

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

March 11, 2022

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

Ref: GL S-5548

MAUI

Amendment of Lease and Consent to Mortgage, General Lease No. S-5548, Hana Health, a Hawai'i nonprofit corporation, formerly known as Hana Community Health Center, Inc., Lessee, Kawaipapa, Hana, Maui, Tax Map Keys: (2) 1-4-003:022 and 024.

APPLICANT AND REQUEST:

Hana Health requests an amendment to General Lease No. S-5548 to allow it to mortgage its leasehold interest with the Lessor's prior written consent, and requests consent to a mortgage of its leasehold interest to Community Health Center Capital Fund, Inc. to secure a loan in the amount of \$2,000,000.00.

LEGAL REFERENCE:

Section 171-22, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kawaipapa, Hana, Maui, identified by Tax Map Keys: (2) 1-4-003:022 and 024, as shown on the attached map labeled Exhibit 1.

AREA:

Parcel 22 - approximately 10.070 acres
Parcel 24 - approximately 2.035 acres
TOTAL: approximately 12.105 acres

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
 X

CHARACTER OF USE:

Providing health care services to the Hana community as set forth in Lessee's articles of incorporation and other services commonly provided by government.

TERM OF LEASE:

Fifty-five (55) years, commencing on July 1, 1997, up to and including June 30, 2052.

ANNUAL RENTAL:

\$1.00.

USE OF LOAN PROCEEDS:

To construct a rehabilitation center pursuant to the plans and specifications submitted for review and approval on October 6, 2020.

REMARKS AND BACKGROUND:

Pursuant to Act 263, Session Laws of Hawaii 1996, an affiliation was established between the State through the Department of Health and the community of Hana through a Hana non-profit health care organization to support the development of a community-based health care program. Hana Health is the only health care provider in the District of Hana. It provides primary medical care, dental health services, and behavioral health care to the resident population, but also to any of the 600,000 annual visitors to Hana who find themselves in need of medical care during their visits. Hana Health is often called upon to provide ancillary and specialty care, including physical therapy, cardiac rehabilitation therapy, and mental health services. Hana Health is currently unable to adequately address these needs due to lack of appropriate facilities.

In 2015, Hana Health applied for a federal grant of up to \$1,000,000 through the Health Infrastructure Investment Program (HIIP) of the Health Resources and Services Administration (HRSA) to fund construction of a rehabilitation center. To satisfy the grant application requirements, on March 30, 2015, Hana Health submitted a request for approval from the Board of Land and Natural Resources to build a rehabilitation center if the grant was awarded, which

would require an amendment of its lease to allow the placement of a federal interest on the improvements and authorization for the Chairperson to sign a Landlord Letter of Consent. At its meeting of May 8, 2015, under agenda item D-18, the Board approved, as amended, Hana Health's amended actions, and directed Hana Health to:

return to the Board at a later date to report on the results of the application and, if applicable, submit detailed building plans and specifications at that time. Hana Health will additionally need to comply with the requirements of HRS Chapter 343 prior to commencing construction of the Rehabilitation Center.

In April 2016, Hana Health was awarded HIIP/HRSA Grant No. C8DCS29760, in the amount of \$1,000,000.00, for the construction of the Rehabilitation Center. The State and Hana Health executed the lease amendment effective as of March 14, 2017. (Exhibit 2.) A Notice of Federal Interest Affecting Portion of the Land Covered by General Lease No. S-5548 was recorded on July 11, 2018 as Document No. A-67660650. (Exhibit 3.)

With respect to the requirements of HRS Chapter 343, Hana Health requested that the Board of Land and Natural Resources determine, pursuant to HAR Section 11-200.1-11, that additional environmental review was not necessary because the Rehabilitation Center was a component of a 2004 Environmental Assessment (2004 EA) for which the Department of Land and Natural Resources (DLNR), was the accepting authority and had issued a Finding of No Significant Impact (FONSI), and the Rehabilitation Center was anticipated to have similar or less direct, indirect, and cumulative impacts compared to those analyzed in the 2004 EA, and was within the range of alternatives analyzed in the 2004 EA. Hana Health's request was considered and approved at the Board's December 13, 2019 meeting, under agenda item D-7, at which the Board also delegated to the Chairperson "the authority to review the detailed plans and specifications for the Rehabilitation Center when submitted, provided that such plans and specifications substantially conform to the elevations and floor plans attached as Exhibit 5 [to the December 13, 2019 Staff Submittal]."

Notice of the Board's determination was published in The Environmental Notice on January 8, 2020.

Hana Health submitted the detailed plans and specifications for the Rehabilitation Center for the Chairperson's review and approval on October 6, 2020. The Chairperson reviewed the detailed plans and specifications and, upon concluding they substantially conform to the elevations and floor plans previously attached to the December 13, 2019 Staff Submittal, approved the detailed plans and specifications.

Construction of the Rehabilitation Center is projected to cost approximately \$5.54 million (including furniture and equipment). Hana Health has secured \$4,366,100.00 for the construction through grants, legislative appropriation, community fundraising and its own reserves, as follows: \$1 million HRSA grant; \$1 million Weinberg Foundation grant; \$250,000

State Contract (2019 legislative appropriation); \$16,100 community fundraising; \$100,000 McNerny Foundation Grant (over three years) and \$2 million Hana Health Reserves. Hana Health has also secured a loan commitment from Community Health Center Capital Fund, Inc. (CHC Cap. Fund) to fund a loan in the amount of \$2 million, which will allow it to cover any contingencies. (Exhibit 4.)

Although the plan for a Rehabilitation Center is based on an obvious community need rather than anticipated income, it appears that, between anticipated fees for the new services (\$70,900 net) and savings from moving the administrative offices from rented modular units into the new building (\$36,000), Hana Health will come close to being able to service the debt without having to cut back too severely on its budgeted expenses. Based on anticipated number of visits, and subtracting expenses (i.e., payroll), it is expected that the Rehab Center will initially generate a net income of \$21,700 for physical therapy services, \$40,000 for chiropractic services, and \$9,200 for cardiac rehab services.

REQUESTED LEASE AMENDMENT AND CONSENT TO MORTGAGE

Because Hana Health is a non-profit, the lease prohibits mortgages. *See* Exhibit “5,” Condition no. 20. To authorize Notice of Federal Interest required by HRSA in connection with the grant, the lease was amended in 2017.

As amended, Condition no. 20, states as follows:

20. Mortgage. Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease.

Notwithstanding the foregoing, the Lessee may, with the prior written consent of the Lessor, through its Board of Land and Natural Resources, allow a federal interest under the Health Infrastructure Investment Program of the Health Resources and Services Administration to encumber the premises to the extent necessary to secure the grant moneys to fund the construction of improvement to the premises.

Hana Health requests that the Lease be amended to permit Hana Health, with the prior written consent of the Lessor, through its Board of Land and Natural Resources, to mortgage its interest in the premises to the extent necessary to secure the balance of the funds necessary to complete the construction of the Rehabilitation Center.

Hana Health is in compliance with its lease terms and believes that, as indicated by the community fundraising and the lack of opposition to its request that further environmental review be deemed unnecessary, the project has the support of the Hana community.

RECOMMENDATION: That the Board:

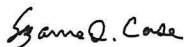
- A. Authorize the further amendment of the lease to allow Hana Health to mortgage its leasehold interest in the premises with the prior written consent of the Lessor, through its Board of Land and Natural Resources; and
- B. Consent to the mortgage of the leasehold interest in the premises between Hana Health, mortgagor, and Community Health Center Capital Fund, Inc., mortgagee, in substantially the form attached as Exhibit "4," in an amount up to \$2 million subject to the following:
 - 1. The loan proceeds shall be used for the purposes as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
 - 2. Hana Health shall obtain the written permission of the Associate Administrator, Office of Federal Assistance Management (OFAM) of HRSA, or designee;
 - 3. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - 4. Review and approval by the Department of the Attorney General; and
 - 5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Andrew R. Tellio
Appraisal and Real Estate Specialist

APPROVED FOR SUBMITTAL:



ST Suzanne D. Case, Chairperson

EXHIBIT 1



EXHIBIT 1



EXHIBIT 1

EXHIBIT 2

WHEREAS, the Board of Land and Natural Resources, at its meeting held on May 8, 2015, as amended, has approved the amendment to General Lease No. S-5548, for the purposes of amending condition no. 11, Liens and condition no. 20, Mortgage to accommodate the building of the rehabilitation center and to add in additional conditions to address federal funds.

NOW, THEREFORE, the Lessor and Lessee covenant and agree that General Lease No. S-5548, is hereby amended as follows:

1. Condition no. 11, Liens, the following is added:

"Notwithstanding the foregoing, the Lessee may, with the prior written consent of the Lessor, through its Board of Land and Natural Resources, allow a federal interest under the Health Infrastructure Investment Program of the Health Resources and Services Administration to encumber the premises to the extent necessary to secure grant moneys to fund the construction of improvement to the premises."

2. Condition no. 20, Mortgage, the following is added:

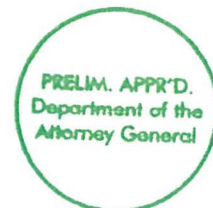
"Notwithstanding the foregoing, the Lessee may, with the prior written consent of the Lessor, through its Board of Land and Natural Resources, allow a federal interest under the Health Infrastructure Investment Program of the Health Resources and Services Administration to encumber the premises to the extent necessary to secure grant moneys to fund the construction of improvement to the premises."

3. Condition no. 50, Restrictive terms, is added as follows:

"50. The Lessor is in full agreement of the proposed improvements to the leased property as part of the Health Resources and Services Administration (HRSA) funding opportunity, and grants permission to Lessee to undertake the proposed improvements.

The Lessee as recipient of federal funds agrees to the following:

(a) The Lessee agrees not to sublease, assign, or otherwise transfer the premises, or use the premises for a non-grant-related purpose(s) without the written approval from HRSA (at any time during the term of the lease, whether or not grant



support has ended).

(b) The Lessor will inform HRSA of any default by the Lessee under the lease.

(c) HRSA shall have sixty (60) days from the date of receipt of the Lessor's notice of default in which to attempt to eliminate the default, and that the Lessor will delay exercising remedies until the end of the sixty (60) day period.

(d) HRSA may intervene to ensure that the default is eliminated by the Lessee or another recipient named by HRSA.

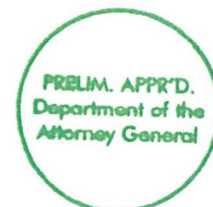
(e) The Lessor shall accept payment of money or performance of any other obligation by the HRSA's designee, for the Lessee, as if such payment of money or performance had been made by the Lessee.

(f) In the event that the Lessee defaults, the grant is terminated, or the Lessee vacates the premises before the end of the lease term, HRSA shall have the right to designate a replacement for the recipient for the balance of the lease term, subject to approval by the Lessor, which will not be withheld except for good reason.

The Lessor also acknowledges that there will be a federal interest in the premises as a result of the proposed improvements and that the Lessor agrees to file a Notice of Federal Interest prior to work commencing, if required by HRSA."

IN CONSIDERATION THEREOF, the Lessor and Lessee further agree that this Amendment of Lease Agreement is subject to all the covenants and conditions in the General Lease No. S-5548, except as herein provided.

This Amendment, read in conjunction with the General Lease No. S-5548 sets forth the entire agreement between the Lessor and Lessee; and the general lease as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Lessor and Lessee.



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

Approved by the Board of Land and Natural Resources at its meeting held on May 8, 2015.

Handwritten mark

STATE OF HAWAII

By *Suzanne D. Case*
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

LESSOR

HANA HEALTH, a Hawaii nonprofit corporation

By *Cheryl Vasconcellos*
Its *Executive Director*

APPROVED AS TO FORM:

Linda L. W. Chow

LINDA L. W. CHOW
Deputy Attorney General

Dated: *Aug. 1, 2016*

By *[Signature]*
Its *Treasurer*

LESSEE



STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 10th day of August, 2016, before me appeared Cheryl Varconcellos and William R. Kalam Jr., to me personally known, who, being by me duly sworn, did say that they are the Executive Director and Treasurer, respectively of HANA HEALTH, a Hawaii nonprofit corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said Executive Director and Treasurer acknowledged said instrument to be the free act and deed of said corporation.

Joanna Paman
Notary Public, State of Hawaii
Joanna Paman

My commission expires: August 23, 2017

Doc. Date: <u>Undated</u>	# Pages: <u>5</u>
Notary Name: <u>Joanna Paman</u>	<u>2nd Circuit</u>
Doc. Description: <u>Amendment</u>	
<u>of General Lease</u>	
<u>Joanna Paman</u>	Stamp or Seal
Notary Signature	Date <u>08/10/16</u>

656607_1.DOC

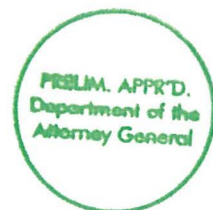


EXHIBIT 3

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES
DOCUME Doc A - 67660650
DATE July 11, 2018 10:45 AM

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return To:
Cheryl Vasconcellos
Hana Health
P.O. Box 807
Hana, HI 96713

By Mail () Pickup ()

Total Pages: _____

Tax Map Key Nos. (2) 1-4-003:022 and 024

**NOTICE OF FEDERAL INTEREST
AFFECTING PORTION OF THE LAND COVERED BY
GENERAL LEASE NO. S-5548**

WHEREAS, pursuant to unrecorded General Lease No. S-5548 dated August 7, 1998, as amended by the unrecorded Amendment of General Lease No. S-5548 dated March 14, 2017 (as amended, the "Lease") the State of Hawaii, by its Board of Land and Natural Resources ("Lessor"), whose address is 1151 Punchbowl Street, Honolulu, HI 96813, leased to Hana Community Health Center, Inc., now known as Hana Health, a Hawaii nonprofit corporation ("Lessee"), whose address is P.O. Box 807, Hana, HI 96713, for a period of fifth-five (55) years, certain real property situate at Kawaipapa, Hana, Maui, Hawaii, containing an area of approximately 12.105 acres, more or less, as more particularly described in Exhibit "A" (the "Land");

WHEREAS, Lessee desires to construct a multi-purpose building on a portion of the Land (the "Rehabilitation Center");

WHEREAS, on April 26, 2016, the Health Infrastructure Investment Program ("HIIP") of the Health Resources Services Administration ("HRSA") awarded Grant No. C8DCS29760 to Lessee, which grant provides Federal funds for construction of the Rehabilitation Center on a portion of the Land;

Exhibit 3

WHEREAS, the Grant includes conditions on the use of, and provides for a continuing federal interest in, the Rehabilitation Center as more fully set forth in the Grant (the "Federal Interest"), including that, for the duration of the Lease term, the Rehabilitation Center may not be (1) used for any purpose inconsistent with the statute and any program regulations governing the award under which the Rehabilitation Center was constructed; (2) mortgaged or otherwise used as collateral without the written permission of the Associate Administrator, Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee; or (3) sold or transferred to another party without the written permission of Associate Administrative Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee;


NOW, THEREFORE, Lessor consents to and gives notice of the Federal Interest in the Rehabilitation Center, the duration of which will not extend beyond the term of the Lease; SUBJECT, HOWEVER, to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to rights of holder of security interest.

IT IS UNDERSTOOD that, except as provided herein, should there be any conflict between the terms of the Lease and this consent, the former shall control; and, further, that except as provided herein, this consent shall not in any manner be construed as varying in any respect the terms and conditions of the Lease; and also that no further federal interest under the Lease shall be made without the written consent of the State of Hawaii, by its Board of Land and Natural Resources, being first obtained and endorsed thereon.

IN WITNESS WHEREOF, the State of Hawaii, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 2nd day of July, 2018.

Approved by the Board of Land and Natural Resources at its meeting held on May 8, 2015

STATE OF HAWAII

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

N

APPROVED AS TO FORM:


LINDA L. W. CHOW
Deputy Attorney General

Dated: 6/20/18



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. 22,667

February 24, 1998

HANA COMMUNITY HEALTH CENTER SITE

PARTS 1 AND 2

Kawaipapa, Hana, Maui, Hawaii

PART 1:

Being a portion of Grant 1906 to Kahoolimoku conveyed to the State of Hawaii by Keola Hana Maui, Inc. by deed dated December 24, 1991 and recorded as Document No. 91-179838 (Land Office Deed S-27903).

Beginning at the east corner of this parcel of land and on the southwest side of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 3507.94 feet North and 4326.16 feet West, thence running by azimuths measured clockwise from True South:-

- | | | |
|----|-------------|--|
| 1. | 69° 53' | 209.00 feet along Part 2 of Hana Community Health Center Site; |
| 2. | 159° 53' | 100.00 feet along Part 2 of Hana Community Health Center Site; |
| 3. | 69° 53' | 149.83 feet along Part 2 of Hana Community Health Center Site; |
| 4. | 335° 49' | 310.74 feet along Part 2 of Hana Community Health Center Site; |
| 5. | 65° 48' 30" | 807.40 feet along Grant 1819 to Kahananui; |
| 6. | 161° 01' | 183.53 feet along Grants 1269 and 3011 to Kapawa; |
| 7. | 163° 17' | 122.03 feet along Grants 1269 and 3011 to Kapawa; |
| 8. | 162° 41' | 153.75 feet along Grants 1269 and 3011 to Kapawa; |



- | | | |
|-----|----------|---|
| 9. | 162° 02' | 329.60 feet along Grants 1269 and 3011 to Kapawa; |
| 10. | 250° 45' | 153.93 feet along R.P. 7604, L.C.Aw. 4566 to Wahineaa; |
| 11. | 262° 54' | 117.11 feet along R.P. 6447, L.C.Aw. 4846 to Kaholokai; |
| 12. | 250° 48' | 77.04 feet along R.P. 6447, L.C.Aw. 4846 to Kaholokai; |
| 13. | 336° 42' | 416.80 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 14. | 244° 01' | 385.40 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 15. | 248° 22' | 150.88 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 16. | 256° 24' | 214.63 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 17. | 342° 28' | 93.94 feet along the southwest side of Hana Highway to the point of beginning and containing an AREA OF 10.071 ACRES. |

SUBJECT, HOWEVER, to the following easements as shown on plan attached hereto and made a part hereof:

1. Access Road Easement (12.00 feet wide).
2. Perpetual Easement (20.00 feet wide) covered by Grant to Hana Ranch Company, Limited dated April 11, 1962 and recorded in Liber 4285, Page 243.

SUBJECT, ALSO, to an existing Hana Ranch, Inc., 8" spiral weld pipeline crossing the above-described Part 1 as set forth in deed dated May 30, 1975 and recorded in Liber 10712, Page 394.

PART 2:

Being a portion of Grant 1906 to Kahoolimoku conveyed to the State of Hawaii by the County of Maui by deed dated July 10, 1985 and recorded in Liber 19657, Pages 108-118 (Land Office Deed S-27577).



Beginning at the east corner of this parcel of land and on the southwest side of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 3358.90 feet North and 4205.11 feet West, thence running by azimuths measured clockwise from True South:-

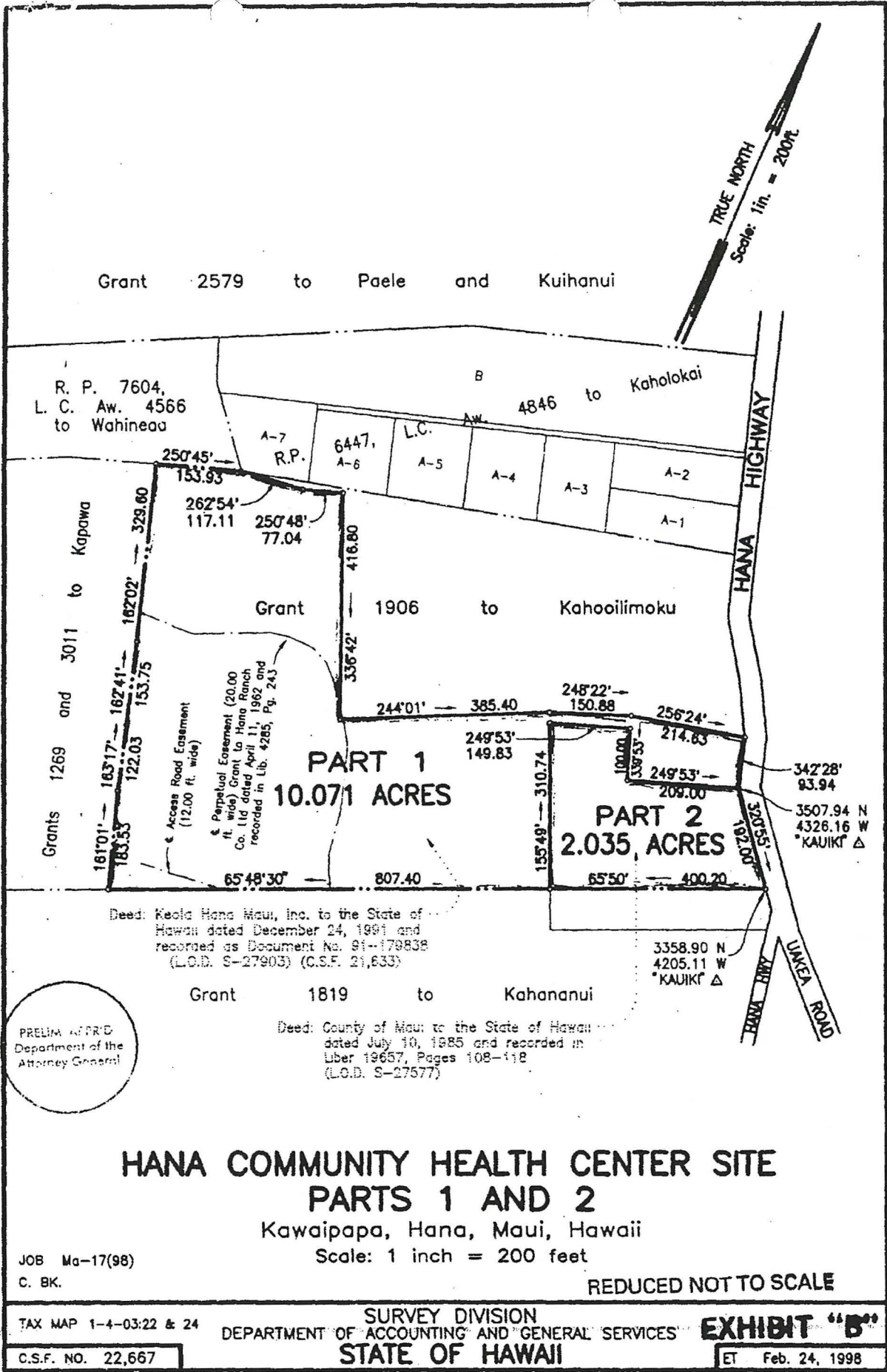
1. 65° 50' 400.20 feet along Grant 1819 to Kahananui;
2. 155° 49' 310.74 feet along Part 1 of Hana Community Health Center Site;
3. 249° 53' 149.83 feet along Part 1 of Hana Community Health Center Site;
4. 339° 53' 100.00 feet along Part 1 of Hana Community Health Center Site;
5. 249° 53' 209.00 feet along Part 1 of Hana Community Health Center Site;
6. 320° 55' 192.00 feet along the southwest side of Hana Highway to the point of beginning and containing an AREA OF 2.035 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor gm

Compiled from CSFs 20565
and 21665 and Govt. Survey
Records.
TMK: 1-4-03:22 and 24

PRELIM. APPR'D.
Department of the
Attorney General



Grant 2579 to Paele and Kuihanui

R. P. 7604,
L. C. Aw. 4566
to Wahineaa

B
4846 to Kaholokai

A-7 R.P. 6447, L.C. Aw.
A-6 A-5 A-4 A-3 A-2
A-1

Grants 1269 and 3011 to Kapawa

Grant 1906 to Kahoolimoku

PART 1
10.071 ACRES

PART 2
2.035 ACRES

Deed: Keola Hana Maui, Inc. to the State of Hawaii dated December 24, 1991 and recorded as Document No. 91-179838 (L.O.D. S-27903) (C.S.F. 21,633)

Grant 1819 to Kahananui

Deed: County of Maui to the State of Hawaii dated July 10, 1985 and recorded in Liber 19657, Pages 108-118 (L.O.D. S-27577)

PRELIMINARY
Department of the
Attorney General

**HANA COMMUNITY HEALTH CENTER SITE
PARTS 1 AND 2**

Kawaipapa, Hana, Maui, Hawaii

Scale: 1 inch = 200 feet

JOB Ma-17(98)
C. BK.

REDUCED NOT TO SCALE

TAX MAP 1-4-03:22 & 24

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "B"

C.S.F. NO. 22,667

ET Feb. 24, 1998

c:\erwin\ma-1798.dwg

EXHIBIT 4

After recording, please return to:

Nolan Sheehan Patten LLP
84 State Street, Suite 940
Boston, MA 02109
Attn: Bret L. Hendrickson

**LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS**

Property Address: 4590 Hana Highway, Hana, Hawaii 96713

This Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents (this “Mortgage”) is made by the Borrower (as defined below) in favor of the Lender (as defined below) as of [] [], 2022.

I. Definitions

The following terms shall have the meanings assigned to them:

- Borrower:** Hana Health, a Hawaii nonprofit corporation d/b/a Hana Community Health Center
- Borrower’s Notice Address:** 4590 Hana Highway
Hana, HI 96713
Attn: Executive Director
- Event of Default:** Event of Default shall have the meaning defined in the Loan Agreement.
- Hazardous Materials:** Any “chemical substances”, “hazardous or toxic substances”, “hazardous or toxic materials”, “hazardous or toxic wastes” and “oil,” as such terms now or hereafter are respectively defined under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C., Section 9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1321 et seq., the Federal Clean Water Act, 33 U.S.C. Section 1251, et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101), and the regulations promulgated under all of the foregoing, as all of the foregoing may from time to time be amended, or as similar such laws, rules, regulations, orders and decrees may now or hereafter be enacted; including, without limitation, asbestos, asbestos-containing materials, oil or other petroleum products,

polychlorinated biphenyls, urea formaldehyde foam insulation, lead paint and other toxic waste and substances including radon gas; provided, however, that Hazardous Materials shall not include ordinary and necessary quantities of office supplies, cleaning materials, pest control supplies and other items used in the ordinary course of Borrower's business, stored in a safe and lawful manner.

- Land:** The land located at the Property Address (defined above), as more completely described in Exhibit A attached hereto and made a part hereof.
- Land Records:** [_____]
- Lease:** That certain [Unrecorded Lease No. S-5548] dated as of [August 7, 1998], by and between Lessor, as landlord, and Borrower, as tenant, [notice of which is recorded with the Land Records in [_____]], as amended by that certain [_____] dated as of [March 14, 2017].
- Lender:** Community Health Center Capital Fund, Inc., a Massachusetts nonprofit corporation, and its successors and assigns
- Lender's Address:** 40 Court Street, 10th Floor
Boston, MA 02108
Attn: Tim Murphy, Portfolio Manager
- Lessor:** [State of Hawaii, by the Chairperson of the Board of Land and Natural Resources]
- Loan:** The loan from the Lender to the Borrower described in the Loan Agreement and evidenced by the Note.
- Loan Agreement:** That certain Loan Agreement dated of even date herewith between the Borrower and Lender relating to the indebtedness evidenced by the Note, as may be amended, extended, modified or renewed.
- Loan Amount:** Up to [Two Million and No/100 Dollars (\$2,000,000.00)], which equals the principal amount of the Note.
- Loan Documents:** Collectively, this Mortgage, the Loan Agreement, the Note and each and every other document, instrument and agreement now or hereafter executed or delivered in connection with the indebtedness evidenced by the Note, as each may be amended, extended, modified or renewed.
- Mortgaged Property:**
- (a) The Real Estate; and
 - (b) the Personal Property (as defined herein).

Note: That certain Promissory Note dated of even date herewith by the Borrower, as maker, to Lender, as payee, in the amount of up to \$[2,000,000.00], as may be amended, extended, modified or renewed.

Real Estate: The Borrower's leasehold estate created by the Lease, on the land described on Exhibit A attached hereto, together with all improvements, including fixtures, now or hereafter situated thereon and all and singular the tenements, hereditaments and appurtenances thereof, and all easements, rights of way, licenses, permits, privileges and covenants now existing or hereafter created for the benefit of the Borrower or any subsequent owner or tenant of the Land, or any part thereof, as well as all right, title and interest of the Borrower in and to the land lying within any street or roadway adjoining the Land, and all machinery, equipment, appliances, furniture and other property of every type and nature as are or can by agreement be made a part of the realty as well as all fixtures of every type and nature, whether now owned or which may subsequently be acquired by the Borrower.

All capitalized words and phrases in this Mortgage that are not otherwise specifically defined above or elsewhere in this Mortgage shall have the same meaning as assigned in the Loan Agreement

II. Grant of Mortgage

The Borrower, for consideration paid, hereby conveys, transfers, assigns, sets-over and grants to the Lender, and the Lender's successors and assigns forever, **WITH MORTGAGE COVENANTS** the Mortgaged Property to secure the payment, performance and discharge of each and every obligation, covenant and agreement of the Borrower to the Lender contained herein, in the Note, or in the other Loan Documents (collectively, referred to as the "Obligations").

III. Grant of Security Interest in Personal Property

This instrument shall also constitute a security agreement under Article 9 of the Uniform Commercial Code as in effect in the State of Hawaii and codified at [_____] (the "Uniform Commercial Code"). To secure the Obligations, the Borrower hereby grants to the Lender a continuing security interest in all personal property and fixtures of every kind and description now or hereafter owned by the Borrower or in which the Borrower has an interest (but only to the extent of such interest), situated or to be situated upon or used, or intended for use, in connection with the Real Estate, together with any renewals, replacements or additions thereto or substitutions therefor, as well as all proceeds thereof, whether now or hereafter existing (collectively, the "Personal Property"). The Personal Property shall include, without limitation, the following:

A. **Equipment, Plans, etc.** All of the Borrower's interest in and to all Equipment, Fixtures, Goods, Accessions, materials, supplies, furnishings, Accounts, choses in action, contract rights, Documents, Instruments, Chattel Paper, plans and specifications, reports, studies, professional or technical work product, shop drawings, surveys, permits, licenses, approvals, warranties and General Intangibles, located at, arising from, relating to, or used in connection with the Real Estate;

B. **Proceeds.** All proceeds (including, without limitation, insurance and condemnation proceeds), as well as all interest earned thereon, paid for any damage done to the Mortgaged Property or for any portion thereof appropriated or otherwise taken by any governmental authority, agency, or entity;

C. **Rents and Contracts.** All of Borrower's right, title and interest in and to any and all leases or other agreements for the use or occupancy of all or any portion of the Real Estate and all rents, security deposits, guarantees and other proceeds and benefits of such leases and other agreements, as well as any sales contracts (including any deposit funds paid thereunder), in each case relating to or arising from the Real Estate;

D. **Records and Goodwill.** All tradenames, trademarks, telephone numbers, goodwill, general intangibles and other similar property as well as all records and books of account, in each case relating to the Borrower's ownership or operation of the Mortgaged Property; and

E. **Escrows and Reserves.** All of Borrower's right, title and interest in any insurance, tax, water, sewer or other escrows deposited with Lender; any operating debt service, replacement or other reserves deposited with Lender; any other escrows or reserves established for the Project; and any cash collateral deposited with Lender.

Unless otherwise provided herein, all capitalized terms in the foregoing subparagraphs shall have the same meanings as defined in the Uniform Commercial Code. Lender shall have all the rights and remedies, in addition to those specified herein, of a secured party under the Uniform Commercial Code. Except for the security interest granted hereby, the Borrower is, and as to any Personal Property acquired hereafter will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrances, or adverse claims thereon of any kind whatsoever. The Borrower shall notify Lender of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

[This Mortgage is to be recorded with the Land Records as a financing statement pursuant to Section [9-502] of the Uniform Commercial Code.]

The Borrower covenants, warrants, represents and agrees with the Lender and its successors and assigns, that:

1. **Performance of Obligations.** The Borrower shall pay the principal of the Note and interest thereon as the same shall become due and payable and shall pay and perform all of the other Obligations.

2. **Title; Further Assurances.** The Borrower is the owner of or holder of a leasehold interest in the Mortgaged Property and has good right, full power and lawful authority to grant this Mortgage; provided, however, that notwithstanding anything to the contrary contained herein, Borrower makes no representation regarding the assignability of any permits, licenses, approvals, warranties, trade names or title to any trade names. The Mortgaged Property is free and clear of all encumbrances except those enumerated in certain title status reports delivered by the Borrower to the Lender in connection with this loan transaction (the "Permitted Title Exceptions"). The Borrower will make further assurances of title that Lender may require. The Borrower shall notify the Lender of, and will defend the Mortgaged Property against, all claims and demands of all persons at any time claiming the same or any interest therein. The Borrower agrees to execute and deliver on demand such other mortgages and other instruments as the Lender may reasonably request in order to perfect its mortgage upon any of the Mortgaged Property.

3. **Protection and Maintenance.** Subject to the planned rehabilitation of the improvements on the Mortgaged Property, the Borrower will protect and maintain, or cause to be protected and maintained, in good and tenantable order, repair and condition at all times the buildings and other structures now standing or hereafter erected on the Land; any additions and improvements thereto; the utility services, parking areas and private ways used in connection therewith (to the extent owned by Borrower); and all building fixtures, equipment and articles of Personal Property now or hereafter acquired and used in connection with the operation of the Real Estate, promptly replacing or restoring as necessary any of the aforesaid which may become lost, destroyed or unsuitable for use with other property of similar character and quality. Borrower shall continue to be obligated under this Section 3 in the event of a casualty loss at the Mortgaged Property; provided, however, that such loss shall not be considered an Event of Default so long as Borrower makes diligent efforts to adjust the insurance claim for such loss and to cause the return of the Mortgaged Property to good and tenantable condition. Diligent efforts shall be subject to Lender's reasonable determination but shall not exceed one hundred twenty (120) days in the case of the adjustment of the insurance claim and shall not exceed twelve (12) months in the aggregate for both adjustment of the claim and restoration of the Mortgaged Property, as such time limits may be extended by Lender in its sole discretion.

4. **No Waste; Compliance With Law.** Subject to the planned rehabilitation of the improvements on the Mortgaged Property, the Borrower shall not commit or suffer any strip or waste of the Mortgaged Property, or any portion thereof, or any violation of any law, rule, regulation, ordinance, license, or permit, or the requirements of any licensing authority affecting the Mortgaged Property or any business conducted thereon, and shall not commit or suffer any demolition, removal, or material alteration of any of the Mortgaged Property (except for the replacement of fixtures and Personal Property in the ordinary course of business, so long as items of comparable or greater value and quality are installed free and clear of liens in favor of any other party and except as set forth in the Loan Agreement), and shall not violate or suffer the violation of the covenants and agreements, if any, of record against the Mortgaged Property, and in all respects, the Borrower shall do all things necessary to comply with, and to keep in full force and effect, all licenses, permits and other governmental authorizations for the operation of the Mortgaged Property for its intended purposes. It is provided, however, that the Borrower shall have the right (but only with the consent of Lender, which shall not be unreasonably withheld or denied) to contest by appropriate legal proceedings, but without cost or expense to Lender and without in any way affecting the value of the Mortgaged Property, the validity of any laws, ordinances, orders, rules and regulations affecting the Mortgaged Property, licenses, permits and other governmental authorizations for the operation of the Mortgaged Property, covenants or agreements of record affecting the Mortgaged Property; and the Borrower may postpone compliance therewith until the earlier of the date Lender notifies Borrower that Borrower may no longer postpone compliance or the final determinations of any such proceedings. If undertaken by Borrower, such proceedings shall, in any event, be prosecuted with due diligence and dispatch, and if any lien or charge is incurred, the Borrower must furnish Lender with security satisfactory to Lender in its reasonable discretion against any loss or injury by reason of such non-compliance or delay and shall indemnify and hold Lender harmless against any liability resulting from any such contest.

5. **Insurance Coverage.** The Borrower will keep the leased space, improvements, fixtures and Personal Property included in the Mortgaged Property insured in accordance with the Loan Agreement.

6. **Insurance Proceeds.** The proceeds of any hazard insurance and rent loss insurance shall, at the discretion of the Lender, be applied to or toward the indebtedness or other Obligations secured hereby in such order as the Lender may determine; or if the Lender shall require repair of that part of the Mortgaged Property so damaged by such insured hazard, the Lender shall release to the Borrower insurance proceeds paid to it upon such conditions as the Lender may prescribe and the Borrower shall

apply all of such proceeds to the repair and restoration of the Mortgaged Property. The Borrower shall promptly notify the Lender upon the occurrence of any loss or claim, and, except with respect to amounts less than \$25,000, at the Lender's option in each instance, the Lender, to the exclusion of the Borrower, shall have the right and authority to file any proofs of claim and negotiate any adjustment or settlement thereof. Each insurance company is hereby directed and authorized to remit all payments (including the return of unearned premiums) directly to the Lender alone and not to the Borrower or to the Borrower and Lender jointly. Any and all such payments received by the Borrower in contravention of the foregoing provision shall be delivered to the Lender within five (5) days of receipt thereof. Notwithstanding anything in this Section 6 to the contrary, if the insurer denies liability to the Borrower, the Borrower shall not be relieved of any obligation under Section 3 of this Mortgage. If, however, the Lender applies insurance proceeds to repayment of the Loan Amount and does not release the same to the Borrower, the obligation of the Borrower under Section 3 to repair, restore or rebuild shall be limited to taking all actions reasonably required to make the Mortgaged Property safe and in compliance with all legal requirements and to restore the undamaged portion to an economically functional unit to the extent that it is reasonably possible to do so.

7. **Eminent Domain.** Any awards of damages received by Borrower on account of any condemnation for public use of or injury to the Mortgaged Property shall be paid to Lender; such awards shall, at the discretion of Lender, be applied to or toward the Obligations in such order as Lender may determine, or, at Lender's discretion, may be released to the Borrower, upon such conditions as Lender in its judgment may prescribe, to be applied to restoration of that part of the Mortgaged Property which remains, but not more than such portion of such awards as may be required to repair such damage or injury and restore the Mortgaged Property to whole shall be so released; and any balance remaining shall be applied by Lender to or toward the indebtedness and other Obligations secured hereby in such order as Lender in its discretion shall determine. The Borrower shall promptly notify Lender upon the occurrence of any such award or condemnation proceeding or claim, and, at Lender's option in each instance, Lender, to the exclusion of the Borrower, shall have the right and authority to file any proofs of claim and to negotiate any award or settlement thereof. Each governmental body is hereby directed and authorized to remit all payments to Lender alone and not to the Borrower or to the Borrower and Lender jointly. If Lender applies such awards to repayment of the Loan Amount and does not release the same to the Borrower, the obligation of the Borrower under Section 3 of this Mortgage to repair, restore or rebuild shall be limited to the taking of all actions reasonably required to make the Mortgaged Property, or what remains thereof, safe and in compliance with all legal requirements and to restore the remaining portion to an economically functional unit to the extent that it is reasonably possible to do so. Notwithstanding the foregoing, if there is any condemnation for public use of or injury to a portion of the Mortgaged Property and no Event of Default has occurred, Lender shall permit the award of damages on account of such condemnation (to the extent received by Lender) to be used by the Borrower for the restoration and repair of the remaining Mortgaged Property as such restoration and repair progresses, but only if Lender is satisfied in Lender's reasonable determination that sufficient awards and other sources are available for restoration and repair of such remaining Mortgaged Property so that the remaining Mortgaged Property shall constitute a complete architectural unit of substantially the same general character and condition (as nearly as may be possible under the circumstances) as the Mortgaged Property existed immediately prior to such condemnation, in material compliance with all applicable laws, or if such awards are insufficient, that Borrower shall have funded or caused to be funded any deficiency to the satisfaction of Lender, and further that Borrower shall have deposited or agreed to deposit such awards and any other sums required with Lender from which deposit disbursements can be made by Lender as restoration and repair proceed.

8. **Due on Sale; No Transfer of Ownership Interests; Failure to Comply With Permitted Exceptions.** It shall be an Event of Default if, without Lender's prior written consent in each instance, which consent may be granted, withheld, or conditionally granted in Lender's sole discretion: (a) there is any sale, conveyance, transfer, or encumbrance of all or any portion of the Mortgaged

Property; or (b) there is any transfer or assignment of, or grant of any security interest in, any of the ownership interests in the Borrower; or (c) there is a failure to comply with the provisions of, or there is a default under, any of the Permitted Title Exceptions which is not cured within any applicable grace period provided for therein. The suffering of an involuntary lien against the Mortgaged Property or any part thereof shall not be a breach of the covenants contained herein provided that either the Borrower is diligently contesting such lien in good faith and such lien is discharged or bonded over within twenty-five (25) days of filing or within ten (10) days of notice thereof to Borrower, whichever is later or Borrower is diligently contesting such lien in good faith and has provided security satisfactory to Lender in its sole discretion.

9. **Lender's Rights to Deal With Borrower's Successors.** Lender may, without notice to any person, deal with any successor in interest of the Borrower regarding this Mortgage and the Obligations in all respects as it might deal with the Borrower, without in any way affecting the liability of the Borrower or any successor in interest of the Borrower; and no sale, lease, assignment, or transfer of all or any part of the Mortgaged Property, nor any forbearance on the part of Lender, nor any extension by Lender of the time for payment and performance of the Obligations, shall operate to release, discharge, modify, change, or affect the liability of any predecessor in interest to the equity owner at the time of such sale, forbearance, or extension.

10. **Payment of Taxes.** Borrower will pay or cause to be paid before delinquent or before any penalty for nonpayment attaches thereto, all taxes, assessments, and charges of every nature and to whomever assessed that may now or hereafter be levied or assessed upon the Mortgaged Property or any part thereof, or upon the rents, issues, income, or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments, or charges be levied directly or indirectly or as excise taxes or as income taxes. It is provided, however, that the Borrower shall have the right (but only with the consent of Lender which shall not be unreasonably withheld or denied) to the extent permitted in the Lease to contest by appropriate legal proceedings, but without cost or expense to Lender and without in any way affecting the value of the Mortgaged Property, the validity of any such taxes, assessments, or charges affecting the Mortgaged Property; and the Borrower may postpone compliance therewith until the earlier of the date Lender notifies Borrower that Borrower may no longer postpone compliance or the final determinations of any such proceedings. If undertaken by Borrower, such proceedings shall, in any event, be prosecuted with due diligence and dispatch, and if any lien or charge is incurred, the Borrower must furnish Lender with security satisfactory to Lender in its sole discretion against any loss or injury by reason of such non-compliance or delay and shall indemnify and hold Lender harmless against any liability resulting from any such contest.

11. **Tax, Water and Sewer and Insurance Reserves.** The Borrower shall maintain tax, water and sewer and insurance reserves, if any, in accordance with the Loan Agreement.

12. **No Other Liens.** The Borrower will pay all sums which, if unpaid, may result in the acquisition of a lien of superior or inferior priority to the lien of this Mortgage, such payment to be made before such lien attaches (except that real estate taxes need not be paid prior to the due date thereof).

13. **Hazardous Materials and Environmental Legal Requirements.**

A. The Borrower shall comply with the following environmental requirements:

(i) Borrower shall not, nor allow any tenant to, store (except in compliance with all applicable laws, ordinances and regulations), or dispose of any Hazardous Materials at, upon, under or within the Mortgaged Property or any contiguous or adjacent real estate or property.

(ii) Borrower shall not, nor allow any tenant to, directly or indirectly transport or arrange for the transport of any Hazardous Materials (except in compliance with all applicable laws, ordinances and regulations) at, upon, under or within the Mortgaged Property or any contiguous or adjacent real estate or property.

(iii) Upon learning of the presence, release or threat of release of any Hazardous Materials at, upon, under or within the Mortgaged Property, Borrower shall take all such reasonable action as shall be prudent in light of the severity of such presence, release or threat of release, including, without limitation the conducting of engineering tests (at the sole expense of Borrower) by an independent and reputable engineering firm or environmental consultant, (x) to assess the presence, release, threat of release or absence of any Hazardous Materials at, upon, under or within the Mortgaged Property and the potential cost in connection with any abatement, clean-up or removal of any of the Hazardous Materials found at, upon, under or within the Mortgaged Property, and (y) to contain and remove any such Hazardous Materials at, upon, under or within the Mortgaged Property to the extent required by applicable law.

(iv) Borrower shall notify Lender promptly in writing (x) upon Borrower's obtaining knowledge of any potential or known release, threat of release, discharge or discovery of any Hazardous Materials at, upon, under or within the Mortgaged Property or any contiguous or adjacent real estate or property; (y) upon Borrower's receipt of any notice to such effect from any government agency (and Borrower shall forward to Lender copies of all orders, notices, applications or other communications and reports in connection with any such matter); and (z) upon Borrower's obtaining knowledge of any incurrence of any expense or loss by such governmental agency in connection with the assessment, containment or removal of any Hazardous Materials for which expense or loss Borrower may be liable or for which expense a lien may be imposed on the Mortgaged Property.

(v) Borrower shall permit Lender, at Borrower's expense, to conduct environmental inspections, surveys or audits of the Mortgaged Property to the extent reasonably deemed necessary or appropriate by Lender in connection with protecting Lender's rights and interests in and to the Loan and the Mortgaged Property. Lender's entry onto the Mortgaged Property for the limited purpose of investigating the presence or absence of Hazardous Materials on or in the vicinity of the Mortgaged Property (including, by way of illustration and not limitation, verifying the character, quantity, location, migration, and sources thereof) or pursuing any Corrective Work (as hereinafter defined) shall not be deemed an entry for possession of the Mortgaged Property, and shall create no liabilities or obligations in Lender related to or arising from the ownership, possession, or operation of the Mortgaged Property, except as may be due to Lender's gross negligence or willful misconduct.

B. Borrower covenants and agrees, at its sole cost and expense, to indemnify, protect and save harmless Lender, and Lender's directors, officers, agents, attorneys and employees (collectively, any "Indemnitee" or the "Indemnitees") against and from any and all damages, losses, liabilities, costs and expenses of Corrective Work, obligations, penalties, fines, impositions, fees, levies, lien removal or bonding costs, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses (including, without limitation, attorneys' and experts' reasonable fees and disbursements) of any kind or of any nature whatsoever, including interest thereon pursuant to the Loan Documents and applicable statutes (collectively, the "Indemnified Matters") which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee and arising from or out of or attributable to or by reason of:

(i) any discharge of any Hazardous Materials, the threat of a release or discharge of any Hazardous Materials, or the presence of any Hazardous Materials at, upon, under, within or otherwise affecting the Mortgaged Property or any other contiguous or adjacent real estate or other property by reason of occurrences at, upon, under or within the Mortgaged Property, such contiguous or adjacent real estate or other property or other site or vessel, whether or not the same originates or emanates from the Mortgaged Property or such contiguous or adjacent real estate or other property;

(ii) any costs of removal or remedial action incurred by any governmental agency, any response costs incurred by any other person, and damages to, destruction of, or loss of natural resources, including, without limitation, costs of assessing such injury, destruction or loss incurred pursuant to all applicable laws, ordinances or regulations;

(iii) additional costs reasonably required to take necessary precautions to protect against the release of Hazardous Materials from the Mortgaged Property into the air, any body of water, any other public domain or any surrounding areas;

(iv) costs incurred to comply, in connection with all or any portion of the Mortgaged Property or any surrounding areas, with all applicable laws, ordinances and regulations and any other environmental matters at, upon, under or within or otherwise affecting the Mortgaged Property or any contiguous or adjacent real estate or other property by reason of occurrences at, upon, under, within the Mortgaged Property or any contiguous or adjacent real estate or other property, including costs related to nonperformance or delayed performance and completion of Corrective Work;

(v) liability for personal injury or damage arising under any statutory or common law theory, including, without limitation, damages for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity or operation on, at, under or within any of the Mortgaged Property or any real estate or other property contiguous or adjacent thereto;

(vi) any Indemnified Matter resulting from the presence of lead paint at the Mortgaged Property;

(vii) any Indemnified Matter arising directly or indirectly from or out of the presence of urea formaldehyde foam insulation at the Mortgaged Property;

(viii) any defense of any of the foregoing and the assertion by Borrower of any defense to its obligations hereunder (except the successful defense of actual performance not subject to further appeal);

whether any of such matters arise before, during or after foreclosure of any mortgage or other taking of title to all or any portion of the Mortgaged Property or other enforcement of the remedies and rights under the Loan Documents, by Lender or any affiliate of Lender (all removal work referred to in clause (ii) above, all work and other actions to take precautions against release referred to in clause (iii) above, and all work and other actions performed in order to comply with applicable laws, ordinances and regulations referred to in clause (iv) above shall be collectively referred to as "Corrective Work"). Notwithstanding anything to the contrary contained herein, (a) the indemnifications provided for hereunder with respect to surrounding areas shall not extend to the costs of Corrective Work on, in, under or affecting any surrounding areas if the applicable Hazardous Materials did not originate from any portion of the Mortgaged Property unless the removal of any Hazardous Materials on, in, under or affecting any surrounding areas is required by law or by order or directive of any governmental agency in connection

with the Corrective Work on, in, under or affecting any portion of the Mortgaged Property; (b) if Lender, or any affiliate, successor or assign of Lender, takes title to the Mortgaged Property at a foreclosure sale, by deed in lieu of foreclosure, pursuant to other rights granted under any Loan Document or otherwise, or if a third-party takes title to the Mortgaged Property at a foreclosure sale, then the indemnifications provided for hereunder shall not apply to Hazardous Materials which are initially placed on or released, in or under all or any portion of the Mortgaged Property after the date Lender or such other party so takes title.

C. Unless Borrower complies with the provisions set forth in the final sentence of this subsection C, the indemnifications set forth above in this Section 13 shall survive the repayment of the Loan and any exercise by any Indemnitee of any remedies under any Loan Document, including, without limitation, the power of sale, or any other remedy in the nature of foreclosure, and shall not merge with any deed given by Borrower to Lender in lieu of foreclosure or any deed under a power of sale. It is agreed and intended by Borrower and Lender that the indemnifications set forth above in this Section 13 may be assigned or otherwise transferred by Lender to its successors and assigns and to any subsequent purchaser of all or any portion of the Mortgaged Property by, through or under Lender, without notice to Borrower and without any further consent of Borrower. To the extent consent to any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Borrower. Notwithstanding anything to the contrary set forth herein, Borrower's liability under this Section 13 shall extend beyond repayment of the Note, provided that from and after the later of repayment of the Note and Lender's receipt of (i) an environmental assessment report reasonably acceptable to Lender indicating that (x) the redevelopment of the Mortgaged Property has included the remediation of Hazardous Materials in compliance all applicable environmental laws, ordinances and regulation, (y) there are no known violations of applicable environmental laws, ordinances and regulations at the Mortgaged Property, and (z) there are no Recognized Environmental Conditions (as such term is defined by the American Society of Testing Materials) at the Mortgaged Property as of the date of such report; and (ii) an accessibility assessment report reasonably acceptable to the Lender showing the Mortgaged Property to be in compliance with applicable accessibility laws, Borrower's liability under this Section 13 shall be limited to events occurring during the period in which Borrower (or any affiliate of Borrower) held an interest in the Mortgaged Property.

D. In addition to Lender's rights to cure Borrower's defaults, Lender shall have the right to do all acts which in the Lender's judgment are or may be necessary or advisable to prevent or respond to the release or threatened release of Hazardous Materials onto or from the Mortgaged Property.

E. Notwithstanding anything in this Section 13 to the contrary, Borrower shall not indemnify any Indemnitee for any Indemnified Matters arising out of the fraud, gross negligence or willful misconduct of such Indemnitee.

14. **Lease Assignment.**

A. The Borrower hereby transfers, assigns, delivers and grants to Lender as further security for the Obligations the entire lessor's right, title and interest in (a) all leases, subleases, tenancies, and other agreements relative to occupancy of all or any portion of the Mortgaged Property, written or oral, recorded and unrecorded, now in existence and which may exist hereafter during the term of this Mortgage; (b) all rents, security deposits, income and profits arising from said leases and any renewals, extension or substitutions thereof; (c) all rents, income and profits otherwise payable for the use and occupation of the Mortgaged Property; (d) all guarantees of said leases; and (e) all proceeds of the foregoing (collectively, the "Leases"). In connection therewith, the Borrower agrees to confirm the foregoing assignment from time to time by executing assignments in form satisfactory to Lender and which authorize Lender in the event of foreclosure or deed or other transfer in lieu thereof, to sell and

assign said interests to the purchaser(s), but no such assignment shall be construed as a consent by Lender to any lease or agreement so assigned, or to impose upon Lender any obligations with respect thereto. The Borrower hereby irrevocably appoints Lender, or any agent designated by Lender, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge, and deliver any such assignments on behalf of the Borrower.

The Borrower warrants that (i) the Borrower is the sole owner of the entire lessor's interest in the Leases with full right and power to assign its interest therein and the rents and profits due thereunder; (ii) each of the Leases now existing is in full force and effect and has not been modified or amended; (iii) there are no defaults under the Leases by either party; (iv) no rent reserved in the Leases has been assigned or anticipated; (v) no lessee under the Leases has any defense, set-off or counterclaim against the Borrower; and (vi) no rent for any period subsequent to the date of this Mortgage has been or will be collected in advance except for security deposits and last month's rent taken in the usual course of business.

B. The assignment of the Leases is made on the following terms, covenants and conditions:

(i) This assignment is an absolute assignment of the Leases from the Borrower to Lender, provided, however, so long as there shall exist no Event of Default, the Borrower shall have a license to manage and operate the Mortgaged Property and to collect, at the time provided in the Leases for the payment thereof, all rents, income and profits arising under the Leases and from the Mortgaged Property and to retain, use and enjoy the same; provided, however, that all rent, income and profits accruing by virtue of the Leases shall be received by the Borrower in trust to be used for the satisfaction of all amounts due under the Loan Documents and all taxes, assessments, insurance premiums, maintenance and utility charges and other amounts necessary for the reasonable operation and maintenance of the Mortgaged Property and may not be used for any other purpose until Lender is paid in full all sums due Lender under the Loan Documents.

(ii) Upon and at any time after an Event of Default, Lender, without in any way waiving such default, may in its discretion without notice and without regard to the adequacy of the security for the Obligations secured hereby, terminate the aforesaid license and exercise any rights and remedies set forth in this Mortgage, including those set forth in Section 20.B. below, or in the other Loan Documents.

(iii) Under no circumstances shall Lender have any duty to produce rents from the Mortgaged Property. Regardless of whether Lender, in person or by agent, takes actual possession of the Real Estate, unless Lender agrees in writing to the contrary, Lender is not and shall not be deemed to be:

(A) A "mortgagee in possession" for any purpose; or

(B) Responsible for performing any of the obligations of the lessor under any lease; or

(C) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair or control of the Mortgaged Property; or

(D) Liable in any manner for the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of it.

C. Upon full payment of all the Obligations, the assignment of the Leases shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of Lender showing any part of the Obligations to remain unpaid or unperformed shall be and constitute conclusive evidence to third parties of the validity, effectiveness and continuing force of this assignment and any person is hereby conclusively authorized and directed to rely thereon. The Borrower hereby authorizes and directs the tenants named in the Leases and any other or future tenants or occupants of the Mortgaged Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and that a default exists thereunder, to pay over to Lender all rents, income and profits arising or accruing under that lease or from the Mortgaged Property and to continue to do so until otherwise notified in writing by Lender and hereby irrevocably waives any claim the Borrower might have against any such tenants or occupants for rent or other amounts paid to Lender, reserving all the Borrower's rights therein solely to a claim against Lender.

D. Upon the occurrence of an Event of Default and until Lender terminates the Borrower's license to operate and manage the Mortgaged Property, any and all rents, income and profits received by the Borrower from the Mortgaged Property shall be held in a segregated account in trust for Lender (the "Trust Fund Account") and shall not be combined with any other funds of the Borrower. Such trust funds may be utilized by the Borrower for payment of the Obligations, payment of reasonable maintenance and repair obligations and utility payments necessary or required under the Leases (but not for capital expenses, improvements or for payments of any management fees owed to any person or entity owned or controlled by or affiliated with the Borrower), provided, however, that a detailed monthly accounting of all receipts and disbursements shall be delivered to Lender within ten (10) days after the end of each calendar month.

Upon the request of Lender at any one time or from time to time, the Borrower shall deliver all amounts contained in the Trust Fund Account (i) to Lender and the same shall be applied to the outstanding Obligations as provided in the Loan Documents, (ii) to any other party designated by Lender which has a lien on or claim to the Mortgaged Property, including, without limitation, the applicable municipal taxing authority with respect to unpaid water, sewer or real estate taxes, any ground lessor, or any other junior or senior lienor. Alternatively, Lender may require the Borrower to maintain the Trust Fund Account as directed by Lender as a restricted cash collateral account, which shall constitute additional collateral for the Obligations. As another option, Lender may require the Borrower to account for and pay the Trust Fund Account into court or to a third-party escrow agent, which funds shall be released upon Lender's demand, as provided above, or as a court of competent jurisdiction shall otherwise determine. In no event shall the exercise of any of the foregoing rights and remedies impair or affect any other rights or remedies which Lender may have under the Loan Documents or applicable law, whether to take possession of or directly collect the rents, income and profits from the Mortgaged Property, or otherwise and the Obligations and any existing Event of Default shall remain unmodified thereby.

E. In the event any tenant under any of the Leases is the subject of any proceeding under the federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of any Lease assigned hereby, the Borrower covenants and agrees that if any of the Leases are so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender (unless such settlement will not have a materially adverse effect on the cash flow of the Mortgaged Property), in each instance, and any check and payment for termination or rejection of any such Lease will be made payable both to the Borrower (and Lender in the event such settlement will have a materially adverse effect on the cash flow of the Mortgaged Property). The Borrower hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender after an Event of Default, the Borrower will duly endorse to the order of Lender any such check, the proceeds of which will be applied to the Obligations.

F. Without in any way limiting the rights of Lender to elect whether to affect a tenant's interest in the Mortgaged Property by joining any such tenant as a defendant in a judicial foreclosure action (if applicable), in the event this Mortgage is foreclosed, Lender shall have the right, in its discretion, to be exercised by written notice to the applicable tenant within thirty (30) days of the date title vests in the party who acquires title as a result of the foreclosure (the "Continuation Notice"), to elect (under the privity of contract established by the assignment of the Leases) to assume some or all of those Leases which are subordinate to this Mortgage and thereupon such Lease(s) shall remain in full force and effect and such tenant shall attorn to the owner of the Mortgaged Property notwithstanding the foreclosure of the superior lien of this Mortgage. In the event that Lender does not timely send the Continuation Notice as provided above and no recognition or nondisturbance agreement has previously been executed by Lender in favor of the applicable tenant(s), then Lender shall retain its rights under applicable law to treat such subordinate leases as terminated by virtue of the foreclosure. Lender's rights hereunder shall automatically be transferred to and may be exercised by any party acquiring title as a result of the foreclosure, as well as their successors and assigns.

15. **Covenants Regarding Leases.** The Borrower covenants with Lender as follows:

- (i) not to enter into any lease for the Mortgaged Property without Lender's prior review and written approval of the proposed Lease(s). The Borrower shall also comply with the terms of the Loan Agreement relating to Leases;
- (ii) to observe and perform all the obligations imposed upon the landlord under every such Lease and not to do or permit to be done anything to impair the security thereof;
- (iii) not to collect any of the rents, income and profits arising or accruing under the Leases or from the Mortgaged Property in advance of the time when the same shall become due, except for collection of last month's rents and security deposits in the ordinary course of business;
- (iv) not to execute any other assignment of the landlord's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Mortgaged Property, unless approved in writing by Lender;
- (v) not to reduce the rent or the term, or otherwise alter, modify or change the terms of the Leases so as to impair their value as security for the Obligations or, except in the case of a default by the tenant thereunder, cancel or terminate the same or accept a surrender thereof, or modify or terminate any guaranties of any Lease, without the prior written consent of Lender in each instance;
- (vi) not to subordinate any such Lease to any mortgage or other encumbrance or permit (other than as pursuant to the Permitted Title Exceptions), consent or agree to such subordination without Lender's prior written consent in each instance;
- (vii) to pay to Lender forthwith all advance rent or amounts in lieu thereof received by the Borrower to be held by Lender as additional collateral or applied after an Event of Default to the Loan Amount, interest thereon or any other amount due or to become due hereunder as Lender in their discretion shall determine; and
- (viii) at Lender's request, to assign and transfer to Lender any and all subsequent Leases upon all or any part of the Mortgaged Property and to execute and deliver at Lender's

request all such further assurances and assignments in the Mortgaged Property as Lender shall from time to time require.

16. **Lender's Right to Perform Borrower's Obligations.** If the Borrower shall neglect or refuse to satisfy any term or condition of this Mortgage or of any other Loan Document, Lender, at its election in each instance, but without any obligation whatsoever to do so, upon thirty (30) days' prior written notice to the Borrower (except in the case of an emergency, in which event no advance notice shall be required), may cause such repairs or replacements to be made, obtain such insurance, pay such taxes, assessments, charges, and sums, do such acts, incur and pay such amounts in protecting its rights hereunder and pay any balance due under any conditional agreement of sale of any property included as a part of the Mortgaged Property, all as Lender in its discretion determines to be necessary or appropriate to satisfy any term or condition of this Mortgage which the Borrower shall have failed to satisfy or to remedy any breach of such term or condition, and any amounts or expenses so paid or incurred, together with interest thereon from the date of payment by Lender at the Default Rate set forth in the Note shall be immediately due and payable by the Borrower to Lender and until paid shall be secured by this Mortgage equally and ratably with the other indebtedness secured hereby, and the same may be collected as part of the principal debt secured by this Mortgage in any suit hereon or upon the Note or any other Loan Document. No such payment or action by Lender shall relieve the Borrower from any default hereunder or impair the right or remedy of Lender with respect thereto.

17. **Legal Expenses.** If any action or proceeding is commenced, including an action to foreclose this Mortgage or to collect the debt hereby secured, to which action or proceeding Lender is made a party by reason of the execution of this Mortgage or by reason of any Obligation, or by reason of entry or any other action under this Mortgage, or if it becomes necessary in connection with legal proceedings or otherwise to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken under this Mortgage, all reasonable sums paid or incurred by Lender or their direct or indirect owners for the expense of any such litigation shall be reimbursed or paid by the Borrower, or may at the discretion of Lender be added to the Obligations and shall be secured hereby equally and ratably and shall bear interest until paid at the Default Rate set forth in the Note.

18. **Subrogation.** Lender shall, in addition to all other rights, be subrogated to the lien, whether released of record or taken by Lender by assignment, of any and all encumbrances on the Mortgaged Property or any part thereof to the extent satisfied or acquired with funds of Lender, whether paid out of the proceeds of the Loan secured by this Mortgage or otherwise.

19. **Default.** Upon the occurrence of an Event of Default, at Lender's discretion or immediately if so provided in the Loan Documents, all Obligations shall become immediately due and payable without further notice or demand and Lender shall be authorized to exercise any right or remedy provided for herein, including, without limitation, the Statutory Power of Sale.

20. **Additional Rights of Lender Upon Borrower's Default.**

A. **Access for Foreclosure Purposes.** In the event Lender elects to exercise the Statutory Power of Sale hereunder, then during such time as the Borrower remains in possession of the Mortgaged Property, the Borrower agrees and covenants that Lender shall have access to the Mortgaged Property, or any portion thereof, during normal business hours for such purposes as Lender deems necessary or desirable for conducting or planning for the foreclosure sale, including, without limitation, inspections by surveyors, appraisers, and structural, environmental, and other types of engineers or building inspection professionals; pre-sale inspections of the Mortgaged Property by auctioneers and prospective bidders; and the conduct of the actual foreclosure auction itself on the Mortgaged Property. In connection with the exercise of any such access rights, no Lender shall not be deemed to have "taken possession" of or

otherwise be responsible for the operation or control of the Mortgaged Property, such access rights being limited in scope solely to effectuate the Statutory Power of Sale.

B. Entry of Possession. The Borrower authorizes Lender, in addition to all other rights granted by law or by this Mortgage, upon an Event of Default, and without notice, to enter and take possession of all or any part of the Mortgaged Property, either in its own name or in the name of Borrower, and to use, operate, construct, reconstruct, manage, and control the same and conduct the business thereof, and perform lessor's obligations under any lease or contract of sale affecting all or any part of the Mortgaged Property, and/or collect the rents, profits, and all receipts of every nature therefrom, as Lender in its discretion shall deem best. To the extent received by Lender, Lender shall apply the rents, profits and receipts from the Mortgaged Property in such order of priority as Lender in their sole discretion may determine, to the Obligations or to the payment of any of the expenses described below.

(i) Upon such entry, Lender may, from time to time, at the expense of the Borrower, make all such repairs, replacements, alterations, additions, and improvements to the Mortgaged Property as Lender may deem proper, but in no event shall Lender be obligated to do so; and Lender may, but shall not be obligated to, exercise all rights and powers of the Borrower, either in the name of Borrower or otherwise, as Lender shall determine. Without limitation upon the generality of the foregoing, Lender shall have the right to do all things necessary or desirable in order to keep in full force and effect all licenses, permits, and authorizations that benefit the Mortgaged Property.

(ii) Upon such entry, Lender may, at its option, but without any obligation to do so, do any one or more of the following: pay and incur all expenses necessary or deemed by it appropriate for the holding and operation the Mortgaged Property or the maintenance, repair, replacement, alteration, addition, and improvement of the Mortgaged Property, including, without limitation, payments of taxes, assessments, wages of employees connected with the Mortgaged Property or any business conducted thereon, charges and reasonable compensation for services of Lender, its attorneys and accountants, and all other persons employed or engaged in connection with the Mortgaged Property or any business conducted thereon; and, in addition, Lender, at its option, may, but shall not be obligated to, make payments or incur liability with respect to obligations arising prior to the date it takes possession.

(iii) Upon such entry, Lender may, at its option, but without any obligation to do so, do any of the following, either in its own name or in the name of Borrower pursuant to the power of attorney set forth below: enforce, modify, cancel or accept a surrender of any or all of the Leases; demand, collect, compromise and give receipts and releases for rents which may be or become due from any tenant under a Lease; receive, endorse and deposit for collection any checks given in payment of rent; institute, prosecute or settle any proceedings for the recovery of rents or possession; lease or rent the Mortgaged Property or any part thereof for such duration at such rentals and upon such other terms and conditions as Lender may deem advisable; and enforce or enjoin the violation of any of the terms, provisions and conditions of the Leases.

(iv) All obligations so paid or incurred by Lender shall be reimbursed or paid for by the Borrower within five (5) business days of demand and prior to the repayment thereof shall be added to the debt secured hereby and shall bear interest at the Default Rate set forth in the Note, and shall be secured hereby equally and ratably. Lender may also reimburse itself therefor from the income or receipts of the Mortgaged Property or any business conducted thereon, or from the sale of all or any portion of the Mortgaged Property. Lender may also apply to any of the Obligations, any tax reserve account, deposit, or any sum credited or due to the Borrower from Lender without first enforcing any other rights of Lender against the Borrower or against any

endorser or guarantor of any Obligations or against the Mortgaged Property. The Borrower hereby irrevocably constitutes and appoints Lender, or any agent designated by Lender, for so long as this Mortgage remains undischarged of record, as its attorney-in-fact, coupled with an interest and with full power of substitution, delegation and revocation, to execute, acknowledge, seal, and deliver in Borrower's name all instruments, agreements, deeds, certificates, and other documents of every nature and description in order to carry out and implement the exercise of Lender's rights hereunder and under the other Loan Documents.

21. **Power of Sale.** [This Mortgage is upon the **STATUTORY CONDITION** and upon the further condition that no Event of Default shall occur, for any breach of which Lender shall have the **STATUTORY POWER OF SALE.**] In exercising its power of sale under this Mortgage, Lender may sell the Mortgaged Property, or any part thereof, all as Lender may in its discretion elect; and may so sell the Mortgaged Property or any part thereof either separately from or together with the whole or any part of other collateral which may constitute security for any Obligation, also as Lender may in its discretion elect. Without limiting the generality of the foregoing, Lender's statutory power of sale shall not be exhausted until all of the Mortgaged Property shall have been struck down at a foreclosure auction and the successful bidders have all accepted and recorded the resulting foreclosure deeds. In the event of any separate sale of the Personal Property, Lender will give to the Borrower reasonable notice of the time and place of any public sale or of the time after which any private sale or other intended disposition thereof is to be made, and such requirement of reasonable notice shall be met if such notice is given at least twenty (20) days before the time of the sale or other disposition. [NTD: To be revised for applicable Hawaii foreclosure provisions; additional Hawaii-specific provisions to be added as necessary.]

22. **Waiver by Borrower.** The Borrower, to the fullest extent that the Borrower may do so, hereby: (a) agrees that the Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the Obligations; and (b) waives all rights to a marshalling of the assets of the Borrower, including without limitation the Mortgaged Property, or to a sale in inverse order of alienation in the event of a sale hereunder of the Mortgaged Property, and agrees not to assert any right under any statute or rule of law pertaining to the marshalling of assets, sale in inverse order of alienation, or other matters whatever to defeat, reduce, or affect the right of Lender under the terms of this Mortgage or the Note or any other Loan Document to a sale of the Mortgaged Property for the collection of the indebtedness evidenced by the Note and all other Obligations without any prior or different resort for collection, or the right of Lender to the payment of such indebtedness and other Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever.

23. **Notices.** All notices, demands, and other communications made with respect to this Mortgage shall be in writing and given as provided in the Loan Agreement.

24. **Lender Not Obligated; Cumulative Rights.** Nothing in this Mortgage shall be construed as obligating Lender to take any action or incur any liability with respect to the Mortgaged Property or any business conducted thereon, and all powers given to Lender are for their benefit and shall be exercised in Lender's discretion, as indicated herein. All of Lender's rights hereunder are cumulative and in addition to, and not in substitution for, the rights of Lender under all other Loan Documents.

25. **Declaration of Subordination.** At the option of Lender, which may be exercised at any time or from time to time, by written notice to the Borrower and to any applicable tenant, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or condemnation awards), to any and all leases of all or any part of the Mortgaged

Property upon the execution by Lender and recording and filing thereof at any time hereafter in the Land Records of a unilateral declaration to that effect.

26. **Maximum Amount Secured.** The maximum amount secured by this Mortgage shall include, but not be limited to, the total of all of the following items which may be outstanding at any time: the Loan Amount; accrued interest, charges, and fees under the Note; legal fees and costs; collection and foreclosure costs (including appraisals, environmental testing (and remediation, if necessary), brokerage commissions, receiver's fees, eviction costs, management and marketing fees and expenses, registry recording charges, deed transfer stamps and taxes, commercial advertising costs, and auctioneer fees); all taxes, utility payments, insurance premiums, maintenance costs, tenant improvements, rental incentives, or other amounts advanced by Lender for purpose of protecting or enhancing its security; all other Obligations of the Borrower to Lender; and all other damages, costs, and expenses to which the holder of a mortgage is entitled under applicable law.

27. **Receiver.** Whether or not the Borrower is then insolvent and whether or not any deficiency balance is anticipated, any rights of Lender hereunder may be exercised by a court appointed receiver. In connection therewith, such a receiver shall be appointed upon a petition, motion, or application filed by Lender with any court of competent jurisdiction and, effective after the occurrence of an Event of Default, the Borrower hereby irrevocably consents to and approves, without prior notice or hearing, the immediate appointment of a receiver (in connection with a foreclosure action or otherwise) and waives any right to object thereto without regard to the value of the Mortgaged Property or the adequacy of any other collateral.

28. **Specific Performance.** As the subject matter of this instrument involves real estate which by its nature is unique, the Borrower agrees and acknowledges that its failure to observe the provisions hereof will cause irreparable harm to Lender for which there is no adequate remedy at law and so the provisions hereof (including, without limitation, Sections 13 and 20) shall be specifically enforceable by Lender in a court of equity by injunctive relief.

29. **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon the Borrower and Lender and their respective representatives, successors, and assigns. The terms "Borrower" and "Lender" as used herein shall include all subsequent holders of their respective rights, title, and interests under this Mortgage.

30. **Lease Provisions.**

A. The Borrower hereby warrants and represents as follows: (i) the Lease is in full force and effect, unmodified by any writing or otherwise; (ii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof; (iii) the Borrower enjoys the quiet and peaceful possession of the property demised thereby; and (iv) the Borrower is not in default under any of the terms thereof and, to the best of its knowledge, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder.

B. Further, with respect to the Lease, the Borrower covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions thereof on its part to be observed, performed and complied with at all times set forth therein, within any allowance for grace periods, if any; (ii) not to do, permit, suffer or refrain from doing anything, as a result of which, there would be a default under or breach of any of the terms thereof; (iii) except as otherwise permitted herein or under any other Loan Document, not to cancel, surrender, modify, amend or in any way alter or permit the alteration of any of the

terms thereof; (iv) to give the Lender immediate notice of any default by anyone under the Lease and to deliver promptly to the Lender a copy of each notice of default and all other notices, communications, plans, specifications and other similar instruments received or delivered by either party to the Lease; (v) to furnish to Lender copies of such information and evidence as Lender may reasonably require concerning the Borrower's due observance, performance and compliance with the terms, covenants and provisions thereof; (vi) that any default under the Lease, beyond any applicable grace period, shall constitute a default under this Mortgage.

C. The Borrower covenants and agrees that in the event of any default by the Borrower in the performance of any of its obligations under the Lease continuing beyond any applicable notice and cure period, including, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant thereunder, then, in each and every case, Lender may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of the tenant thereunder in the name of and on behalf of the tenant. The Borrower shall, on demand, reimburse Lender for all advances made and expenses incurred by Lender in curing any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at the default rate payable on the Note from the date that an advance is made or expense is incurred, to and including the date the same is paid.

D. If the Borrower acquires the fee title or any other estate, title or interest in the property demised by the Lease or any part thereof, the lien of this Mortgage shall continue to attach to, cover and be a lien upon such acquired estate, title or interest and shall continue to be a part of the Mortgaged Property. The Borrower agrees to execute all instruments and documents which Lender may reasonably require to ratify, confirm and further evidence Lender's lien on the acquired estate, title or interest. Furthermore, the Borrower hereby appoints Lender its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of the Borrower. This power, being coupled with an interest, shall be irrevocable as long as the indebtedness remains unpaid.

E. If the Lease is cancelled or terminated, and if Lender or its nominee shall acquire an interest in any new lease of the property demised thereby, the Borrower shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

F. [The Borrower shall deliver to the Lender within twenty (20) days after written demand by Lender, an estoppel certificate under the Lease setting forth (i) the name of the tenant thereunder, (ii) that the Lease has not been modified or, if either has been modified, the date of each modification (together with copies of each such modification), (iii) the base rent payable under the Lease, (iv) the date to which all rental charges have been paid by the tenant under the Lease, and (v) whether there are any alleged defaults under the Lease and, if there are, setting forth the nature thereof in reasonable detail.]

G. Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Lease within the meaning of any provision thereof prohibiting its assignment and the Lender shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. The Borrower agrees that Lender shall be liable for the obligations of the tenant arising under the Lease only for that period of time which Lender is in possession of the leased premises or has acquired the leased premises, by foreclosure or otherwise, and is holding all of the Borrower's right, title and interest therein.

31. **Governing Law.** The rights and obligations hereunder shall be governed by the laws of the State of Hawaii, without regard to principles of conflicts of laws.

32. **Nonrecourse.** Lender acknowledges and agrees that the obligations of or arising out of this Mortgage are not binding upon any of Borrower's members, partners, officers, directors, employees, agents or shareholders individually, but are binding solely upon the assets of the Borrower.

[Signature/Notary Pages to Follow]

EXECUTED and delivered as a sealed instrument as of the date first above written.

BORROWER:

HANA HEALTH,
a Hawaii nonprofit corporation,
d/b/a Hana Community Health Center

By: _____
Cheryl Vasconcellos
Executive Director

[REVISE/INSERT STATE OF HAWAII NOTARY BLOCK]

STATE OF HAWAII

COUNTY OF _____, ss., _____, 2022

Then personally appeared before me, the undersigned notary public, the above-named Cheryl Vasconcellos, the Executive Director of Hana Health, a Hawaii nonprofit corporation d/b/a Hana Community Health Center, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be her free act and deed and the voluntary act of Hana Health, a Hawaii nonprofit corporation d/b/a Hana Community Health Center.

Notary Public
My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

[TO BE ATTACHED]

EXHIBIT 5

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5548

THIS LEASE, made this 7th day of August, 1998, 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 HANA COMMUNITY HEALTH CENTER, INC., a Hawaii non-profit corporation, whose address is Post Office Box 807, Honolulu, Hawaii 96713, hereinafter referred to as the "Lessee";

WITNESSETH:

The Lessor, pursuant to Act 263, 1996 Legislature and Section 171-43.1, Hawaii Revised Statutes, and 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 lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Kawaipapa, Hana, Maui, Hawaii, identified as "Hana Community Health Center Site, Parts 1 and 2," Part 1 containing an area of 10.071 acres and Part 2 containing an area of 2.035 acres, more particularly described in Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof, subject, however, to Executive Order Nos. S-3368 and S-3549. The Board on January 16, 1998 approved the cancellation of Executive Order Nos. S-3368 and S-3549. These executive orders will be cancelled by the Governor.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of fifty-five (55) years, commencing on the 1st day of July, 1997, up to and including the 30th day of June, 2052, 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, an annual rental as provided hereinbelow,

PRELIM. APPR'D.
Department of the
Attorney General

payable in advance, without notice or demand, in annual installments on July 1st of each and every year during the term as follows:

A. For the fifty-five (55) years, the sum of ONE AND NO/100 DOLLARS (\$1.00) per annum.

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

PRELIM. APPR'D.
Department of the
Attorney General

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RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

PRELIM. APPR'D.
Department of the
Attorney General

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THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

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

3. Utility services. 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 the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

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

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or



suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at its sole cost and expense.

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

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

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in



this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for health care services to the Hana community as set forth in Lessee's articles of incorporation and for other social services commonly provided by the government.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made only if it is to a non-profit corporate successor of the Lessee.

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor 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 pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, 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 premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount acceptable to the Board, with an insurance company(s) licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing

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of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

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

18. Bond, performance. 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 Lessee of all the terms, conditions, and covenants of this lease, in an amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's 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 provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

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20. Mortgage. Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease.

21. Breach. Time is of the essence in this agreement and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, 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 premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) 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 premises occupied by the Lessee. The Lessee shall not by reason

of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

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

24. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any 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 authorization shall be given more than two years before the expiration of the term of this lease.

25. Acceptance of rent not a waiver. 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 breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise

any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

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

27. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business 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 a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor 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 this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

28. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by

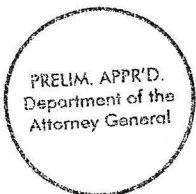
the Lessee of the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

29. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

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

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or



by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

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

33. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

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

35. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall

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in no way define, describe or limit the scope or intent of any provision of this lease.

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

37. Archaeological sites. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 587-0047 in compliance with Chapter 6E, Hawaii Revised Statutes.

SPECIAL CONDITIONS:

38. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.

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39. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; 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 the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

40. Non-use and abandonment. If the Lessee shall, at any time for a continuous period of one (1) year, fail or cease to use said premises for the purposes stated in Paragraph 12 herein, or abandon all or any portion of said premises, this lease shall cease and terminate.

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41. Audit and examination of books, etc. Lessee shall at all times maintain full and accurate records relating to Lessee's operations and activities upon and in connection with said leased premises. Lessor reserves the right to audit, examine, and to make copies of all Lessee's books, accounts, records, and receipts, during regular working hours upon reasonable notice given by Lessor.

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

43. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

44. Certification of tax exemption. The Lessee shall be certified to be tax exempt under Sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The premises shall be used by the Lessee for the purposes for which its charter was issued and for which it was certified by the Internal Revenue Service. The Lessee shall provide a copy of its Internal Revenue Code 501(c) non-profit certificate to the Maui District Land Office.

45. Time of essence. Time is of the essence in all provisions of this lease.

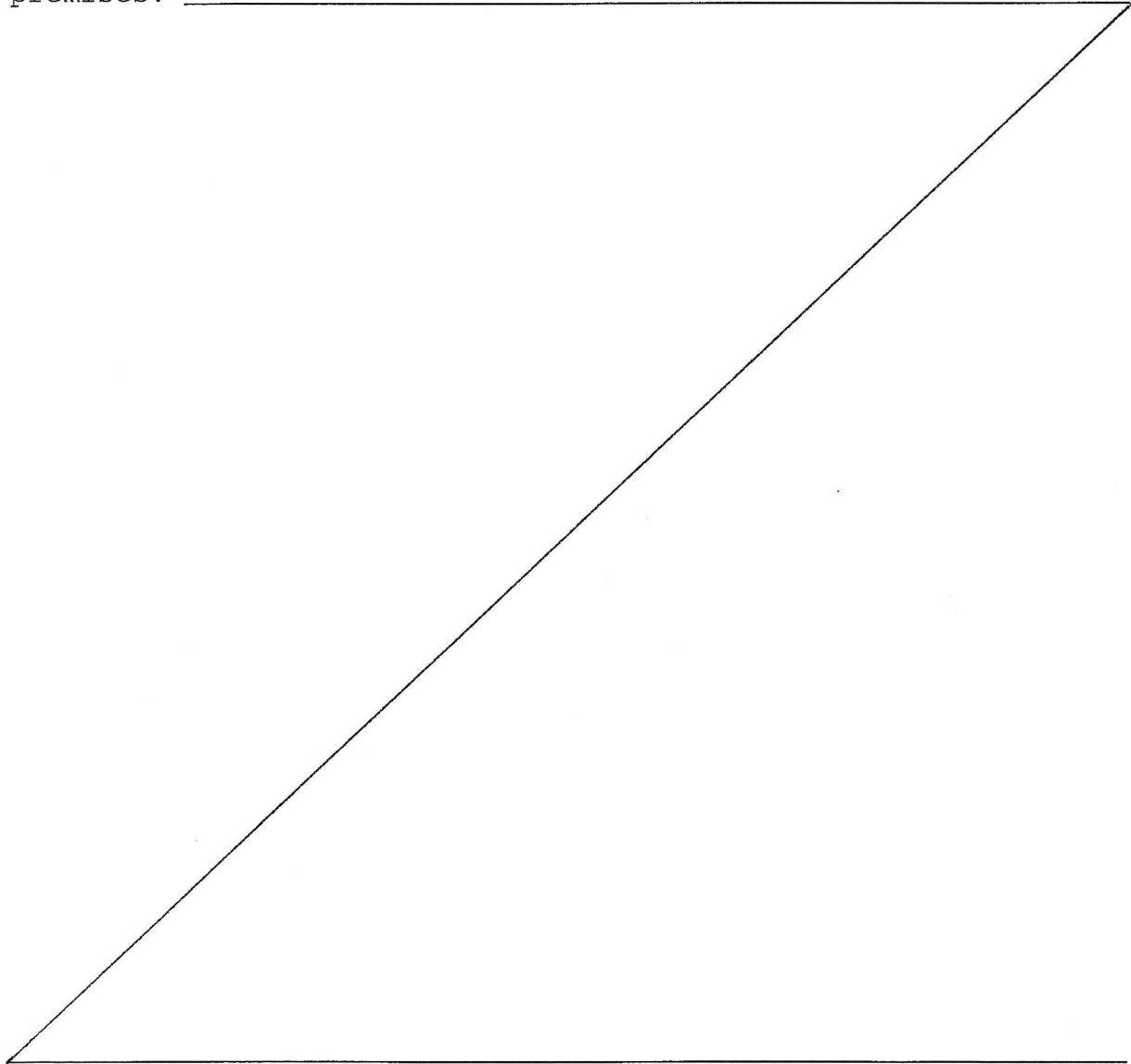
46. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of sale of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.

47. Level one (1) hazardous waste evaluation. Prior to the termination of the subject general lease or the assignment of the leasehold, Lessee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of

Land and Natural Resources. The termination will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.

48. Annual report. The Lessee shall provide the Lessor with a copy of its annual report which at a minimum, will contain information on the Lessee's funding sources and all expenses.

49. Survey and boundary stakeout. The Lessee shall be solely responsible for survey and boundary stakeout of the leased premises. _____



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Definitions.

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

2. As used in this lease, unless clearly repugnant to the context:

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

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

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

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

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

(f) "Days" shall mean calendar days, unless otherwise specified.

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

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on January 16, 1998. *gw*

By *Monte Coleman-Cagan*
Chairperson and Member
Board of Land and Natural Resources *gw*

LESSOR

HANA COMMUNITY HEALTH CENTER, INC.,
a Hawaii non-profit corporation

By *S. H. Hagan*
Its President

And By *M. J. Omer*
Its V.P.

APPROVED AS TO FORM:

M. J. Omer
Deputy Attorney General

Dated: *May 28, 1998*

LESSEE

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STATE OF HAWAII)
) SS.
COUNTY OF Mau)

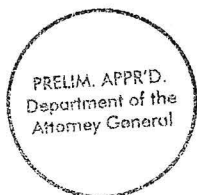
On this 17th day of JULY, 1998,

before me appeared H.T. Hasegawa and
R.D. Omer to me personally known, who,

being by me duly sworn, did say that they are the President
and Vice-President respectively of HANA COMMUNITY HEALTH CENTER,
INC., a Hawaii non-profit corporation, and that the foregoing
instrument was signed in behalf of said corporation by authority
of its Board of Directors, and the said President and
Vice-President acknowledged said instrument to be the free
act and deed of said corporation.

Valerie M. Kolesic-Cook
Notary Public, State of Hawaii

My commission expires: 4-11-2002





STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

February 24, 1998

C.S.F. No. 22,667

HANA COMMUNITY HEALTH CENTER SITE

PARTS 1 AND 2

Kawaipapa, Hana, Maui, Hawaii

PART 1:

Being a portion of Grant 1906 to Kahoolimoku conveyed to the State of Hawaii by Keola Hana Maui, Inc. by deed dated December 24, 1991 and recorded as Document No. 91-179838 (Land Office Deed S-27903).

Beginning at the east corner of this parcel of land and on the southwest side of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 3507.94 feet North and 4326.16 feet West, thence running by azimuths measured clockwise from True South:-

- | | | |
|----|-------------|--|
| 1. | 69° 53' | 209.00 feet along Part 2 of Hana Community Health Center Site; |
| 2. | 159° 53' | 100.00 feet along Part 2 of Hana Community Health Center Site; |
| 3. | 69° 53' | 149.83 feet along Part 2 of Hana Community Health Center Site; |
| 4. | 335° 49' | 310.74 feet along Part 2 of Hana Community Health Center Site; |
| 5. | 65° 48' 30" | 807.40 feet along Grant 1819 to Kahananui; |
| 6. | 161° 01' | 183.53 feet along Grants 1269 and 3011 to Kapawa; |
| 7. | 163° 17' | 122.03 feet along Grants 1269 and 3011 to Kapawa; |
| 8. | 162° 41' | 153.75 feet along Grants 1269 and 3011 to Kapawa; |

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Department of the
Attorney General

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|-----|----------|---|
| 9. | 162° 02' | 329.60 feet along Grants 1269 and 3011 to Kapawa; |
| 10. | 250° 45' | 153.93 feet along R.P. 7604, L.C.Aw. 4566 to Wahineaa; |
| 11. | 262° 54' | 117.11 feet along R.P. 6447, L.C.Aw. 4846 to Kaholokai; |
| 12. | 250° 48' | 77.04 feet along R.P. 6447, L.C.Aw. 4846 to Kaholokai; |
| 13. | 336° 42' | 416.80 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 14. | 244° 01' | 385.40 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 15. | 248° 22' | 150.88 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 16. | 256° 24' | 214.63 feet along the remainder of Grant 1906 to Kahoolimoku; |
| 17. | 342° 28' | 93.94 feet along the southwest side of Hana Highway to the point of beginning and containing an AREA OF 10.071 ACRES. |

SUBJECT, HOWEVER, to the following easements as shown on plan attached hereto and made a part hereof:

1. Access Road Easement (12.00 feet wide).
2. Perpetual Easement (20.00 feet wide) covered by Grant to Hana Ranch Company, Limited dated April 11, 1962 and recorded in Liber 4285, Page 243.

SUBJECT, ALSO, to an existing Hana Ranch, Inc., 8" spiral weld pipeline crossing the above-described Part 1 as set forth in deed dated May 30, 1975 and recorded in Liber 10712, Page 394.

PART 2:

Being a portion of Grant 1906 to Kahoolimoku conveyed to the State of Hawaii by the County of Maui by deed dated July 10, 1985 and recorded in Liber 19657, Pages 108-118 (Land Office Deed S-27577).

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Beginning at the east corner of this parcel of land and on the southwest side of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 3358.90 feet North and 4205.11 feet West, thence running by azimuths measured clockwise from True South:-

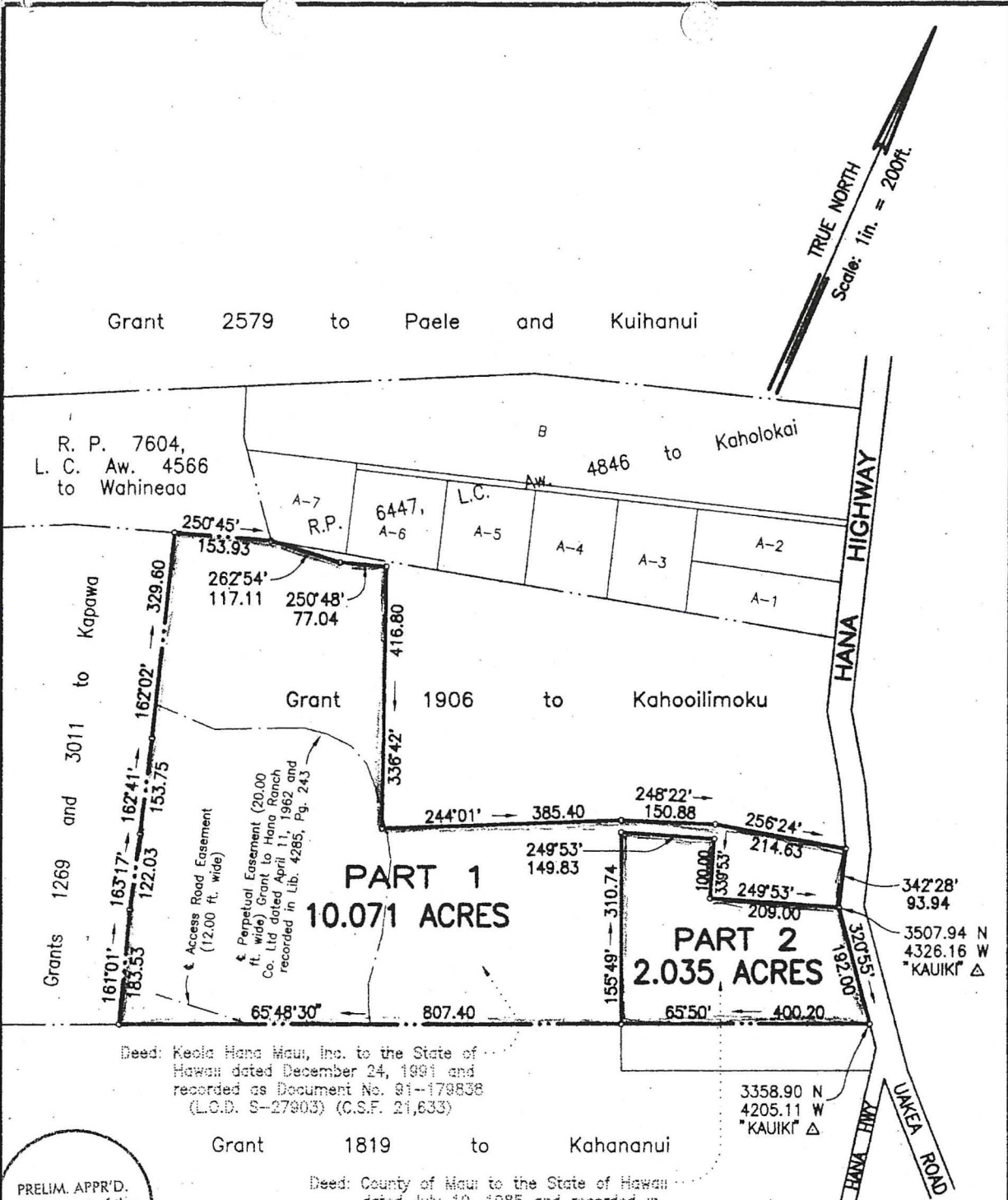
1. 65° 50' 400.20 feet along Grant 1819 to Kahananui;
2. 155° 49' 310.74 feet along Part 1 of Hana Community Health Center Site;
3. 249° 53' 149.83 feet along Part 1 of Hana Community Health Center Site;
4. 339° 53' 100.00 feet along Part 1 of Hana Community Health Center Site;
5. 249° 53' 209.00 feet along Part 1 of Hana Community Health Center Site;
6. 320° 55' 192.00 feet along the southwest side of Hana Highway to the point of beginning and containing an AREA OF 2.035 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor gm

Compiled from CSFs 20565
and 21665 and Govt. Survey
Records.
TMK: 1-4-03:22 and 24

PRELIM. APPR'D.
Department of the
Attorney General



Grant 2579 to Paele and Kuihanui

R. P. 7604,
L. C. Aw. 4566
to Wahineaa

4846 to Kaholokai

Grants 1269 and 3011 to Kapawa

Grant 1906 to Kahoolimoku

PART 1
10.071 ACRES

PART 2
2.035 ACRES

Deed: Keola Hana Maui, Inc. to the State of Hawaii dated December 24, 1991 and recorded as Document No. 91-179838 (L.O.D. S-27903) (C.S.F. 21,633)

Grant 1819 to Kahananui

Deed: County of Maui to the State of Hawaii dated July 10, 1985 and recorded in Liber. 19657, Pages 108-118 (L.O.D. S-27577)

PRELIM. APPR'D.
Department of the
Attorney General

HANA COMMUNITY HEALTH CENTER SITE
PARTS 1 AND 2

Kawaipapa, Hana, Maui, Hawaii

JOB Ma-17(98)
C. BK.

Scale: 1 inch = 200 feet

REDUCED NOT TO SCALE

TAX MAP 1-4-03:22 & 24

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "B"

C.S.F. NO. 22,667

ET Feb. 24, 1998

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