

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

April 8, 2022

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

PSF No.: 22OD-002  
Oahu

Issuance of Right-of-Entry Permit to Eurus Energy America LLC to Conduct Topographic, Easement, Geotechnical, Biological, and Cultural Surveys on Land Set Aside to the Department of Agriculture under Executive Order No. 4584 at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031: 001.

APPLICANT:

Eurus Energy America LLC (Eurus), a Delaware limited liability company.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031: 001, as shown on the attached map labeled Exhibit A.

AREA:

110 acres, more or less.

ZONING:

State Land Use District: Urban  
County Zoning: I-2 Intensive Industrial District

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

The subject parcel was set aside to the Department of Agriculture (DOA) on May 15, 2019, for agricultural purposes via Executive Order No. 4584 (Exhibit B) and is leased to Hawaii Land & Livestock, LLC (HLL) under DOA General Lease No. S-3138 (Exhibit C). HLL uses the land for livestock resting pens.

CHARACTER OF USE:

Conduct Topographic, Easement, Geotechnical, Biological, and Cultural Surveys.

TERM OF RIGHT-OF-ENTRY (ROE) PERMIT:

One (1) year with authorization for the Chairperson to extend the ROE for additional one year periods, or such shorter period as Eurus may require, for good cause shown.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources (Department) reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving minor expansion or minor change of use beyond that previously existing” and Part 1, Item 44 that states, “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing” and General Exemption Type 5 that states, “Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource” and Part 1, Item 1 that states, “Conduct surveys or collect data on existing environmental conditions (e.g. noise, air quality, water flow, water quality, etc.)”, Item 2 that states, “Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping”, Item 3 that states, “Conduct topographic, sounding, wave, littoral transport, bathymetric, and location surveys”, Item 12 that states, “Conduct terrestrial and marine archeological surveys”, Item 19 that states, “Conduct planning and feasibility studies”, and Item 20 that states, “Permission to enter lands for the purpose of conducting those activities listed above.”

The proposed disposition is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

DCCA:

Eurus Energy America LLC is a Delaware limited liability company, does not (yet) conduct business in Hawaii and is not required to register with the Department of Commerce and Consumer Affairs at this time.

REMARKS:

At its meeting of November 9, 2018, the Board of Land and Natural Resources (Board) approved the set aside of the subject parcel to DOA for agricultural purposes. The subject parcel was formally set aside via Executive Order No. 4584 on May 15, 2019, subject to a reservation to the Board of the right to issue leases for renewable energy projects on the land provided that the projects do not unreasonably interfere with DOA's or its lessee's use of the land for agricultural purposes.<sup>1</sup>

On December 26, 2019, DOA executed General Lease No. S-3138 with HLL for a term of 35 years. The lease was solely for Diversified Agriculture including animal feedlot purposes for finishing prior to slaughter of livestock and the lease specified that DOA maintained the right to withdraw any portion of the premises for leasing to renewable energy producers and/or for the creation of photovoltaic projects and supporting infrastructure (Exhibit C, page 8).

On January 12, 2022, Eurus submitted its Request for State Lands for an ROE permit onto the subject parcel (Exhibit D). The purpose of this ROE is to conduct topographic, easement, geotechnical, biological, and cultural surveys necessary to: (a) evaluate the feasibility and design of a solar-based electricity and renewable hydrogen generation facility; (b) comply with relevant state and local laws including Chapter 343, HRS, and permit requirements including Special Management Area User Permit requirements; (c) evaluate other approvals necessary for a potential long-term lease of the parcel. Eurus has contacted DOA to discuss this project and DOA has initiated discussions between Eurus and DOA's lessee, HLL. Staff notes that HLL pays DOA \$18,300 in base rent annually under DOA Lease S-3138, with a provision for additional rent based on 1.5% of gross proceeds to the extent they are in excess of the base rent.

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<sup>1</sup> The Department reserved rights for developing renewable energy projects on the land because the land was once designated as income-producing as a prime site for renewable energy projects with its location in Campbell Industrial Park across a Hawaiian Electric Company, Inc. (HECO) facility and close to the west side energy corridor. The land was previously under a Board-approved development agreement for a renewable energy project, but the developer was not able to secure the HECO power purchase agreement for its project and the development agreement terminated. Soon thereafter, DOA requested the land be transferred to it.



The subject parcel consists of approximately 110 acres. Eurus requests permission to conduct studies over the entire parcel although its renewable energy project would require use of a maximum of 90 acres.

Staff visited the subject parcel on January 21 and February 22, 2022. On these visits staff observed that a significant portion of the parcel is being used for purposes other than those prescribed in the lease and executive order. There is what appears to be an extensive industrial base yard running along the makai portion of the parcel parallel to Olai Road. Staff documented numerous excavators and other heavy equipment, shipping containers and rusting trailers stacked and strewn throughout the parcel, large piles of what appear to be construction fill and rubble, abandoned and wrecked vehicles ranging from cars to construction equipment to semi-trucks, large vehicle repair bays and support structures, stacks of concrete girders and barriers, and other industrial and construction materials (Exhibit E). Aside from a small corral situated behind the HLL office, staff did not observe any cattle or other agricultural activity taking place on the subject parcel.

HLL employees explained that the vehicles and materials located on the subject parcel are the property of a hauling company that provides hauling services in support of HLL's slaughterhouse business, and that its use of the subject parcel was with the permission of HLL. Upon returning from the January 21 site visit, staff informed DOA of the condition and use of the subject parcel and provided DOA with pictures. Staff intends to discuss HLL's use of the land with DOA and explore options for bringing the use into compliance with the executive order and the DOA lease.

Staff notes that the ongoing use of subject parcel as an industrial base yard is not compliant with the terms of Executive Order No. 4584 or General Lease No. 3138, which only make exceptions from agricultural use for renewable energy projects. Due to the small footprint of HLL's authorized operations on the property, there does appear to be potential for development of a large portion of it for renewable energy purposes.

This ROE shall remain in effect for one (1) year, however it may be extended by the Chairperson for additional one (1) year periods, or such short period as Eurus may require, for good cause shown.

Comments were solicited from the agencies below with the results indicated:

Agency:	Comment:
DBEDT-State Energy Office	Exhibit F
DOA	Exhibit G

Applicant has not had a lease, permit, easement, or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.



RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-16, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
2. Grant an access right-of-entry permit to Eurus Energy America LLC covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current access right-of-entry form, as may be amended from time to time;
  - B. This access right-of-entry is effective upon Land Board approval and shall remain in effect for one (1) year. The Chairperson is authorized to extend the ROE for additional one-year periods, or such shorter period as Eurus may require, for good cause shown;
  - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Luke Sarvis*

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Luke J. Sarvis  
Project Development Specialist

APPROVED FOR SUBMITTAL:

*Suzanne D. Case*

*RT*

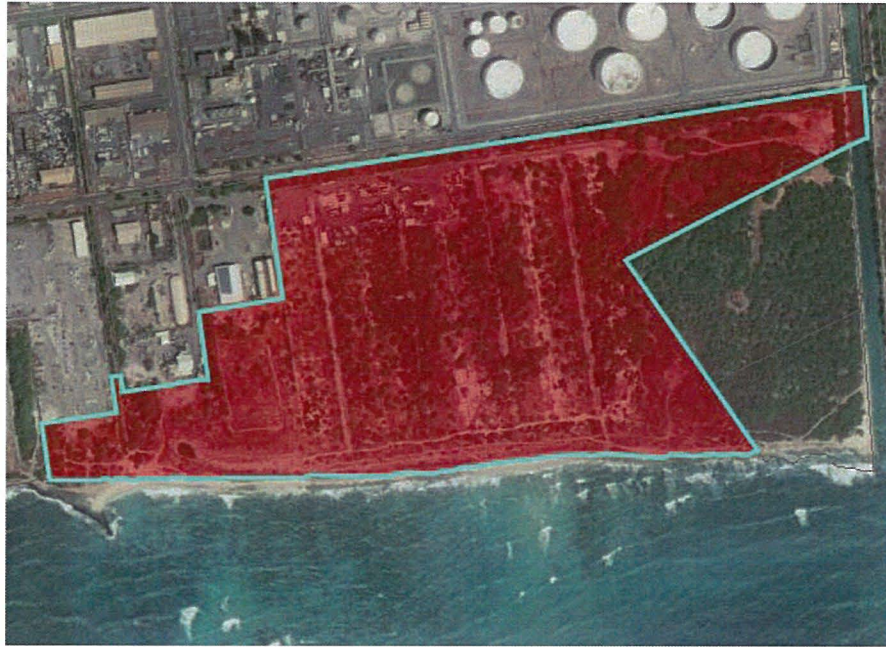
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Suzanne D. Case, Chairperson

# EXHIBIT A



EXHIBIT A



TMK: (1) 9-1-031:001





# EXHIBIT B

EXHIBIT B



STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

May 28, 2019 3:29 PM

Doc No(s) T-10739196  
on Cert(s) 498504  
Issuance of Cert(s)



1 1/1 VKK  
B-33334265

/s/ LESLIE T. KOBATA  
ASSISTANT REGISTRAR

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

DEPT. OF LAND AND NATURAL RESOURCES  
LAND DIVISION

Total Number of Pages: 6

Tax Map Key No. (1) 9-1-031:001

FROM: STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

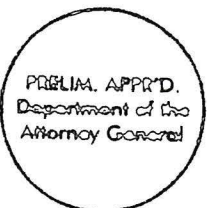
TO: STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814

EXECUTIVE ORDER NO. 4584

SETTING ASIDE LAND FOR PUBLIC PURPOSES

BY THIS EXECUTIVE ORDER, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, as amended, and every other authority me hereunto enabling, do hereby order that the public land and improvements hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR AGRICULTURAL PURPOSES, to be under the control and management of the State of Hawaii, Department of Agriculture, being that parcel of land situate at Honouliuli, Ewa, Oahu, Hawaii, and identified as "Agricultural Purposes Site," being all of Lot 12022 as shown on Map 888 of Land Court Application 1069 filed in the Office of the Assistant Registrar of the Land Court





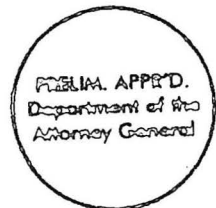
of the State of Hawaii covered by Transfer Certificate of Title 498504 issued to the State of Hawaii, containing an area of 110.106 acres (Land Office Deed S-28204, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, Exhibit "A" being respectively a survey description prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,720 and dated March 8, 2019, and Exhibit "B" being a copy of Land Court Map 888 of Land Court Application 1069. TOGETHER WITH the above-described parcel of land, all of the submerged lands seaward of the Highwater Mark (Vegetation Line) as shown on Map 888 to the Mean Lower Low Water Mark at seashore, and SUBJECT, HOWEVER, to any and all encumbrances that may be noted on Transfer Certificate of Title 498504. Lot 12022 shall have access across Lots 3163 and 3164 as shown on Map 325 as set forth by Land Court Order 127022.

RESERVING to the State of Hawaii, Board of Land and Natural Resources the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of Agriculture's use of the land, provided that the State of Hawaii, Department of Agriculture and its tenants shall not be prohibited from installing photovoltaic arrays or locating other renewable energy projects on the land as long as the power generated thereby is wholly consumed on the land; and provided further that the State of Hawaii, Department of Agriculture and its tenants shall obtain the prior written consent of the Chairperson of the Board of Land and Natural Resources before installing photovoltaic arrays or locating any other renewable projects on the land.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the State of Hawaii, Department of Agriculture shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the





State of Hawaii's title to the subject public land.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed.

Done at the Capitol at Honolulu this 15<sup>th</sup> day of May, 2019.

*David Y. Ige*

DAVID Y. IGE

Gov Governor of the State of Hawaii

APPROVED AS TO FORM:

*Daniel A. Morris*

DANIEL A. MORRIS

Deputy Attorney General

Dated: MAR 20 2019

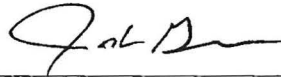


STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of  
Executive Order No. 4584 setting aside land for public  
purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant  
Governor of the State of Hawaii, has  
hereunto subscribed his name and caused  
the Great Seal of the State to be affixed.



JOSH GREEN

Lieutenant Governor of the State of Hawaii

DONE in Honolulu, this 21<sup>st</sup> day of

May, A.D. 2019





STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,720

March 8, 2019

AGRICULTURAL PURPOSES SITE

Honouliuli, Ewa, Oahu, Hawaii

- ✓ Being all of Lot 12022 as shown on Map 888 of Land Court Application 1069 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 498504 issued to the State of Hawaii and containing an AREA
- ✓ OF 110.106 ACRES (Land Office Deed S-28204).

Lot 12022 shall have access across Lots 3163 and 3164 as shown on Map 325 as set forth by Land Court Order 127022.

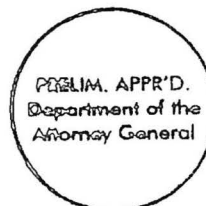
TOGETHER WITH the above-described parcel of land, all of the submerged lands seaward of the Highwater Mark (Vegetation Line) as shown on Map 888 to the Mean Lower Low Water Mark at seashore.

SUBJECT, HOWEVER, to any and all encumbrances that may be noted on Transfer Certificate of Title 498504.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

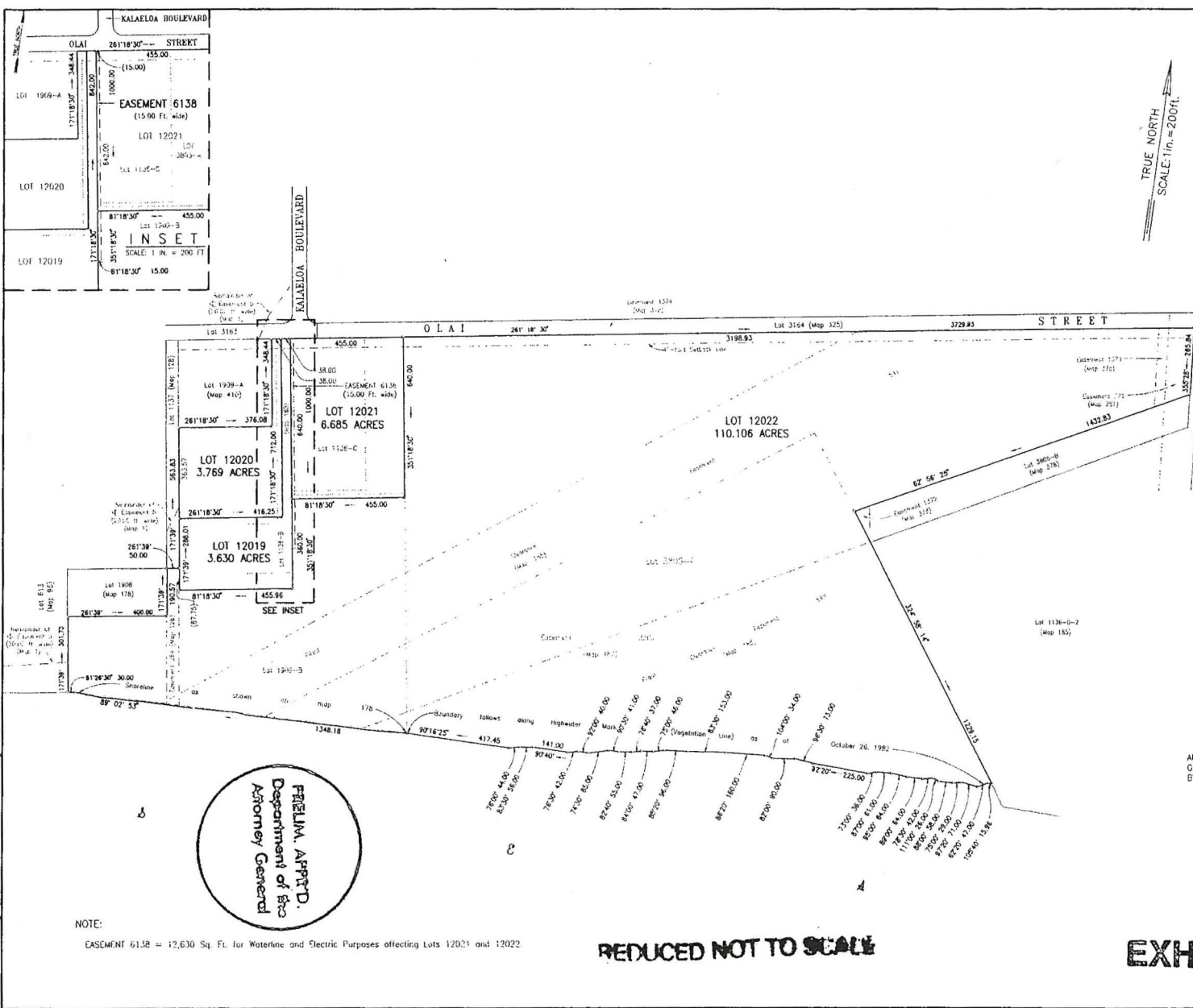
By: *Gerald Z. Yonashiro*  
Gerald Z. Yonashiro  
Land Surveyor rk

Compiled from Land Court  
Records.



**EXHIBIT "A"**





TRUE NORTH  
SCALE: 1 in. = 200 ft.

LAND COURT  
STATE OF HAWAII  
LAND COURT APPLICATION 1069

CONSOLIDATION OF LOT 3805-A  
AS SHOWN ON MAP 378  
LOTS 1136-B AND 1136-C  
AS SHOWN ON MAP 165  
LOT 1909-B  
AS SHOWN ON MAP 410  
AND RESUBDIVISION OF SAID CONSOLIDATION  
INTO LOTS 12019, 12020, 12021 AND 12022,  
CANCELLATION OF EASEMENT 488  
AS SHOWN ON MAP 165,  
CANCELLATION OF PORTIONS OF EASEMENT 5  
AS SHOWN ON MAP 1  
AND DESIGNATION OF EASEMENT 6138  
HONOLULU, EWA, OAHU, HAWAII

Kolononoku Building  
1151 Punchbowl St.  
Room 210  
Honolulu, Hawaii  
July 17, 1995



STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES  
SURVEY DIVISION  
*Ramona W. Smith*  
Licensed Professional Land Surveyor  
Certificate No. 7549  
Registered Land Court Surveyor  
Certificate No. 255

OWNER: TRUSTEES UNDER THE WILL AND OF THE  
ESTATE OF JAMES CAMPBELL, DECEASED  
TRANSFER CERTIFICATE OF TITLE: 410,853

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED FEBRUARY 10, 1997  
BY ORDER OF THE COURT

*Ramona W. Smith*  
Acting REGISTRAR OF THE LAND COURT

REDUCED NOT TO SCALE

EXHIBIT "B"

Filed June 30, 1997  
2000 by 64  
31" x 37" = 47' 56" x 61'

# EXHIBIT C

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

**The original of this document was  
recorded as follows:**

**DOCUMENT NO.** Doc T-10952244  
CT 498504  
**DATE/TIME** December 27, 2019 11:00 AM

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

DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESOURCE MANAGEMENT DIVISION  
1428 SO. KING STREET  
HONOLULU, HAWAII 96814  
No. of Pages: 62

Tax Map Key No. 1<sup>st</sup> DIV/9-1-031:001

STATE OF HAWAII

DEPARTMENT OF AGRICULTURE

GENERAL LEASE NO. S - 3138

between

STATE OF HAWAII

and

HAWAII LAND & LIVESTOCK, LLC  
A Hawaii Limited Liability Company

LOCATION: HONOULIULI, EWA, ISLAND OF OAHU, HAWAII



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STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
GENERAL LEASE NO. S-3138

THIS INDENTURE OF LEASE, is made and entered into this 26<sup>th</sup> day of December, 2019, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor", by its Board of Agriculture, hereinafter referred to as the "Board", whose business address is 1428 South King Street, Honolulu, Hawaii 96814, and HAWAII LAND & LIVESTOCK, LLC, a Hawaii Limited Liability Company, whose business and post office address is 91-319 OLAI STREET, KAPOLEI, HAWAII 96707, hereinafter referred to as the "Lessee".

WITNESSETH:

THAT, the Lessor for and in consideration of the rent to be paid and of the terms, covenants, and conditions contained herein, all on the part of the Lessee to be kept, observed, and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor the premises identified as Tax Map Key 1-9-1-031:001 containing approximately 110.016 gross acres, of land at Honouliuli, Ewa Island of Oahu, Hawaii, more particularly described in Exhibit A, and the premises outlined in red on Exhibit B, which are attached hereto and made a part hereof.

TO HAVE AND TO HOLD the demised premises unto the Lessee for the term of THIRTY-FIVE (35) years commencing on the 1<sup>st</sup> day of January, 2020, and ending on the 31<sup>st</sup> day of December, 2055, unless sooner terminated as provided herein, or extended upon mutual written agreement of the Lessor and Lessee to the extent allowed under the Hawaii Revised Statutes and Hawaii Administrative Rules, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Department of Agriculture, Honolulu, Oahu, a base annual rental as provided herein, payable in advance without notice or demand, in semi-annual installments on January 1 and July 1 of each and every year during the lease term, except as otherwise provided, as follows:

A. Base annual rental. For the first ten (10) years, the base annual rental shall be the sum of EIGHTEEN-THOUSAND THREE-HUNDRED AND NO/100 DOLLARS (\$18,300.00); as offered and accepted by the Board; except, the Board may, at its sole discretion, permit the Lessee to offset the cost of land clearance and leasehold improvements against not more than two years of base annual rental, the evidence of which shall be submitted to the Lessor within the first year of the lease term.

B. Additional rental. Each year on or before the 30th day of April, the Lessee shall submit to the Lessor a report disclosing the gross proceeds from the sale of commodities produced on the demised premises during the

year immediately preceding. Together with the report, the Lessee shall pay to the Lessor any additional rental due, which amount shall be determined in the manner described below:

From the report, determine a value representing 1.5 per cent (%) of the gross proceeds, which includes revenues from consignment sales and subletting. Any excess of the value so derived over the base annual rental constitutes the additional rental.

C. Reopening of annual rental. The annual rental shall be reopened and redetermined at the expiration of the 10<sup>th</sup>, 20<sup>th</sup>, and 30<sup>th</sup>, years of the term herein, provided however, in no event shall the base annual rental be revised downward.

D. Determination of annual rental upon reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which the disposition was made shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be notified promptly of the determination; provided that should the Lessee disagree with the fair market rental as determined by the Lessor's appraiser, the Lessee may appoint its own appraiser, within fourteen days after



written notice of the fair market rental, to prepare an independent appraisal report.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen days after the exchange, the two appraisers, within seven days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within forty-five days of the appointment. Within twenty days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental, as determined by a majority of the appraisers, shall be in writing and shall be final and binding upon both the Lessor and the Lessee, subject to chapter 658A, Hawaii Revised Statutes ("HRS"). The Lessee shall pay for its own appraiser. The cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In rendering such decision, the appraisers shall assume that neither Lessor or Lessee is under a compulsion to rent and both are typically motivated, well-informed, well-advised and each is acting in what it considers its own best interest and the premises are fit for immediate occupancy and use "as is".

In the event that the appraisers are unable to determine the fair market rental before the reopening date, the Lessee shall continue to pay the rent at the rate effective for the previous rental period, but the Lessee shall make up any deficiency within thirty days after the new rental has been determined. The Lessee's or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of the Lessee's right to contest the new fair market rental, and the Lessee shall pay the rental as determined by the Lessor's appraiser without adjustment. Alternatively, the Board may, at its option, treat the failure as a breach of this lease and terminate this lease.

E. Facilities capital recovery fee. The facilities capital recovery ("FCR") fee is payable annually and shall be for the full term of this lease, commencing on the date the Lessor installs improvements as described herein in support of the Lessee's operations, or the commencement of the term of this lease, whichever is later. The FCR fee is based on the Lessor's expenditures to install the improvements and is calculated on one-tenth of one per cent of the Lessor's expenditures and will be added to the base annual rental, except that Capital Improvement Projects, as may be authorized by the State of Hawaii Legislature, which are constructed to repair or remedy defects to the physical facility and are not used to expand operations shall not be

included as the Lessor's expenditure upon which the FCR fee is based.

F. Interest on delinquent rental. Interest at the rate of one per cent (1%) per month shall be charged to any delinquent rentals.

G. Holdover. Upon expiration of the lease term, if the land is not otherwise disposed of, the Lessor may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the Lessor may prescribe, and further as provided in section 4-158-31, Hawaii Administrative Rules ("HAR").

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and water rights. (a) All minerals as hereafter defined, in, on, or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove 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, including strip mining, shall be reserved to the Lessor. "Minerals", as used herein, means any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum, and all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources in, on, or under the demised premises, fast or submerged;



provided that "minerals" shall not include sand, gravel, rock, or other material suitable for use and when used in general construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others.

(b) All surface and ground waters appurtenant to the demised 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 demised premises as may be required in the exercise of this right shall be reserved to the Lessor; provided 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 the Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found in, on, or under the demised premises shall be reserved to the Lessor.

3. Ownership of fixed improvements. The ownership of all improvements, including but not limited to farm dwellings, barns, maintenance sheds, shadehouses, fences, irrigation and stockwater systems located on the demised premises prior to or on the commencement date of this lease, excluding the improvements constructed during the term of this lease, unless provided otherwise, shall be reserved to the Lessor.

4. Withdrawal. The Lessor shall have the right to withdraw the demised premises, or any portion thereof, at any time during the term of this lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for leasing to renewable energy producers and/or for the creation of photovoltaic projects, 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 Lessor to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises; provided that upon the withdrawal or taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental shall be reduced in proportion to the value of the land withdrawn or made unusable. If any permanent improvement constructed upon the demised premises by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of this lease; provided that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Lessor pays to the Lessee the value of the crops; and provided further that upon withdrawal the Lessee shall be compensated for the present value of all permanent

improvements in place at the time of withdrawal that were legally constructed upon the demised premises by the Lessee of the leased land being withdrawn. For tree or orchard crops taken, payment shall be based on the residual value of trees taken and, if there are unharvested crops, the value of such unharvested crops.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the required rent in legal tender of the United States of America to the Lessor at the times, in the manner and form, and at the place specified above, or at any other place designated by the Lessor, without any deduction and without any notice or demand.

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

4. Irrigation costs. Without limiting the provisions of the proceeding section, the Lessee shall be responsible for its share of operating and maintenance costs associated with the irrigation system which provides irrigation water to the demised premises. The Lessee agrees not to oppose the establishment of an irrigation project under Chapter 167, HRS, under which assessments, tolls, fees, and charges for water usage and irrigation system operation and maintenance shall be set; and the Lessee agrees to abide by and to pay when due all rates and charges set by such irrigation project.

The Lessee shall use due care to protect the ditches, flumes, pipelines, gates, valves, and all other property and appurtenances of the irrigation system and shall not cause or suffer any damage or destruction thereof.

5. Character of use. (a) The Lessee shall use the premises hereby demised solely for Diversified Agriculture including animal feedlot purposes for finishing prior to

slaughter of livestock. No other use shall be permitted except as provided in sections 4-158-18 and 4-158-19, HAR.

(b) No cesspools shall be constructed on the premises. However, the Lessee may use alternative wastewater treatment and disposal systems, which do not pose a threat to the groundwater and provided the Lessee obtains the prior written approval from the Department of Health.

(c) Disposal of all solid and liquid animal waste must be by a means acceptable to the Hawaii Department of Health.

(d) The covenants, conditions, and restrictions contained in this section shall run with the land until the time that the land is reclassified to a land use district other than an agricultural district, provided that if less than all the premises is reclassified, then the covenants, conditions, and restrictions shall terminate only as to the portion of the premises which is reclassified to a land use district other than an agricultural district. Any transfer, assignment, sublease, mortgage, or other instrument of conveyance of the premises shall expressly contain the restrictions on uses and the conditions in this section.

6. Dwelling restrictions. Residential use and residential dwellings shall not be permitted on the premises. The Board may permit a farm dwelling on the premises if the need is clearly demonstrated. The farm dwelling shall be used in direct connection with the

agricultural activities on the premises and shall not be used for rental purposes. The dwelling shall be subject to such additional terms and conditions as the Board may require including, but not limited to, an adjustment of lease rental. All construction on the premises shall be in accordance with plans approved by the Lessor and shall be in accordance with all applicable federal, state and county laws, ordinances, regulations and rules, including, but not limited to, laws regarding environmental quality control.

7. Utilization and development of the demised premises. The development of the demised premises shall be completed within three years from the commencement date of this lease, with not less than fifty per cent (50%) developed within the first two years of the lease term. The above schedule shall be in accordance with a Plan of Utilization and Development (P.U.D.) which shall be prepared by the Lessee and approved by the Lessor before the execution of this lease. Any modification or deviation from the plan, without the prior written approval of the Lessor, may constitute a breach of this lease and cause for the termination thereof.

8. Good husbandry and conservation practices. The Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use permitted and shall carry out a program of conservation based upon a Conservation Plan (CP) developed by the Lessee in cooperation with the appropriate Soil and Water



Conservation District. In the event the activities of the Lessee are determined to be contrary to the Conservation Plan, the Lessor shall notify the Lessee of the discrepancy and the Lessee shall be required, within sixty days of the notice, to cure the discrepancy and to submit proof thereof satisfactory to the Lessor.

9. Invasive species. Lessee shall immediately notify Lessor of any suspected or known presence of invasive species on the Premises and/or adjoining or nearby lots. Lessee and Lessor may collaborate on remedial actions to eradicate suspected or identified invasive species, however, it shall be Lessee's responsibility to take action to eradicate and/or prevent the spread of invasive species on the Premises and/or adjoining or nearby lots. In the event Lessee fails to take appropriate action to eradicate or control known presence of invasive species on the Premises and/or adjacent or nearby lands, then Lessor shall have the right to participate in remedial action to exterminate such invasive species which may include administering pesticides or other methods of remediation approved and accepted by the Department of Agriculture.

10. Major portion of income. Within three years following the commencement date of this lease, the Lessee shall attain and maintain throughout the remainder of the lease term a level of agricultural operation that generates more than fifty per cent (50%) of the Lessee's total annual income; except, that this requirement shall not apply if

failure to meet the requirement results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production, marketing, and sale of crops or products for which this lease was granted. Each year on or before April 30th following the third year of the lease term, the Lessee shall submit a copy of its federal or state income tax return for the year immediately preceding. The submitted tax return shall be subject to audit and verification by the Lessor, who may impose additional requirements to carry out the requirements of this section.

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

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

13. Inspection of premises. The Lessee shall permit the Lessor and its representatives, at all reasonable times during the lease term, to enter the demised premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of

the Lessee in connection with the administration of this lease.

14. Improvements. At any time during the lease term, the Lessee shall not construct, place, maintain, or install on the premises any building, structure, sign, or improvement, except with the prior written approval of the Lessor and upon such conditions as the Lessor may impose. All buildings, structures, signs, or improvements shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in the Lessee until the expiration or sooner termination of this lease, at which time the ownership thereof shall, at the option of the Lessor, vest in the Lessor or shall be removed by the Lessee, at the Lessee's sole cost and expense.

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

16. Insurance. At all times during the term of this lease, the Lessee shall keep insured all buildings and improvements erected on the demised premises in the joint names of the Lessor, the Lessee, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage



endorsement and in an amount equal to the maximum insurable value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to the Lessor, the Lessee, and any mortgagee, as their interests may appear, and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as reasonably possible, to be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by the Board; except, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and forfeiting all interest in the proceeds of insurance and in any remaining improvements, with the Lessor to retain the balance of the proceeds; any policy or current certificate of insurance certifying that such policy has been issued and is in effect shall be delivered to Lessor upon commencement of the term of the Lease and Lessor may, at any time and from time to time, inspect and/or copy any and all insurance policies required to be procured by Lessee hereunder.

17. Right of first refusal. A lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, shall not be transferred or assigned unless the

lease and improvements, or any interest therein, are first surrendered to the Board, as follows:

- (1) The Board shall have the option to re-purchase the lease for the price paid by the current lessee, including closing costs, or the fair market value, less appreciated value, at the time of re-purchase, as determined in paragraph (3), whichever is the lower but not less than zero. For the purposes of this section, "price paid by the current lessee" means the consideration paid for the lease exclusive of improvements and "appreciated value" means the replacement cost for developing the leased premises.
- (2) Any improvements affixed to the realty, including trade fixtures and growing crops, shall be re-purchased at their fair market value.
- (3) At the time of the re-purchase, the fair market value of the lease less appreciated value and the fair market value of any improvements shall be determined by a qualified appraiser whose services shall be contracted for by the Lessor; provided that should the Lessee disagree with the values, the Lessee may appoint the Lessee's own appraiser who together with the Lessor's

appraiser shall appoint a third appraiser, and the fair market value shall be determined by arbitration as provided in chapter 658A, HRS. In this event, the Lessee shall pay for the Lessee's own appraiser, the Lessor shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Lessor.

- (4) The Board may re-purchase the lease and improvements with funds from the non-agricultural park lands special fund or may accept a surrender of the lease subject to the offer by a qualified applicant to purchase the lease and improvements, including any encumbrances, for not less than the amount to be paid therefor by the Board; provided that the purchase by a qualified applicant shall be subject to sections 4-158-22 and 4-158-29, HAR.
- (5) Notwithstanding the conditions herein, the consideration for the applicant's purchase of the lease as provided in paragraph (4) shall not be less than the total of all encumbrances that have been approved by the Lessor at the time of the re-purchase.
- (6) This section shall not apply to a holder of record having security interest upon



foreclosure pursuant to section 4-158-34,  
HAR.

18. Assignments of lease, lease interest, etc. (a)

Any transferee, assignee, or sublessee of a non-agricultural park lease shall satisfy applicant qualification requirements. No lease or any interest therein, including corporate stock or an interest in a partnership or association, shall be transferred or assigned without the consent of the Board, except by devise, bequest, or intestate succession and upon the further condition that there is a dwelling on the property in which the devisee or heir resides or that more than fifty per cent (50%) of the devisee's or heir's income is derived from the productive use of the demised premises. In the absence of or upon cessation of these conditions, the devisee or heir shall surrender the lease and improvements, or any interest therein, to the Board pursuant to its right of first refusal.

(b) With the approval of the Board, and subject to its right of first refusal, the assignment and transfer of a lease or any interest therein, including stock of a corporation holding the lease or an interest in a partnership or association holding the lease, may be made if:

- (1) The Lessee becomes mentally or physically disabled;

(2) Extreme economic hardship is demonstrated to the satisfaction of the Board; or

(3) The assignment is to the corporate successor of the Lessee;

provided that with the prior written approval of the board the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by the Board; provided further, that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the board on October 23, 2007; as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the above-mentioned Evaluation Policy. With respect to state agricultural leases, in the event of foreclosure or sale, the above described premium shall be assessed only after the encumbrances of record and any other advances made by the holder of a security

interest are paid; and provided further that the Lessor may adjust the base annual rental and additional rental pursuant to section 4-158-21, HAR.

19. Subletting. The Lessee shall not rent or sublet the whole or any portion of the demised premises without the prior written approval of the Board; provided that before approval, the Board shall have the right to review and approve the rental to be charged to the sublessee; provided further that where the Lessee is required to pay rent based on a percentage of its gross receipts, the rents paid to the Lessee by the sublessee shall be included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the rental of the demised premises based upon the rent charged to the sublessee; and provided further that the rental may not be revised downward.

20. Mortgage. Except as provided, the Lessee shall not mortgage, hypothecate, or pledge the premises or any portion thereof, or this lease or any interest herein, without the prior written approval of the Chairperson, on behalf of the Lessor, and any mortgage, hypothecation, or pledge without such approval shall be void. That upon application and with the prior written consent of the Lessor, the Lessee may mortgage this lease or any interest herein or create a security interest in the leasehold of the public land demised. If the mortgage or security interest is to a recognized lending institution authorized



to do business in the State of Hawaii, consent shall extend to foreclosure and sale at the foreclosure to any purchaser, provided that the purchaser is qualified to lease and hold the land or any interest therein.

21. Breach. Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this lease, the Board shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the Lessee and to each holder of record having any security interest in the land covered by or subject to this lease, making demand upon the Lessee to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments, including payment of any additional rent, the written notice shall include a demand upon the Lessee to cure the breach within thirty days after the receipt of the notice. Upon failure of the Lessee to cure or remedy the breach or default within the time period provided, or within such additional period as the Board may allow for good cause, the Board may exercise the rights it may have, subject to the rights of a holder of a security interest. Without limiting the foregoing, the Board, after due notice of default shall terminate this lease or tenancy and take possession of the premises together with all improvements placed thereon, without demand or previous entry and without legal process, and

shall retain all rental paid in advance as damages for the violations. The retention of advance rental as liquidated damages shall be in addition to any other rights and remedies available to the Lessor.

22. Rights of holder of record of security interest.

(a) Prior board action shall be required when an institutional lender acquires the Lessee's interest through a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the Lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(b) Notwithstanding any provisions of this lease, if any lease is subject to a security interest held by an institutional lender and if the institutional lender has given to the Board a copy of the encumbrance as recorded in the bureau of conveyances:

(1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately prior to the cancellation, termination, or rejection, with all terms and conditions being the same as in the canceled, terminated, or rejected

lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before cancellation, termination, or rejection. If a lease is rejected or deemed rejected under bankruptcy law, the lease shall be deemed canceled and terminated for all purposes under state law;

(2) If the Lessee's interest under a lease is transferred to an institutional lender, including by reason of the provisions of paragraph (1), by reason of acquisition of the Lessee's interest pursuant to a foreclosure sale, judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure:

(A) The institutional lender shall be liable for the Obligations of the Lessee under the lease for the period of time during which the institutional lender is the holder of the Lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and

(B) The provisions of section 166E-8(b)(1) and (2) shall not apply to the lease or the demised land during such time as the institutional lender holds the lease; provided that:

(i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation,



termination, or rejection to the satisfaction of the Board; and

- (ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, when the institutional lender shall either sell or assign the lease, after which date section 166E-8(b)(1) and (2) shall apply to the new lease;

(3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the Board, except with the prior written consent by the institutional lender and that consent shall not be unreasonably withheld; and

(4) If the lease contains any provision requiring the payment of a premium to the Lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender shall have been paid in full.

(c) Ownership of both the lease and security interest by an institutional lender shall not effect or cause a

merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the estates with the consent of the Board.

(d) The Board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(e) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

(1) The purchase, assignment, or transfer shall conform with subsection (b) (4); and

(2) The purchase, assignment, or transfer of such rights shall be reserved for and exercisable only by an institutional lender. Other purchasers may not be precluded from acquiring the institutional lender's security interest but shall not have rights as successor interest to the original institutional lender.

23. Acceptance of rent not a waiver; no accord and satisfaction; no 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, of the Lessor's right to re-entry for breach of covenant,

nor of the Lessor's right to declare and enforce a forfeiture for any breach. Further, no acceptance by Lessor of a lesser sum of rent or any other charge then due shall be deemed to be other than on account of the earliest installment of such rent or charge due, nor shall any endorsement or statement on any check or letter accompanying said payment be deemed an accord and satisfaction, and Lessor may accept such payment without prejudice to its right to recover the balance of such installment or pursue any other remedy as provided by the Lease.

The failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option. Any consent or permission by Lessor to any act or omission by Lessee shall not be deemed to be consent or permission by Lessor to any other similar or dissimilar act or omission and any such consent or permission in one instance shall not be deemed to be consent or permission in any other instance.

24. Liability insurance. The Lessee shall procure and maintain during the entire period of this lease, a policy or policies of commercial general liability insurance, in an amount to be determined by the Lessor and approved by the Board, subject to periodic review and adjustment every two years, insuring the Lessor and the Lessee against all



claims for personal injury, death and property damage. The policy or policies shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate verifying the policy and shall furnish a certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any policy prior to actual cancellation. The certificate of insurance shall name the Lessor as an additional insured and shall require a thirty day notice to the Lessor of any policy change or cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease or limit the amount of its liability under this lease.

25. Performance bond. The Lessee shall 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 in an amount equal to two times the annual base rental, conditioned upon the full and faithful observance and performance by the Lessee of the lease terms, conditions, and covenants of this lease. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the

full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

The Lessor may waive or suspend the performance bond requirement at its discretion; provided that the Lessee has substantially complied with the terms, conditions, and covenants of this lease; and provided further that the Lessor reserves the right to reinstate the performance bond requirement at any time throughout the term of this lease.

26. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the Lessee may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, the Lessee shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the Lessor.

27. Indemnity. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against any claim or demand for loss, liability, or damage, including claims for property damage, personal injury, or death, arising out of any occurrence on the demised premises or on sidewalks, parking areas, and roadways adjacent thereto resulting from

any act or omission of the Lessee, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, and from and against all actions, suits, damages, and claims brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the laws, ordinances, and rules of the federal, state, or county governments. This provision shall survive the expiration or earlier termination of this lease.

28. Costs of litigation. If the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), without any fault on the Lessor's part, the Lessee shall pay all costs and expenses incurred by or imposed on the Lessor, including, but not limited to, attorney's fees; furthermore, the Lessee shall pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises, or in the collection of delinquent rental, taxes, and any and all other charges.

29. Liens. The Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge, or

encumbrance, except as provided herein, and shall indemnify, defend, and hold harmless Lessor from and against all attachments, liens, charges, and encumbrances and all expenses resulting therefrom.

30. 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 demised premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the premises for all costs, attorney's fees, and rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all moneys as provided in this lease to be paid by the Lessee, and the lien shall continue until the amounts due are paid.

31. Condemnation. If any portion of the demised premises shall be condemned for public purposes by the State of Hawaii, a county, or any other governmental agency, the base annual 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:

- (1) The value of growing crops which the Lessee is not permitted to harvest; and
- (2) 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 in the alternative, the Lessee may remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for compensation or indemnity for the leasehold interest, and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation 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 the Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided that the Lessee may remove the permanent improvements constructed, erected, and placed by the Lessee within such reasonable period as may be allowed by the Lessor.

32. Right to enter. The Lessor, the City and County of Honolulu, or their representatives shall have the right at all reasonable times to enter and cross any portion of the demised premises for the purpose of performing any public or official duties; provided that in the exercise of the rights, the Lessor, the City and County of Honolulu, or their representatives shall not interfere unreasonably with the Lessee or the Lessee's use and enjoyment of the premises.

33. Extension of time. Notwithstanding any provision to the contrary, wherever applicable, the Lessor, for good cause shown, may allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions, and covenants contained in this lease.

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

35. Surrender. At the end of the term or other sooner termination of this lease, the Lessee shall peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise in this lease. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of the Lessee's personal property from the premises, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of the Lessee, and the

Lessee shall pay all costs and expenses for the disposal, removal, or storage of the personal property. This provision shall survive the expiration or earlier termination of this lease.

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

37. 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, color, national origin, sex, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

38. Hunting. No hunting shall be allowed on the demised premises during the term of this lease.

39. Boundary stakeout. The Lessor shall not be responsible or liable for surveying and boundary stakeout of the demised premises; the Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.

40. Setback requirements. Building setback lines shall be in accordance with applicable county ordinances and rules.

41. Drainage easements. The demised premises shall be subject to drainage and flowage easements as applicable. An easement area shall not be altered or used for any purposes which may obstruct flow or reduce the

effectiveness of the drainageway. The Lessee shall accept the storm runoff draining into and through the easement area and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

42. Roadway and utility easements. The demised premises shall be subject to roadway and utility easements as applicable, which easements shall be in favor of property owners served by the easements; provided that the Lessee may cross the easements at any point; provided further that the Lessee shall be responsible for maintenance of the easements.

43. Animal waste management. The Lessee shall implement a waste management system to handle solid waste and wastewater generated from the feedlot operation. It shall include waste collection system, treatment and storage of facilities and adequate irrigation areas for application of the animal waste effluent. Submittals and designs of the waste management system shall all comply with the State of Hawaii, Department of Health's Guidelines for Livestock Waste Management dated June 1996. The construction and operation of the waste management facilities shall be concurrent with the Lessee's operation. Lessee shall contact the State of Hawaii, Department of Health, Wastewater Branch at (808) 586-4294 for annual site inspections of the waste management system.



44. Compliance with laws. The Lessee shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the premises which are now in force or later may be in force.

45. Interpretation. The use of any gender shall include all genders. If there is more than one Lessee, all words used in the singular shall extend to all Lessees. The paragraph headings in this lease are for convenience and are not intended to construe the intent or the meaning of any of the provisions.

46. Hazardous materials. (a) The Lessee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of, or allow to exist on, within, under, or about the premises any hazardous materials, except in full compliance with all applicable hazardous materials laws. If the Lessee at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the premises which could subject the Lessor, the Lessee, any mortgagee, or the premises to any liability or restrictions on ownership, occupancy, transferability, or use of the premises under any hazardous materials laws, the Lessee shall immediately advise the Lessor thereof in writing and provide to the Lessor such detailed reports thereof as may be reasonably requested by the Lessor. The Lessor shall have the right, in its sole

discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) The Lessee shall be responsible for and shall indemnify, defend, and hold harmless the Lessor and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the past, present, or future use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the premises, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of the Lessor's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of the Lessor's enforcement of this covenant, whether or not a lawsuit is brought therefor; and (5) all reasonable costs and expenses incurred by the Lessor in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this lease.

47. Hazardous waste evaluation. Prior to the termination of the lease, Lessee, at its sole cost and expense, 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 Agriculture. The termination will not be approved by the Board of Agriculture or Department of Agriculture unless this evaluation and abatement provision has been executed.

48. Commercial operations. The Lessee, its employees, customers, guests, agents and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without prior written approval of the Lessor. No commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

49. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

50. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof

fence along the entire perimeter of the land under lease where fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease.

51. 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.

52. Incorporation; amendments. Lessee expressly acknowledges and agrees that Lessor has not made and is not making, and Lessee, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease. All understandings and agreements heretofore made between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties and which is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Lease.



This Lease may be amended and the provisions modified only by instruments in writing executed by Lessor and Lessee.

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

#### SPECIAL CONDITIONS

##### DEFINITIONS

As used in this lease, unless the context otherwise requires:

"Chairperson" means the Chairperson of the Board of Agriculture.

"Corporate successor" means a solely owned corporation which, through an assignment of lease, succeeds a non-agricultural park lessee who shall own all of the stock issued by and be the principal officer of the corporation.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, livestock feedlot operations for temporary holding of cattle, sheep, goats, hogs and any approved animals.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows or run-off from one point to another.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the premises.

"Hazardous materials" means and includes any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any and all other substances or materials defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," and/or "toxic substances" under or for the purposes of the hazardous materials laws.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of the Lessee's knowledge, contemplated or threatened, with respect to the premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of the Lessee's knowledge, contemplated or threatened by any third party against the Lessee or the premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting

from any hazardous discharge or from the existence of any hazardous materials on, within, or under the premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land demised and who has filed a copy of the interest with the Department of Agriculture and with the Bureau of Conveyances.

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the State and that make loans to qualified applicants under this lease on the basis of a lease awarded pursuant to Chapter 166E, Hawaii revised Statutes for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Invasive species" means any organism which may include (but not limited to) plant, animal, fungus, or bacterium, that has negative effects that threaten biodiversity by causing disease, acting as predators or parasites, acting as competitors, altering habitat, and/or hybridizing with local species, likely causing harm to the economy, environment and/or human health thereby affecting the agricultural industries of the State of Hawaii, as determined and so designated from time to time by the Department of Agriculture. The term shall also include any and all noxious weeds, as that term is defined herein, regardless of whether the noxious weed is native to Hawaii or not.

"Lessee" includes the Lessee, its heirs, personal representatives, executors, administrators, successors, or permitted assigns.

"Making a loan" means lending of new money or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender, after June 30, 2006.



"Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural industries of the State of Hawaii, as determined and so designated from time to time by rule of the Department of Agriculture.

"Premises" or "demised premises" includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land.

"Special Equestrian Activities" shall mean the raising, keeping, care, breeding, training buying, selling and showing of equine animals.


"Waste" includes (1) permitting the premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in uncultivated portions thereof; (3) failure to employ all of the usable portions of the demised premises; and (4) abandonment of the demised premises.

IN WITNESS WHEREOF, the parties hereto have caused  
these presents to be executed this 26<sup>th</sup> day of  
December, 2019.

APPROVED AS TO FORM:


STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE

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

  
\_\_\_\_\_  
Phyllis Shimabukuro-Geiser  
Chairperson  
Board of Agriculture

LESSOR

HAWAII LAND & LIVESTOCK, LLC

  
\_\_\_\_\_  
By ROBERT J. FARISS JR.  
Its PRES.

LESSEE

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

On this 20th day of December, 20 19, before  
me personally appeared Robert J. Ferris Jr,  
to me known to be the person described in and who executed  
the foregoing instrument General Lease No. S- 3138 and  
acknowledged that he/she executed the same as his her free  
act and deed.



Notary Public, State of Hawaii

J Y Ferrer  
Jan Y. Ferrer

My commission expires: \_\_\_\_\_

Document Date: Undated # of Pages: 62  
Notary Name: Jan Y. Ferrer First Circuit  
Document Description: SDH DOA General Lease No. S-3138  
between SDH + Hawaii Land + Livestock LLC  
J Y Ferrer DEC 20 2019

Notary Signature

Date



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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before  
me personally appeared \_\_\_\_\_,  
to me known to be the person described in and who executed  
the foregoing instrument General Lease No. S-\_\_\_\_ and  
acknowledged that he executed the same as his free act and  
deed.

Notary Public, State of Hawaii

\_\_\_\_\_  
My commission expires:\_\_\_\_\_

Document Date: \_\_\_\_\_ # of Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ First Circuit

Document Description: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date





EXHIBIT "A"

STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,720

March 8, 2019

AGRICULTURAL PURPOSES SITE

Honouliuli, Ewa, Oahu, Hawaii

Being all of Lot 12022 as shown on Map 888 of Land Court Application 1069 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 498504 issued to the State of Hawaii and containing an AREA OF 110.106 ACRES (Land Office Deed S-28204).

Lot 12022 shall have access across Lots 3163 and 3164 as shown on Map 325 as set forth by Land Court Order 127022.

TOGETHER WITH the above-described parcel of land, all of the submerged lands seaward of the Highwater Mark (Vegetation Line) as shown on Map 888 to the Mean Lower Low Water Mark at seashore.

SUBJECT, HOWEVER, to any and all encumbrances that may be noted on Transfer Certificate of Title 498504.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By:

*Gerald Z. Yonashiro*

Gerald Z. Yonashiro  
Land Surveyor

rk

Compiled from Land Court  
Records.

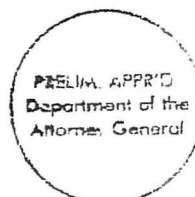


EXHIBIT "A"

DEPARTMENT OF THE TAX COMMISSIONER			
TAXATION MAPS BUREAU			
STATE OF HAWAII			
TAX MAP			
FIRST	SECTION	PLAT	PARCELS
9	1	31	
CONTAINING			PAGES 2

NOTE All returned by  
James Campbell Trust Estate  
and located as noted

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VACANT - LOT 1

## Feedlot

POR LC CT APP 1069, POR HONOLULU, ILEWA, OAHU, HAWAII (Formerly por 9-1-14)

DWG NO 0501  
SOURCE: 687 JUNE 1954; 0501 MAPS 0501  
NY: 67-NN-0501

**EXHIBIT "C"**

**DEPARTMENT OF AGRICULTURE  
ASSIGNMENT OF LEASE EVALUATION POLICY**

**1. Reference**

§4-158-19(a)(5), effective December 6, 2007, reads in part:

“Prior to the approval of any assignment of lease permitted by this section, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of lease on payment by the lessee of a premium based on the amount by which the consideration for assignment, whether by cash, credit or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid; provided further that the board may adjust the base and additional rental pursuant to the method outlined in section 4-158-21;”

**2. Qualifying Leases**

This policy shall be applicable to the subject lease.

**3. Prior Approval**

Prior to giving its consent to an assignment, the Department of Agriculture (DOA) must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Board of Agriculture (Board) has given its approval. Such assignments shall be entertained only if they meet the criteria set forth in §§4-158-19(a)(3) and (4), HAR.

**4. Qualifications of Assignee**

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.



**5. Consideration to be Paid**

Prior to review by the Attorney General and approval by the Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

**6. Payment of Premium**

The rule permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 days after evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.



The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee. Only in cases where the lessee has essentially constructed or directed the construction of its own improvements, may the lessee be given the option of paying for an appraiser, but to be selected by the state, to determine the valuation of the improvements. Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

**7. Non-qualifying Deductions**

The statute only recognizes tangible items. Intangibles such as "goodwill," business name recognition, etc., are not deductible.

**8. Subsequent Assignments**

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the base year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined base year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (the whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the

consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. **Rights of Holders of Security Interest**

In the event of foreclosure or sale, the premium, if any shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid. In the event of foreclosure or sale, the premium, if any shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. **State-owned Improvements**

When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

## **SCHEDULE A.      Adjusted Depreciated Cost of Improvements or Renovations**

1.      **Adjusted Cost of Improvements or Renovations.**  
Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)\* and divide the result by the CCI of the year construction was completed (Base Year) to get the adjusted cost of improvements or renovations.
2.      **Depreciation.**  
Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.
3.      **Depreciated Cost of Improvements or Renovations.**  
Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

\*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example:	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base):	102.3
	Expired term:	57 mos.
	Whole term:	408 mos.

1.      **Adjusted Cost of Improvements or Renovations:**  
  
$$\text{Actual Cost} \times \text{CCI (most recent)} / \text{CCI (base)}$$
$$\$500,000 \times 121.1 / 102.3 = \$591,887$$
2.      **Depreciation:**  
  
$$\$591,887 / 408 \text{ mos.} \times 57 \text{ mos.} = \$82,690$$
3.      **Adjusted Depreciated Cost of Improvements or Renovations:**  
  
$$\$591,887 - \$82,690 = \underline{\$509,197}$$

**SCHEDULE B.****Adjusted Depreciated Cost of Trade Fixtures****1. Adjusted Cost of Trade Fixture.**

Multiply the actual cost of the improvements or renovations by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)\* and divide the result by the CPI of the year in which the purchase was made (base year).

**2. Depreciation.**

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

**3. Depreciated Cost of Trade Fixtures.**

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

\*As published by the U.S. Department of Labor, Bureau of Labor Statistics

**Example:****Refrigerator**

Actual cost:	\$1,510
CPI (most recent):	118.1
CPI (base):	104.6
Expired term:	57 mos.
Whole term (Anticipated Life)	96 mos.

**1. Adjusted Cost of Trade Fixture:**

Actual Cost x CPI (most recent) / CPI (Base Year)

$$\$1,510 \times 118.1 / 104.6 = \$1,705$$

**2. Depreciation:**

$$\$1,705 / 96 \text{ mos.} \times 57 \text{ mos.} = \$1,012$$

**3. Adjusted Depreciated Cost of Trade Fixture:**

$$\$1,705 - \$1,012 = \$693$$



**SCHEDULE C.****Premium Percentages**

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 and over	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

#### **SCHEDULE D. Assignment of Lease Calculations**

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A)
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by nos. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). multiply by the excess, if any, derived by no. 4.

#### **Example:**

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 102.3, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj. Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
3.	Adj. Cost Imp/Ren:		-509,197
	Adj. Cost Trade Fixture:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj. Dep Cost Trade Fixtures:		<u>- 693</u>
4.	Excess:		90,110
5.	Premium:	Percentage: 50%	\$45,055

## SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

### Example:

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1.	Net Consideration Received:		\$1,000,000
2.	Consideration Paid:	\$600,000	
	Premium:	- 45,055	
	Net Consideration <u>Paid</u> :		\$554,945
3.	Adj. Value Consideration (improvements):		
	\$554,945 x (156.4 / 121.1):		\$716,708
	Depreciation:		
	\$716,708 x (107 mos. / 408 mos.):	- 187,960	
	Adj. Depreciated Value Consideration:		- 528,748
4.	Excess:		471,252
5.	Premium:	Percentage: 45%	\$212,063



# EXHIBIT D



**State of Hawaii**  
**Department of Land and Natural Resources**  
**Land Division**

**REQUEST FOR STATE LANDS (Direct Negotiation) – APPLICATION FORM**

This Application Form is for persons requesting State lands for the following categories:

- Right to temporarily enter onto State lands for a specific purposes
- Access, utility or other easements to private property
- Month-to-month revocable permit where an auction is prohibited
- Direct lease to eleemosynary organizations, public utilities, etc.
- Purchase of remnant
- Land patent in confirmation of Land Commission Award
- Land license

Please note the following important points:

- 1) Statutorily, directly negotiated leases and permits can only be issued in certain situations. In most cases, you must compete for the use of State lands through the public auction process. If you are interested in bidding on State leases through the auction process, please contact the District Branch staff in your county to obtain further information.
- 2) Persons who have had, during the five years preceding a previous sale, lease, license, permit or easement cancelled for failure to satisfy the terms and conditions are not eligible to purchase or lease public lands.
- 3) The use of State lands triggers the environmental assessment requirements of Chapter 343, HRS. Please contact the Office of Environmental Quality Control for their opinion of whether an environmental assessment is required and the process to be followed. Phone number: (808) 586-4185. Website:  
<http://hawaii.gov/health/environmental/oeqc/index.html>
- 4) You are responsible for contacting the appropriate agencies to verify that your proposed project has complied with all applicable zoning and permitting laws and regulations (e.g., State Land Use classification, Special Management Area, County General Plan, etc.).
- 5) You will be responsible for paying processing fees. If you are granted a disposition, you will be required to obtain insurance, among other requirements.

All applications must be complete to be considered for processing. Please submit two copies of the completed application form to the District Branch office in your county:

Oahu District Branch  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Phone: (808) 587-0433; Fax: (808) 587-0455

Maui District Branch  
130 Mahalani St.  
Wailuku, Hawaii 96793  
Phone: (808) 984-8103; Fax: (808) 984-8111

Hawaii District Branch  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
Phone: (808) 974-6203; Fax: (808) 974-6222

Kauai District Branch  
3060 Eiwa Street, Room 205A  
Lihue, Hawaii 96766  
Phone: (808) 274-3491; Fax: (808) 241-3537

**STATE OF HAWAII  
DEPARTMENT OF LAND & NATURAL RESOURCES**

**REQUEST FOR STATE LANDS  
APPLICATION FORM**

For DLNR use only:

Date of request: \_\_\_\_\_

Date request recvd: \_\_\_\_\_

Date request no. issued: \_\_\_\_\_

Request number: \_\_\_\_\_

Land Code: \_\_\_\_\_

Unit Code: \_\_\_\_\_

Status: \_\_\_\_\_ Future

Type of Request: \_\_\_\_\_

Assigned Land Agent: \_\_\_\_\_

**I. APPLICANT**

Should a land disposition result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable, full legal names and addresses, one for each person/entity (attach additional sheets as necessary). If title is held by a trust, please include the trustee(s) name(s) and full description of the trust (e.g., George D. Smith, Trustee of the George D. Smith Revocable Living Trust dated June 1, 2001).

Applicant name(s): Eurus Energy America LLC


Last name First Name

Mailing address: 9255 Towne Centre Drive, Suite 840  
No. and Street

San Diego California 92121  
City State Zip Code

Phone numbers: 858-638-7115 ( ) ( )  
Work Home Cellular

( )   
Pager Fax E-mail address

Signature:  Date: 1/12/2022

Applicant intends to hold title as:

( ) Individual ( ) Corporation ( ) Partnership  
( ) Husband and Wife (X) Limited Liability Corporation ( ) Limited Partnership  
( ) Trust ( ) Non-Profit Corporation ( ) Association  
( ) Joint Venture ( ) Limited Liability Partnership ( ) Other (specify): \_\_\_\_\_

For individual or husband and wife, type of tenancy:

( ) Tenant in Severalty ( ) Tenants in Common ( ) Joint Tenants ( ) Tenants by the Entirety

For individual, marital status:

( ) Single ( ) Widow/widower ( ) Married – spouse of: \_\_\_\_\_

For partnership or corporation, state of incorporation: Delaware (limited liability company)

II. AGENT

If you have an attorney, consultant or other person processing this request for you, please include the following information.

Agent name: Tomlinson David  
Last name First Name

Agent address: 9255 Towne Centre Drive, Suite 840  
No. and Street

San Diego CA 92121  
City State Zip Code

Phone numbers: [REDACTED] ( N/A ) [REDACTED]  
Work Home Cellular

( ) ( ) [REDACTED]  
Pager Fax E-mail address

III. TYPE OF REQUEST

(X) Right-of-entry (right to temporarily enter onto State lands for a specific purpose)

( ) Grant of easement (access, utility, seawall, etc.)

( ) Month-to-month revocable permit

( ) Direct lease (eleemosynary organizations, public utilities, government, renewable energy producers, etc.)

( ) Purchase of remnant

( ) Land patent in confirmation of a Land Commission Award

( ) Land license

Is this request being made to resolve an encroachment or other violation? ( ) Yes (X) No

If yes, explain: \_\_\_\_\_

\_\_\_\_\_

IV. LOCATION AND AREA

If your request pertains to a specific parcel, please specify below.

Island: (X) Oahu ( ) Kauai ( ) Molokai  
( ) Hawaii ( ) Maui

Town: Oahu Tax Map Key: (1) 9-1-031:001



Area: 110 acres

County Zoning: I-2

State Land Use:      ☐ Agricultural                      ☐ Rural  
                                 ☐ Conservation                      ☒ Urban

Is property located in a Special Management Area?  
                                 ☒ Yes                                      ☐ No

V. USE

Identify the specific uses intended.

☐ Agriculture                                      ☐ Easement - Access  
☐ Business/Commercial                      ☐ Easement - Utility  
☐ Industrial                                      ☐ Easement – Seawall  
☐ Pasture

☒ Other (specify): Renewable Energy Facility \_\_\_\_\_

A. Fully describe your proposed use of the public lands: Eurus Energy proposes to conduct topographic, easement, geotechnical, biological, and cultural surveys necessary to: (a) evaluate the feasibility and design of a solar-based electricity and renewable hydrogen generation facility; (b) to comply with relevant state and local laws including Hawaii Revised Statutes (HRS) Chapter 343, and permit requirements including those of City and County of Honolulu Special Management Area (SMA) Use Permit requirements; and (c) to evaluate other approvals necessary for a longer term lease of the parcel. The parcel consists of approximately 110-acres of land. We ask for permission to conduct studies over the entire 110-acre parcel, on parcel, but, but anticipate ultimately using only approximately 90-acres of the parcel, which will allows the remaining 20-acres to be used for cattle resting pens or other agricultural uses intended by the Department of Agriculture or their other lessee (currently, Hawaii Land and Livestock ).

B. Attach a location map showing a preliminary sketch or plot plan of your proposed project in relation to the tax maps. A preliminary site map is provided as Figure 1.

C. Describe any improvements you intend to place on the land and their approximate value:

No improvements will be made. This Access Agreement Application is for conducting land, geotechnical and biological surveys only.

D. If constructing improvements, attach a Plan of Development showing improvements to be constructed and their location on the public lands including a timeframe for construction. N/A – No improvements proposed at this time.

E. Is it your opinion that an environmental assessment is required?      ☐ Yes      ☒ No

If no, identify exemption: From the Exemption List of the Department of Land and Natural Resources (November 2020) General Exemption Type 5, Part 1 (Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource), Exemption Numbers 1, 2, 12, 15, 19 and 20.

If yes, describe completion of EA: \_\_\_\_\_

- F. Describe what other permits or approvals are required for this use and whether you have obtained such permits or approvals: None.
- G. If you intend to do a project, please provide a Scope of Work (SOW) document as an attachment to your application. Also attach any relevant diagrams or photos. Photos may be printed on office paper. Please find Study Scope of Work as Attachment 1.

#### VI. OTHER

- A. If you are applying for a revocable permit for any type of use, you are required to provide the following information:
- 1) Describe your qualifications and experience in running this type of operation; and
  - 2) Describe your long-term intentions for this operation. (Note: Revocable permits are temporary and may be revoked at any time.)
- B. **If you are applying for a revocable permit for pasture or agricultural use, you are required to complete Attachment A. Not Applicable.**

#### VII. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our lease/permit/agreement may be cancelled.

Nicholas Henriksen  
\_\_\_\_\_  
Printed Name

X   
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

X \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**For DLNR Use Only:**

**TO CLOSE FUTURE TENANT:**

Reason for closing: \_\_\_\_\_

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Approved by DLA: \_\_\_\_\_

Date request closed: \_\_\_\_\_



Figure 1  
Preliminary Site Map





## **Attachment 1**

### **Study Scope of Work**

#### **Boundary and Topographical Surveys**

Conduct preliminary, and subsequent ALTA survey which includes, but is not limited to surveying mapping and staking of lot boundaries, topography, encumbrances and easements.

#### **Biological Resource Surveys**

Conduct pedestrian level or protocol level surveys as appropriate. Should habitat for listed species be present, species-specific surveys may be conducted. Surveys will be conducted during seasonal timeframes specific to the species being surveyed and in consultation with relevant agencies including, but not limited to, the U.S. Fish and Wildlife Service and Hawaii Division of Forestry and Wildlife (HDOFW).

The results of these surveys will be documented in reports suitable for agency submittal. The presence or absence of federal and state-listed wildlife and plant species. Other species will also be documented.

#### **Water Resource Surveys**

Eurus will review National Wetlands Inventory (NWI), National Hydrography Dataset (NHD), and the Hawaii Division of Aquatic Resources (DAR) datasets to identify if potentially jurisdictional wetlands and water occur within or adjacent to the Project Area.

Conduct pedestrian level survey to assess the presence of potentially jurisdictional waters. If potential jurisdictional features are observed, a wetland and Waters of the United States determination and delineation protocol level survey will be conducted.

#### **Archaeological/Cultural Resources**

An Archaeological Inventory Survey (AIS) will be conducted per HAR Section 13-276. The studies will include both literature searches, and pedestrian surveys and will be done in consultation with State of Hawaii State Historic Preservation Division staff members.

#### **Geotechnical Surveys**

Conduct a geotechnical survey of surface and subsurface soil. The survey will include the collection of up to 30 surface and sub-surface (<36-inches) soil samples for off-site analysis.

# EXHIBIT E



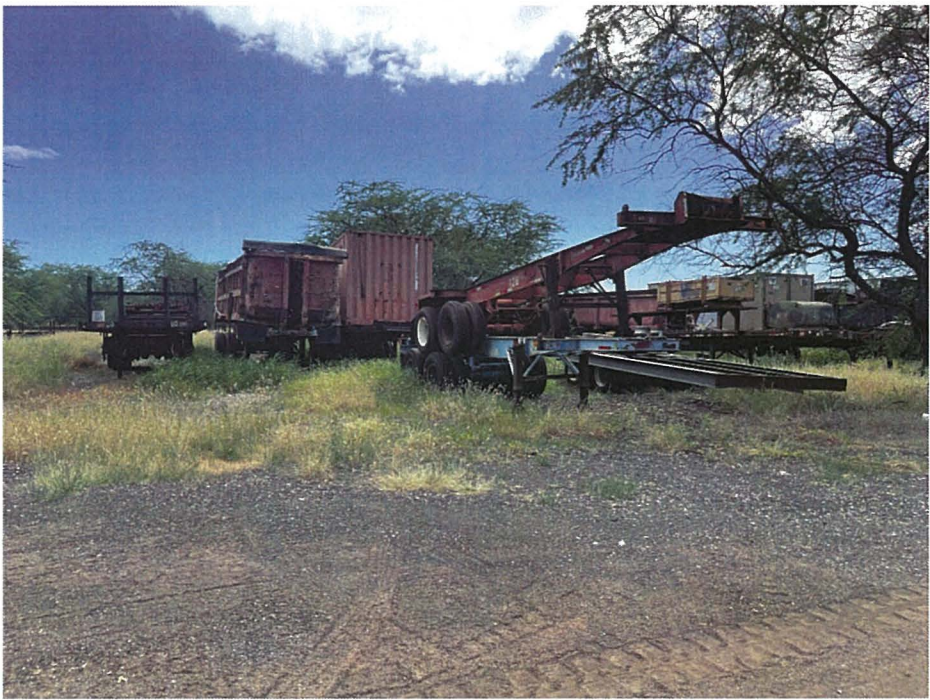
EXHIBIT E

























# EXHIBIT F



## HAWAII STATE ENERGY OFFICE STATE OF HAWAII

DAVID Y. IGE  
GOVERNOR

SCOTT J. GLENN  
CHIEF ENERGY OFFICER

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-3807  
Fax: (808) 586-2536  
Web: [energy.hawaii.gov](http://energy.hawaii.gov)

March 22, 2022

To: Luke Sarvis, Project Development Specialist  
Department of Land and Natural Resources

From: Scott J. Glenn, Chief Energy Officer *Scott J. Glenn*  
Hawai'i State Energy Office

Subject: Hawai'i State Energy Office Comments Regarding the Issuance of Right-of-Entry Permit to Eurus Energy America LLC to Conduct Topographic, Easement, Geotechnical, Biological, and Cultural Surveys on Land Set Aside to the Department of Agriculture Under Executive Order No. 4584  
Honouliuli, 'Ewa, O'ahu; Tax Map Key (1) 9-1-031:001

The Hawai'i State Energy Office (HSEO) offers the following comments on the issuance of a Right-of-Entry Permit (ROE) to Eurus Energy America LLC (Eurus) to conduct topographic, easement, geotechnical, biological, and cultural surveys on Tax Map Key (1) 9-1-031:001 located on the coastline of Campbell Industrial Park on O'ahu. Eurus, which is owned by Toyota and Tokyo Electric Power, seeks to evaluate the feasibility and design of a solar-based electricity and renewable hydrogen generation facility under a long-term lease from the State of Hawai'i. The ROE would be for one year with the possibility of additional one-year extensions at the discretion of the Board of Land and Natural Resources (BLNR) Chairperson.

HSEO's comments on the ROE are guided by its statutory duties<sup>1</sup> and its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, and ultimately carbon negative economy. Hawai'i law requires each of Hawai'i's electric utilities to sell 100% renewable energy to their customers by the year 2045.<sup>2</sup> In addition, Act 15 (2018) established Hawai'i's zero emissions clean economy target, which set a statewide target to sequester more atmospheric carbon and greenhouse gas than emitted within the state as quickly as practicable, but no later than 2045.<sup>3</sup>

HSEO supports BLNR's issuance of the ROE to Eurus to enable the necessary site due diligence activities to determine the site's suitability for renewable energy and hydrogen

<sup>1</sup> H.R.S. 196-71, Hawai'i State Energy Office; Established: [HRS \(hawaii.gov\)](http://HRS(hawaii.gov))

<sup>2</sup> H.R.S. 269-92, Renewable Portfolio Standards: [https://www.capitol.hawaii.gov/hrscurrent/Vol05\\_Ch0261-0319/HRS0269/HRS\\_0269-0092.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0269/HRS_0269-0092.htm)

<sup>3</sup> H.R.S. 225P-5, Zero Emissions Clean Economy Target: [http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0225P/HRS\\_0225P-0005.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0225P/HRS_0225P-0005.htm)



generation. HSEO understands any due diligence work conducted by Eurus that is provided to the Department of Land and Natural Resources (DLNR) would be available to the public. Such information helps to inform the renewable energy and hydrogen potential of both the site and the island of O'ahu.

#### Eurus Energy

Eurus owns and operates the 27.6 megawatt EE Wai'anae Solar project on about 198 acres of previously vacant former agricultural land next to the Kamaile Academy School in Wai'anae. Eurus purchased the land for that project and Hawaiian Electric purchases power from this facility at \$0.145/kilowatt-hour through January 2039 under a power purchase agreement with Hawaiian Electric approved by the Hawaii Public Utilities Commission (PUC) in July 2015. Eurus also investigated and decided not to pursue a wind energy project at Palehua on the west side of O'ahu.

#### Zoning

While the site offers agricultural value, it is zoned Urban and I-2 Intensive Industrial District which makes it permissible for solar and hydrogen generation with the proper City and County of Honolulu zoning approvals. Industrial sites are generally more expensive to lease or own, but their use of for energy and fuel generation is appropriate and preserves better suited lands for other priorities such as agriculture, cultivation of food crops, housing, recreation, and preservation.

HSEO notes part of the parcel appears to be within the Special Management Area which would require additional reviews and/or permits.

#### Inundation and Contamination Hazards

HSEO notes the parcel is in a Tsunami Evacuation Zone and Flood Zone D which could require additional approvals or safeguards that could increase project costs.

The site has known soil contamination and is under the jurisdiction of the Hawai'i Department of Health Hazard Evaluation and Emergency Response Office (HEER).<sup>4</sup> In some cases, contaminated sites are well-suited for solar development and may be facilitated by the U.S. Environmental Protection Agency (EPA) and HEER. For example, solar projects can be built in ways that minimize underground disturbance. In 2018, HSEO partnered with EPA and HEER

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<sup>4</sup> iHEER System (hawaii.gov)



on the Hawai'i Brightfields Initiative<sup>5</sup> to identify and encourage the development of solar on sites throughout Hawai'i with known or perceived site contamination.

#### Revenue from the Proposed Project and Proximity to Critical Infrastructure

HSEO understands the ROE is sought to conduct due diligence very early in the project development stage with no commitment to develop a project or proceed further. The ROE application does not specify how the proposed project would earn revenue for the lifetime of the proposed project, but HSEO assumes it would be through electricity and/or hydrogen sales.

The nearby natural gas infrastructure makes the site uniquely well-suited for hydrogen generation and sale to Hawai'i Gas should it be an off taker. There is also the opportunity to sell hydrogen to other parties for transportation use, which is a substantial need for Hawai'i to transition away from fossil fuels for transportation use. In addition, the site's proximity to other large electrical generation and transmission infrastructure makes it well-suited to sell electricity to Hawaiian Electric. In both cases, the site's location near this infrastructure would reduce the impacts and the connection and development costs of the proposed project.

As both Hawaiian Electric and Hawai'i Gas are regulated public utilities in Hawai'i, any significant expenditures made by these utilities related to the proposed project would likely require approval from the PUC through a public docket proceeding. This includes the construction of new infrastructure and/or the purchase of electricity and/or hydrogen.

#### Critical Habitat and Protected Species

HSEO defers to DLNR's Division of Forestry and Wildlife but notes the potential presence of two endemic plants at the site: the 'Ewa Plains 'akoko and round leaved chaff flower. Other species of interest and/or critical habitats may be present as well.

HSEO appreciates the opportunity to comment on the ROE. If there are any questions, please contact Cameron Black at [cameron.b.black@hawaii.gov](mailto:cameron.b.black@hawaii.gov) or at 808-367-3955.

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<sup>5</sup> [Hawaii Brightfields Initiative \(arcgis.com\)](https://arcgis.com)

# EXHIBIT G

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

February 25, 2022

Ref. No.: 22OD-002  
Author: LD-LS

MEMORANDUM

TO:

**State Agencies:**

- ☒ DOA
- ☒ DBEDT Energy Office
- ☐ DLNR-Aquatic Resources
- ☐ DLNR-Forestry & Wildlife
- ☐ DLNR-Historic Preservation
- ☐ DLNR-State Parks
- ☐ DLNR-Conservation and Coastal Lands
- ☐ DLNR-Water Resource Management
- ☐ DOT

**County Agencies:**

- ☐ Planning
- ☐ Parks & Recreation
- ☐ Public Works
- ☐ Water Department

**Federal Agencies:**

- ☐ Corps of Engineers
- ☐ NRCS

**Other Agencies:**

- ☐ Office of Hawaiian Affairs

FROM: Luke Sarvis, Project Development Specialist

SUBJECT: Request for Comments Regarding the Issuance of Right-of-Entry Permit to Eurus Energy America LLC to Conduct Topographic, Easement, Geotechnical, Biological, and Cultural Surveys on Land Set Aside to the Department of Agriculture under Executive Order No. 4584.

LOCATION: Honouliuli, Ewa, Oahu, TMK: (1) 9-1-031: 001

APPLICANT: Eurus Energy America LLC

Transmitted for your review and comment is a copy of the above referenced request involving State lands. We would appreciate your comments on this application. Please submit any comments by March 25, 2022. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at (808) 587-0545. Thank you.

Attachments



subject to consulting w/lessee, unless

- (X) We have no objections, it interferes with  
( ) We have no comments the use of the  
(X) Comments are attached. premises by the

Signed:  lessee.

Date: 3/8/2022

cc: Central Files  
District Files

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

March 23, 2022

MEMORANDUM

TO: Luke Sarvis, Project Development Specialist  
Department of Land and Natural Resources

FROM: Linda Murai, Property Manager *LM*  
Agricultural Resource Management Division

SUBJECT: Request for Comments Regarding the Issuance of Right-of-Entry Permit to Eurus Energy America LLC to Conduct Topographic, Easement, Geotechnical, Biological, and Cultural Surveys on Land Set Aside to the Department of Agriculture under Executive Order No. 4584

LOCATION: Honouliuli, Ewa, Oahu, TMK: (1) 9-1-031:001

APPLICANT: Eurus Energy America LLC

This is in reply to your memorandum dated February 25, 2022, regarding the issuance of a Right-of-Entry (ROE) permit to Eurus Energy America LLC, for which the deadline for DOA comments is March 25, 2022. Following are DOA comments:

1. DOA acknowledges BLNR's reservation of right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with the State of Hawaii, Department of Agriculture's use of the land as stated in GEO 4584.
2. To ensure that the ROE does not unreasonably interfere with the present lessee's use of the property, DOA is requesting that detailed information be provided to DOA and the present lessee regarding the various due diligence procedures to be conducted on the premises by Eurus Energy America LLC, including but not limited to locations, impacts of soil disturbances, etc.
3. Under the BLNR submittal section REMARKS regarding the DLNR site visits of January and February 2022, staff observed various industrial equipment and materials on the premises. DOA had previously acknowledged the limited use of the premises for storage of certain items in an area known as the "bone yard," which supports and serves as an integral part of the operations of the processing facility. DOA reserved the right to demand the "bone yard" be removed from the premises.

Should you have any questions, please contact me by email at [Linda.H.Murai@hawaii.gov](mailto:Linda.H.Murai@hawaii.gov) or call (808) 973-9471.

