provided to Buyer the opportunity to investigate and review a preliminary title report and the physical condition of the Property, which investigation and review must be completed on or before the Review Deadline. If Buyer determines that it is dissatisfied with the condition of the Property, then Buyer may terminate this Agreement by delivering written notice to Seller on or before the Review Deadline. If Buyer fails to deliver any such written termination notice to Seller on or before the Review Deadline, then Buyer will be deemed to have elected to proceed to close escrow and acquire the Property.

7. Escrow and Closing.

(a) Seller has opened an escrow (the "Escrow") with Title Guaranty	of
Hawaii, Inc., 235 Queen Street, Honolulu, Hawai'i, 96813 Attn: (the	
"Escrow Holder") for the purpose of consummating the purchase and sale of the	
Property. Buyer and Seller will approve and submit joint escrow closing instructions.	
Escrow will close on or before, unless extended by agreement of	
the parties.	

- (b) Buyer and Seller must deliver (or cause to be delivered) all final, fully executed documents and all funds into Escrow at least two (2) business days before the Close of Escrow.
- (c) Seller will pay all escrow fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property will be borne by Seller, if applicable. The cost of tile insurance will be borne as provided in Section 9 below. Any other closing expenses, fees, and charges will be paid for by Seller.

8. <u>Title</u>. Seller will cause the Property to be conveyed to Buyer by warranty deed (the "Deed") in the form attached hereto as <u>Exhibit C</u>, incorporated herein by this reference, a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except as shown in the preliminary title report issued by Title Guaranty of Hawaii, Inc. (the "Title Company") attached hereto as <u>Exhibit D</u>, attached hereto and incorporated by this reference:

<u>Preliminary Report No.</u> 201837285 dated July 25, 2018, 2019. [Note: The State will require an updated title report before closing.]

Seller will pay or cause to be paid all property taxes up to the date of recordation of the Deed.

- 9. <u>Title Insurance</u>. Buyer will purchase an ALTA standard coverage, owner's policy of title insurance, with regional exceptions, in the full amount of the Purchase Price, insuring that title to the Property is vested in Buyer upon Close of Escrow subject only to the exceptions noted in <u>Section 8</u>. If Buyer or the Title Company requires a survey, the cost of the survey will be at Buyer's expense and such survey must be completed at least two (2) business days before the Close of Escrow.
- 10. <u>Seller's Promise not to Further Encumber</u>. Seller may not, without the prior written consent of the Buyer, make any leases, contracts, options, or agreements whatsoever affecting the Property that would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.
- Area of Environmental Concern. Environmental Risk Analysis LLC ("ERA") prepared a Solid Waste Clean-Up and remediation report on behalf of Ashford & Wriston LLLP dated July 2019 (the "Report"). The Report is attached hereto as Exhibit E and incorporated herein by this reference. Sampling from an area identified as Location 5 in the Report detected lead and mercury exceeding the HDOH Unrestricted Environmental Action Levels ("EALs"). Location 5 contained a burnt structure and suspected soil contamination resulting from burnt building materials. ERA excavated and removed the impacted surface soil from Location 5 on July 17, 2019. Analytical results after the excavation determined that the remaining concentrations of total lead and mercury were below both unrestricted and commercial/industrial EALs. ERA, on behalf of Seller, submitted a Hawaii Hazardous Substance Written Follow-up Notification form for Incident Case No. 20180822-1540 dated September 6, 2019, to the Hawai'i Department of Health ("HDOH"). Should additional remediation or testing be required in order for HDOH to issue a no further action ("NFA") letter for Location 5, Seller agrees to perform and pay for all additional work at no cost to Buyer. The terms of the NFA cannot restrict Buyer's use of the Property for which it is being purchased.

Buyer agrees to execute applications and other agreements required by the HDOH, the City and County of Honolulu, and any other governmental authority with jurisdiction over the Property to facilitate the receipt of the NFA.

12. **Seller's Representations**. Seller represents and warrants that:

- (a) Seller has the power to sell, transfer and convey all right, title and interest in and to the Property;
- (b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration, or other proceeding pending or threatened that in any manner affects the Property;
- (c) Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement;
- (d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation affecting the Property;
- (e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property;
- (f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 4, and subject to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles affecting or limiting the rights of contracting parties generally. Neither this Agreement nor anything provided to be done under this Agreement violates or will violate any contract, document, understanding, agreement, or instrument to which Seller is a party or by which it is bound;
- (g) Seller has no actual knowledge of any unrecorded agreements affecting the Property other than as described in <u>Section 8</u>;
- (h) Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is ______;
- (i) Seller represents and warrants that it is a general partnership duly organized, validly existing and in good standing under the laws of the State of Hawai'i;
- (j) Seller represents and warrants, to Seller's actual knowledge that except as described in <u>Section 11</u>, the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims;
- (k) Seller agrees to disclose to Buyer all material findings regarding the condition of the Property that Seller may discover and are not contained in the preliminary title report delivered to Buyer.

- 13. <u>Buyer's Representation</u>. Buyer represents and warrants that subject to approval by the Board of Land and Natural Resources which approval is at the Board's sole discretion, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.
- 1.4. <u>Risk of Loss</u>. All risk of loss will remain with Seller until Close of Escrow. If the Property is destroyed or damaged after the Effective Date of this Agreement and before Close of Escrow, then Buyer or Seller may, at their option elect to terminate this Agreement with no damages accountable to Buyer.
- 15. Notices. All notices pertaining to this Agreement will be in writing delivered to the parties hereto by email transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth in Recital A. All notices will be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepared, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by email, when transmitted; provided the sender receives no indication the transmittal was unsuccessful. The parties may, by notice as provided above, designate a different address for notices.
- 16. **Remedies Upon Default.** If Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, then Seller or Buyer will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against the defaulting party.
- 17. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. If any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.
- 18. <u>Time of the Essence</u>; <u>Dates</u>. Time is of the essence to this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, then such date will be deemed to be the succeeding day on which the public agencies and major banks are open for business.
- 19. <u>Binding on Successors</u>. Subject to approval by the Board of Land and Natural Resources and Seller, which approvals are at their sole discretion, this Agreement will be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.
- 20. <u>Additional Documents</u>. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

- Additional Documents to be Provided by Seller to Buyer. Seller agrees to provide to Buyer or Escrow Holder before the close of Escrow a resolution of Seller authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.
- 22. <u>Assignment</u>. Buyer may not assign its interests under this Agreement without the written consent of Seller.
- 23. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver and agreeable to both parties.
- 24. <u>Counterparts</u>. This Agreement may be executed in counterparts; each of which will be deemed an original and which together will constitute one and the same agreement.
- 25. <u>Severability</u>. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance will nonetheless be of full force and effect.
- 26. <u>Governing Law</u>. This Agreement will be governed by and construed in accordance with the laws of the State of Hawai'i.
- 27. <u>Survival of Close of Escrow</u>. All representations, warranties, covenants, conditions, agreements, and other obligations set forth in this Agreement will survive the Close of Escrow and the recordation of the Deed and will not merge therein unless specifically stated otherwise in this Agreement.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:	STATE OF HAWAI'I
K&H HORIZONS HAWAII , a Hawai'i domestic general partnership	
tt	Ву:
	Name: SUZANNE D. CASE
	Chairperson
By:	Board of Land and Natural Resources
Date:, 2019	
Approved by the Board of Land and	APPROVED AS TO LEGALITY, FORM,
Natural Resources at its meeting	EXCEPTIONS, AND RESERVATIONS:
held on	,
	Name: JULIE H. CHINA
	Deputy Attorney General

Exhibit A

Legal Description of Property

Exhibit B

Map of Property

Exhibit C

Warranty Deed

Exhibit D

Preliminary Title Report

Exhibit E

Solid Waste Clean-Up and Remediation Report

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