

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE PARKS
Honolulu, Hawai'i 96813

July 28, 2023

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

O'AHU

Consent to Transfer of General Lease No. S-5285 Jose K. Gaceta, Jr. to Brummel B. Gaceta, Successor Designee, by Succession, Lot A – 11, Ahupua'a 'O Kahana State Park, Kahana, Ko'olauloa, Oahu, Hawai'i, TMK: (1) 5-2-002:030

APPLICANT:

Brummel B. Gaceta, as Successor Designee

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Lot A – 11, Ahupua'a 'O Kahana State Park, Kahana, Ko'olauloa, Oahu, Hawai'i, identified as TMK: (1) 5-2-002:030, as shown on the attached map labeled and delineated as **Exhibit A**.

AREA:

10,066 square feet, more or less.

ZONING:

State Land Use District:	Conservation
County of Honolulu CZO:	Preservation

TRUST LAND STATUS:

Non-ceded lands of the Hawaii Admission Act and Acquired after 8/59

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

ITEM E-1

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3518 setting aside land for Ahupua'a 'O Kahana State Park, to be under the control and management of Department of Land and Natural Resources, Division of State Parks.

CHARACTER OF USE:

Living park/residential purposes.

TERM OF LEASE:

65-years, commencing December 1, 1993, up to and including November 30, 2058.

ANNUAL RENTAL:

In lieu of monetary rent, Lessee shall contribute in-kind services to the Department by participating in the interpretive programs at the Park, in the amount of 25 hours per month for a total of 300 hours per year.

CONSIDERATION:

N/A

ENVIRONMENTAL REVIEW:

This action before the Board is merely a request to approve the transfer of an interest in the existing general residential lease. In accordance with Hawai'i Administrative Rule (HRS) §11-200.1-16 and the Exemption List for the Department of Land and Natural Resources 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 Exemption Class No. 1, which states, "Operations, repairs or maintenance or existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing, Part I, 40. Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

REMARKS:

Ahupua'a 'O Kahana State Park was acquired by the State through condemnation between 1965 and 1969 as a way to prevent a proposed resort development and to retain the open space and rural character of Windward O'ahu.

Pursuant to Act 5, SLH 1987, authorized the Department to issue long term residential leases to individuals who had been living on the lands and provided authorization for a residential subdivision in Kahana Valley. The law granted the Department relief from regulation regarding subdivision entitlements and construction standards. In 1993, the Department entered into 65-year leases covering 31 residential properties.

The Department entered into General Lease (GL) No. S-5285 with Jose Kikahunanui Gaceta Jr., attached as **Exhibit 1**. On May 11, 1993, Mr. Gaceta designated his son Brummel B. Gaceta as his successor. On May 12, 1993, the Department of State Parks Park Manager, A. L. Rogers approved the designation of successorship form submitted by Jose Gaceta, Jr, attached as **Exhibit 2**. On January 25, 2020, Jose K. Gaceta, Jr. passed away at 80. Brummel B. Gaceta wishes to and is entitled to succeed to Jose K. Gaceta, Jr.'s ownership of GL S-5285.

Brummel B. Gaceta is qualified as assignee for a Ahupua'a 'O Kahana State Park Lease. Act 5 itself does not impose any restrictions on assignees. The lease provides that preference as to assignment shall be given to family members residing in the Ahupua'a 'O Kahana State Park.

Brummel B. Gaceta 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.

No comments have been solicited for comments as this is not a new disposition or change in use. Staff notes that the lease is up to date with the contribution of in-kind services as required by the lease.

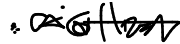
Staff requests that the Fire and Liability Insurance is updated to the recent amounts and has no objections to this request.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5285 to Brummel B. Gaceta by succession subject to the following:

1. Authorize the amendment of General Lease No. S-5285 to update the Fire and Liability insurance to the most current amounts and language.
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the state.

Respectfully submitted,



CURT A. COTTRELL
Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG
Chairperson
Board of Land and Natural Resources

ATTACHMENTS:

- Exhibit A – Survey CSF Map
- Exhibit 1 – General Lease S-5285
- Exhibit 2 – Exhibit D: Designation of Successor



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. OAHU FILE
FOLDER 7

April 21, 1993

KAHANA VALLEY STATE PARK

PHASE II SUBDIVISION

LOT A-11

Kahana, Koolauloa, Oahu, Hawaii

Being all of Lot 52 as shown on Map 8 of Land Court Application 285 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, containing an AREA OF 10,066 SQUARE FEET and covered by Transfer Certificate of Title 174019 issued to the State of Hawaii.

Being also a portion of Part 1 of Kahana Valley State Park, Governor's Executive Order 3518.

Together with all easements as required for access to and from said Lot 52 to Kamehameha Highway.

The above-described Lot 52 is subject, however, to any encumbrances that may be noted on Transfer Certificate of Title 174019.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Joseph M. Matsuno
Joseph M. Matsuno
Land Surveyor

gm

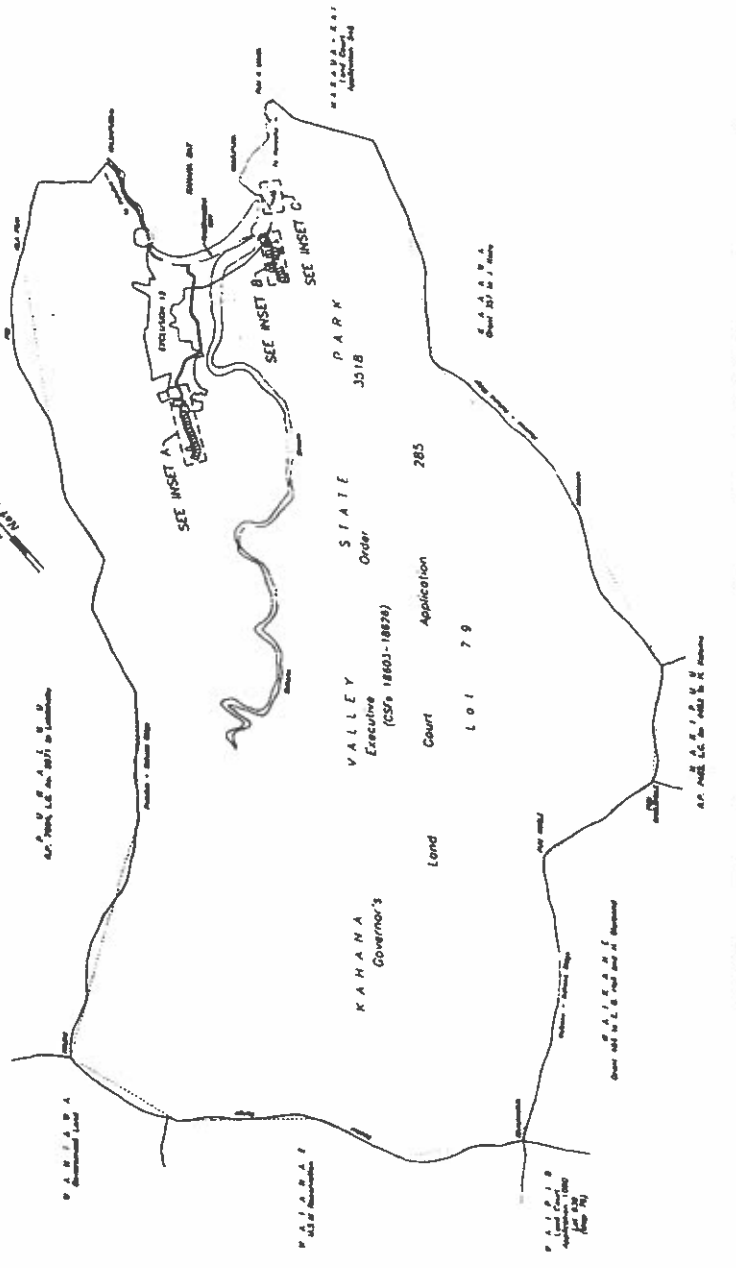
Refer to Reg. Map 4158
TMK: 5-2-02

EXHIBIT A



**KAHANA VALLEY STATE PARK
PHASE II SUBDIVISION
STATE OF HAWAII**

LOTS A-1 TO A-18, INCLUSIVE, I
LOTS B-1 TO B-14, INCLUSIVE, AND LOT 4-A
KAHANA, HONOLULU, OAHU, HAWAII
For Map Ref. 3-2-021, B-P

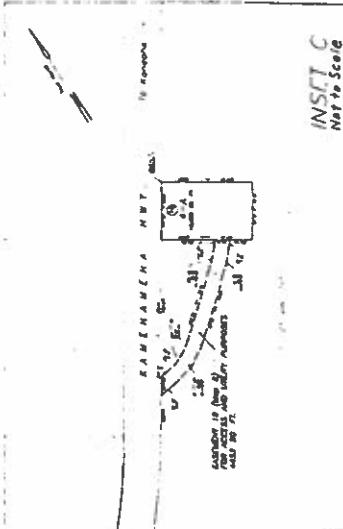
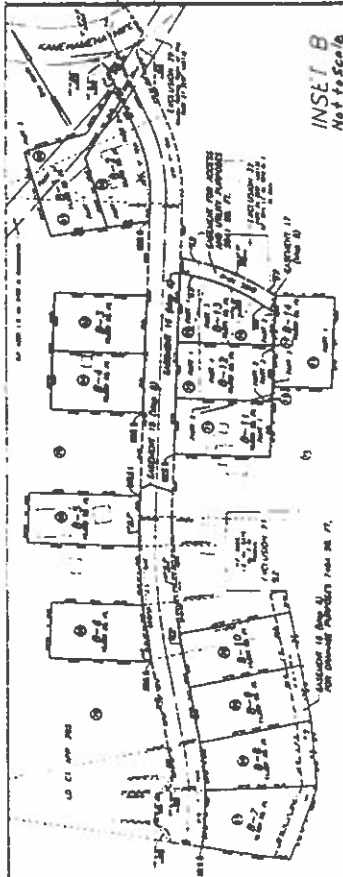


Owner: State of Hawaii
Department of Land and Natural Resources

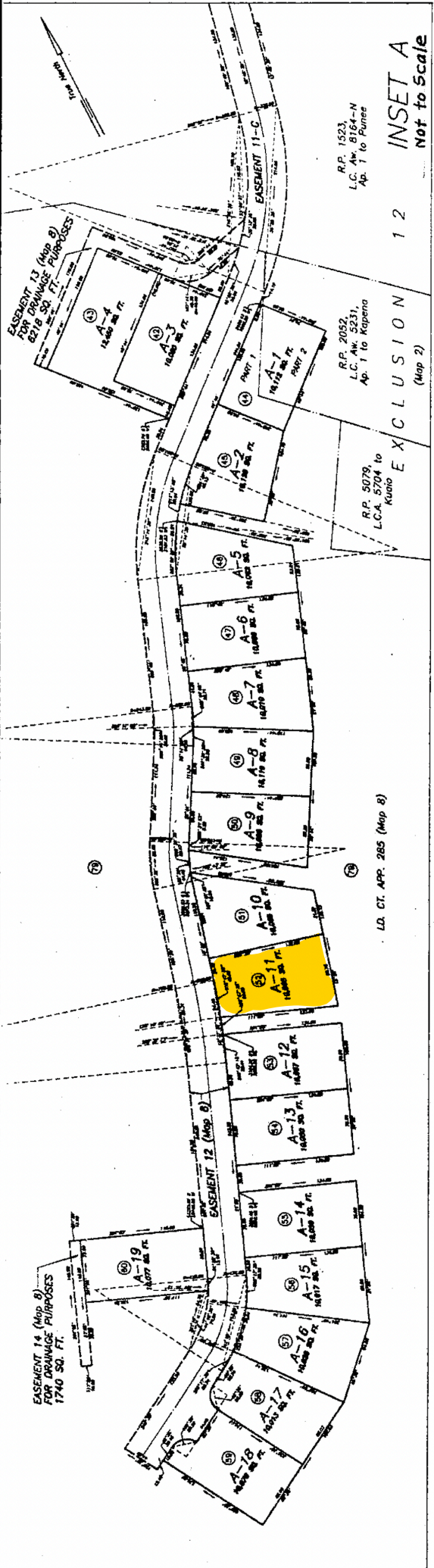


1001 Bishop Street
Honolulu, Hawaii
July 3, 1983

M. B. C. PEARCE, INC.
Professional Land Surveyors
Honolulu, Hawaii
Certificate No. 181



Note:
1. This map is prepared in accordance with the provisions of Chapter 215, Hawaii Revised Statutes, and Chapter 215-10, Hawaii Administrative Rules.
2. The area shown on this map is the same as shown on the map of the State of Hawaii, Department of Land and Natural Resources, dated 1982.



INSET A
Not to Scale

1 2

EXCLUSION
(Map 2)

LD. CT. APP. 285 (Map 8)

R.P. 1523,
L.C. No. 5164-N
Ap. 1 to Pūnee

R.P. 2052,
L.C. No. 5231,
Ap. 1 to Kaperua

R.P. 5079,
L.C.A. 5704 to
Kaitio

EASEMENT 13 (Map 8)
FOR DRAINAGE PURPOSES
8218 SQ. FT.

EASEMENT 14 (Map 8)
FOR DRAINAGE PURPOSES
1740 SQ. FT.

EASEMENT 12 (Map 8)

EASEMENT 11-C

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

The original of this document was
recorded as follows:

DOCUMENT NO. 2083025
DATE 11-2-77 TIME 840

After Recordation Return By: (Mail () Pickup (X) To:

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT

5-285

EXHIBIT 1

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5285

between

STATE OF HAWAII

and

JOSE KIKAHUNANUI GACETA JR.

covering

LOT NO. A 11

KAHANA VALLEY STATE PARK, PHASE II SUBDIVISION

as shown on

REGISTERED MAP 4158

OAHU, HAWAII

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5285

THIS INDENTURE, made this 1st day
of June, 1993, by and between the STATE OF
HAWAII, hereinafter referred to as the "LESSOR," by its Board of
Land and Natural Resources, hereinafter referred to as the
"BOARD" and JOSE KIKAHUNANUI GACETA JR.,
whose residence and post office address is P.O. BOX 53
KAAWA, HI. 96730,
hereinafter referred to as the "LESSEE";

WITNESSETH:

Pursuant to the authority granted under Act 5, Session
Laws of Hawaii 1987, as amended, the Lessor for and in
consideration of Lessee's participation in the Kahana Valley
State Park (hereinafter the "Park") interpretive program and of
the terms, covenants and conditions herein contained, all on the
part of the Lessee to be kept, observed and performed, does
hereby lease to the Lessee the premises known as LOT NO. A 11,
located at Kahana Valley State Park, Phase II Subdivision as
shown on Registered Map No. 4158 more particularly described in
Exhibit "A" and shown on the map marked Exhibit "B," attached
hereto and made a part hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee
for the term of sixty-five (65) years, commencing on the 1st
day of December, 1993, up to and including the 31st
day of November, 2058, unless sooner terminated as
hereinafter provided, the Lessor reserving and the Lessee
yielding and paying to the Lessor at the Office of the Department
of Land and Natural Resources, Honolulu, Oahu, State of Hawaii,
rent as provided hereinbelow:

In lieu of monetary rent, Lessee shall contribute in-
kind services to the Department by participating in the
interpretive programs at the Park, in the amount of 25 hours
per month for a total of 300 hours per year; subject to
review of the Lessor. The nature of this in-kind services
shall be described in Exhibit "C" attached hereto and made a
part hereof. For purposes of this lease, "rent" shall mean
the above. The payment of rent shall commence upon
notification of the Lessor.

I. RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as
hereinafter defined, in, on or under the premises and the right,

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

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

II. THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Performance of rental obligation. The Lessee shall perform the rental obligations to the Lessor at the times, in the manner and form prescribed by the Department and Exhibit "C".

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 which the premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in those installments, Lessee shall be required to pay only those 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, electricity, gas, refuse collection or any other

charges, as to which the premises or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during the lease term become liable, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin or a physical handicap.

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

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises, or any part thereof.

7. Compliance with laws. The Lessee shall comply with all of the applicable requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws pertaining to the premises, now in force or which may hereinafter be in force except as provided by Act 5, Session Laws of Hawaii 1987, as amended; provided further that State park rules shall not apply to the premises.

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

9. Improvements. The Lessee shall not at any time during the lease term construct, place, renovate or install on the premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Chairperson and upon conditions as the Chairperson may impose. In addition, Lessee shall obtain Lessor's approval and certification of the building, structure or improvement upon its completion. The ownership thereof shall be in the Lessee until the expiration or termination pursuant to a breach of the lease, at which time the ownership thereof shall vest in the Lessor.

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

11. Liens. The Lessee shall not commit or suffer any act or neglect whereby the premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Character of use. The Lessee shall use or allow the premises to be used solely for residential purposes as the Lessee's principal domicile.

13. Dwelling restriction. The Lessee shall not place or construct in excess of one dwelling unit on the premises and the dwelling unit shall be placed or constructed in accordance with plans and specifications approved by the Chairperson.

14. Assignments; restrictions. (a) The Lessee shall not transfer or assign this lease or any interest therein, either voluntarily or by operation of law, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or interest thereof may be made if the assignee is a member of Lessee's family. Preference shall be given to those family members residing in Kahana Valley.

(b) If the Lessee does not transfer or assign this lease to a family member then the Lessor shall exercise its first right to purchase pursuant to paragraph 15 herein. Thereafter, Lessor shall assign this lease to a new lessee from a list of not less than six (6) names submitted by the Kahana Advisory Council, its successor organization, or groups representing Kahana Valley residents. The following criteria shall govern the selection criteria for a new lessee:

(1) Person who is a member of the immediate family of one of the other residential Lessees at Kahana Valley. Preference shall be given to those family members residing in Kahana Valley. This category shall have preference over categories 2 and 3 hereinbelow;

(2) Person who can demonstrate to the Board he/she has been traditionally and historically associated with Kahana Valley. This category shall have preference over category (3) hereinbelow; or

(3) Person who can demonstrate to the Board that he/she is otherwise qualified to participate in the Park's public interpretive programs.

In all cases the assignee shall be a person 18 years of age or older and qualified, willing, and available to participate in the Park's public interpretive programs and financially qualified to assume any mortgage obligations under this lease.

15. Lessor's right to purchase. If Lessee wishes to transfer its leasehold interest in the premises, Lessor shall purchase the leasehold interest except where the Lessor consents to the transfer to a qualified assignee or successor.

The purchase price of Lessee's interest in the premises shall be the value of Lessee's interest in the premises derived below, less the outstanding mortgage loan amount:

(i) The cost to Lessee of the initial improvements to the premises which have been approved and certified by Lessor;

(ii) "Sweat" equity in the form of labor contributions during the development period to be established and agreed to by the Lessor upon completion of the dwelling unit in an amount not to exceed FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00); and

(iii) The cost of any subsequent improvements, which have been approved and certified by Lessor (excluding labor), added to the premises by Lessee.

16. Successorship. The Lessee shall designate a successor to this lease. Designation of successors shall comply with the criteria contained in paragraph 14(a) hereinabove. The Lessee shall designate in writing, a successor to the lease upon Lessee's death on the form attached as Exhibit "D" which shall be updated annually. If the Lessee fails to designate a successor, the Board shall determine the successor to the lease using the criteria and procedures set out in paragraph 14(b) hereinabove. In addition to the requirements of paragraph 14, the designated successor shall be able to comply with the terms of this lease and be financially qualified to assume any mortgage obligations under this lease.

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

18. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against: (1) any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from any use, occupancy, maintenance, or enjoyment of the premises, or adjacent sidewalks and roadways in Lessee's use or control, including any accident, fire or

nuisance, or growing out 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 (2) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

19. Costs of litigation. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises or in the collection of delinquent taxes and any and all other charges.

20. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, in the amount of THREE HUNDRED THOUSAND AND NO/DOLLARS (\$300,000.00) combined single limit with an insurance company licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

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

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but

shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policies or certificates thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

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

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

21. Mortgage. The Lessee shall not mortgage, hypothecate or pledge the premises or any portion thereof of this lease or any interest therein without the prior written approval of the Chairperson and any such mortgage, hypothecation or pledge without the approval shall be null and void; provided, however, that upon due application and with the prior written consent of the Lessor, the Lessee for financing purposes may only assign this lease to the Housing Finance and Development Corporation. Lessee shall not mortgage this lease by way of second mortgage and such second mortgage shall be null and void and constitute a breach of this lease.

22. Breach. Time is of the essence of this agreement and if the Lessee shall fail to perform the rental obligation or any part thereof at the times and in the manner aforesaid, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and the premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to the mortgagee, if any. The Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises or any part thereof, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or

for any preceding or other breach of contract; and in the event of termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

23. Bond, performance. The Lessee shall, at its own cost and expense, within sixty (60) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

24. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements based upon the formula contained in paragraph 15 herein, provided that the Lessee may, in the alternative, 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 condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was leased: (1) the Lessor or Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor; or (2) the Lessor shall have the option to relocate Lessee within Kahana Valley State Park provided a residential lot with the required infrastructure can reasonably be made available and the lot is mutually agreeable to Lessor and Lessee.

25. Right to enter. The Lessor or the County and the agents or representatives thereof shall have the right to enter and cross any portion of the premises for the purpose of

performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

26. Performance of rental obligation not a waiver. The performance of the rental obligation by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.

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

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

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

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

31. Withdrawal. The Lessor shall have the right to withdraw any portion of the premises at any time during the term of this lease upon the giving of reasonable notice to Lessee and any holder and without compensation, except as provided herein, for public uses or purposes, including the construction of 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 premises; provided, that upon withdrawal, or upon such taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the formula contained in paragraph 15 herein. The Lessor shall also have the option to relocate the Lessee within Kahana Valley State Park provided a residential lot with the required infrastructure can reasonably be made available and the lot is mutually agreeable to Lessor and Lessee.

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

In the event of total or partial loss any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Chairperson; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

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

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

33. Building requirement. All infrastructure to the premises must be provided before any home construction can begin. Within one (1) year after receiving written notice from the Lessor that the residential housing infrastructure is complete, the Lessee shall complete the construction of a single-family residential dwelling unit of new materials containing an area of not less than 800 square feet, in accordance with plans and specifications submitted by the Lessee to and approved by the Chairperson prior to construction. The construction shall be in full compliance with all laws, ordinances, rules and regulations applicable thereto, including the following:

- 1) Uniform Building Code of 1985 with amendments as of 1987
- 2) National Electrical Code as of 1987
- 3) Uniform Plumbing Code of 1985 with amendments as of 1986
- 4) Land Use Ordinance, City and County of Honolulu, R-10 Zoning District

34. Amendment to lease. This lease constitutes the entire agreement between Lessor and Lessee concerning the premises. No terms conditions, warranties, promises, or undertakings of any nature whatever expressed or implied exist between Lessor and Lessee except as expressly set forth herein. Any amendment or modification of this lease shall be in writing signed by both Lessor and Lessee.

III. SPECIAL TERMS AND CONDITIONS:

1. Plan of operation. Exhibit "C" attached hereto and incorporated herein by this reference shall be a plan of operation detailing Lessee's duties and responsibilities in

performing its rental obligation to provide interpretive programs at the Park. The plan of operation shall also include a mechanism for monitoring and enforcing the rental obligations and other applicable lease provisions.

2. Dispute resolutions. Performance under this lease shall be coordinated with a representative of the Lessor to be designated by the Chairperson who shall act as the principal liaison between the Lessee and the Lessor to help interpret the conditions of the lease, resolve policy questions, to expedite decisions, to inspect and monitor the work performed and to implement the plan of operation.

In the event of any disagreement over the interpretation and/or implementation of this lease, Park Manager and Lessee shall attempt to mutually resolve the matter in a reasonable and equitable manner consistent with the purpose and spirit of this lease. In the event that agreement cannot be reached, then the matter shall be submitted to a Kokua Committee.

The Kokua Committee shall be composed of three Kahana Valley residents and one Kahana Valley resident alternate to be elected by the residents by secret ballot. Names of interested residents shall be submitted to the Chairperson who shall administer the election. If a Lessee is interested in serving on the Kokua Committee, that Lessee shall submit no more than one name from the Lessee's family. Each Lessee shall have four votes.

The Kokua Committee shall review the dispute and attempt to reach a mutually acceptable resolution of the problem. If a mutually acceptable resolution cannot be reached, then the Kokua Committee shall submit its recommendation to the Division of State Parks. In the event the dispute affects a Kokua Committee member's Lease, that member shall disqualify itself from taking action on the dispute and the alternate Kokua Committee member shall serve.

The Division of State Parks shall review the dispute and the Kokua Committee's recommendation. In the event the Division of State Parks disagrees with the Kokua Committee's recommendation, then the Division of State Parks shall submit to the Chairperson for his review both Division of State Parks' and Kokua Committee's recommendation. The Division of State Parks shall submit a copy of its recommendation to the Kokua Committee. The Kokua Committee may comment on the Division of State Park's recommendation and submit its comments directly to the Chairperson.

The Chairperson has the discretion to make a final decision or bring the matter before the Board.

3. Misrepresentation. The Lessee shall in no way misrepresent its relationship with the State with respect to programs and activities conducted therein in any of its publications, literature, promotional materials or public utterances or presentations of any sort.

4. Commercial operations. The Lessee, its employees, customers, guests, agents and/or invitees shall not display or offer for rent or sale or sell any article or merchandise, or conduct commercial activities whatsoever within the premises.

5. Garbage, refuse and abandoned vehicles. The Lessee shall dispose of all garbage, rubbish and other refuse in a sanitary manner. Stockpiling derelict or abandoned vehicles or other personal property on or about the premises and the Park is prohibited. If after reasonable written notice is given by Lessor, Lessee fails to remove the derelict or abandoned vehicle or other such property, Lessor may remove the vehicle or property at the cost and expense of Lessee.

6. Ingress and egress. The Lessee, its guests, and invitees, in common with others, shall have the non-exclusive right of ingress to and egress from the Park to or from which these persons shall reasonably require ingress or egress, in a manner and upon those terms and locations as the Lessor may from time to time designate.

7. Use of Park by general public. Lessee acknowledges that the premises are located within the Park. Lessee shall not interfere with or prevent access, use and enjoyment of the Park by the general public.

8. Fires, etc. The Lessee shall not start any outdoor fires, except in an incinerator, fireplace, or grill without the prior written approval of the Chairperson. Use of fire for personal use is permissible subject to City and County of Honolulu and State laws. The Lessee shall also take all reasonable precautions to prevent forest fires, and in the event any fire shall occur, Lessee shall use all reasonable means at Lessee's command or under Lessee's control to have any fire speedily extinguished.

9. Cutting of trees, etc. The Lessee shall not cut or destroy any live forest trees without first obtaining a permit to do so from the Lessor. Lessee shall clear the premises of dead wood, fallen leaves, branches, weeds, briars and all other debris or unsightly growth and maintain the premises in a satisfactory condition and keep the premises in a condition conducive to preventing any fires.

10. Dangerous animals. The Lessee shall not keep animals of any kind on the premises that in Lessor's determination, presents a threat or danger to life, property or to the environment or whose presence constitutes a nuisance to others. All dogs shall be leashed or confined to a kennel or fenced area. This provision includes animals banned by the State Department of Agriculture.

11. Prevention and control of exotic plants. The introduction of noxious-exotic plant species to the premises may not be permitted without the prior written approval of the Division of State Parks and the Division of Forestry and Wildlife. The Lessee shall be responsible for the removal, at no cost to the State of Hawaii, of any and all exotic plant species found to have adverse impacts upon the environment.

Definitions.

As used herein, unless clearly repugnant to the context:

(a) "Board" or "Lessor" means the Board of Land and Natural Resources or its designated representative.

(b) "Chairperson" means the Chairperson of the Board and Land and Natural Resources or his designated representative.

(c) "Department" means the Department of Land and Natural Resources.

(d) "Family" means two or more individuals who are related by blood, adoption, hanai, legal guardianship, or marriage.

(e) "Lessee" means and include the Lessee herein, and his or her heirs, executors, administrators, successors or permitted assigns, according to the context hereof.

(f) "Mortgagee" means the Housing Finance and Development Corporation, a public body and body corporate and politic of the State of Hawaii, established pursuant to Chapter 201E, Hawaii Revised Statutes.

(g) "Park" means the Kahana Valley State Park.

(h) "Premises" includes the land hereby leased.

(i) "Waste" includes, but not limited to, (1) permitting the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make

reasonable effort to prevent or correct same; and (2) permitting any material increase in noxious weeds in cultivated and uncultivated portions thereof.

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

(k) The paragraph headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

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

STATE OF HAWAII

By Kirk C. Aune
Chairperson and Member
Board of Land and
Natural Resources

And By _____
Member, Board of Land
and Natural Resources

LESSOR

Jose Kikahunani Gaceta Jr.
JOSE KIKAHUNANUI GACETA JR. (MARRIED)

SPOUSE - CORAZON BUAN GACETA

LESSEE

APPROVED AS TO FORM:

Doree W. [Signature]
Deputy Attorney General
Dated: 5/24/93

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

On this 11th day of May, 1993, before me personally appeared JOSE KIKAHUNANI GACETA JR. and ---, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Dean Fujiwara
Notary Public, State of Hawaii

My commission expires: 2/4/95

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 19____, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively of _____, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires: _____

5277E

EXHIBIT "C"

INTERPRETIVE HAWAIIAN CULTURAL PROGRAM PARTICIPATION COMMITMENT

The program participation requirement for in-kind payment of the lease rent is twenty-five (25) hours per month of services related to scheduled interpretive programs. This participation requirement will commence as soon as this lease is signed provided, however, that service hours will be waived for a period of not more than twelve (12) months after the Lessee is notified by the State that the residential housing infrastructure has been completed. This waiver is made available only to those residents who are actually participating in the construction of their new homes or renovating existing homes on their new 65 year houselots. This waiver may be extended upon a showing of good cause and with written approval by the Chairperson.

Eligible Interpretive Programs - Interpretative Programs will generally be based on the expressed interest of valley residents as reflected in the Addendum attached to this Exhibit, more particularly identified as "Kahana Valley State Park, Addendum to Schedule C, Interview Summary Data of Participation, Activities of Kahana Residents". Interpretative Programs shall be recommended by an advisory committee with the assistance of the Park Manager. The residents may recommend additional programs to the advisory committee. The advisory committee and Park Manager shall, at least annually, review and evaluate the overall interpretative programs. General park maintenance shall not be considered an interpretative program.

Type of Work to be Performed - Service hours will be credited for all aspects of a scheduled activity including planning, gathering/preparing materials, presenting the activity and clean up after the event. Service hours will also be credited for learning, teaching and evaluating activities as part of a scheduled, ongoing training program. No credit shall be received if a resident is paid for participating in a scheduled activity. Lessees who qualify for the 12-month waiver are encouraged to participate in their respective interpretative programs.

Qualified Family Members - All family members, as defined in the lease, who are over 14 years of age are eligible to provide the scheduled service hours. The proportion of time divided among each eligible family member from the lessees family shall be determined by the family.

- Children of qualified families between 14 and 18 years of age will need a work permit and will be subject to all child labor laws in order to qualify for family service hours.
- Such children may participate in scheduled service hours provided that no more than 10 hours per month can be earned by the children of a given family.
- The lessee's family may not substitute anyone outside the family for an eligible and able family member for service hour credit.
- Family members ineligible for service hour credit may participate in program activities, unless a participant capacity would be exceeded.
- The planning and operation of these programs may be enhanced and enriched with assistance from residents' families outside the valley. However, it must be emphasized that since it is the residents who are participating in the Interpretative Programs in lieu of lease rent, use of non-valley residents to satisfy the 25 hour in-kind requirement is discouraged and authorized only upon approval by the Park Manager.

Service Hour Credits - Service time beyond the 25 hours per month requirement may be accumulated for a total service credit not to exceed 150 hours per year. Accumulated service credit cannot be sold, transferred, or otherwise conveyed in any manner.

The 25 hour requirement can be considered an average monthly requirement. Periodic scheduled program activities may require the lessee's participation to exceed 25 hours in any given month. At other times the lessee may wish to refrain from participation in an interpretative program because of family needs (e.g., family vacation, extended illness, military service, education, etc.) Excess hours beyond 150 hours will not be credited but can be donated as voluntary assistance.

Scheduling - In scheduling any interpretative program the State and residents shall be sensitive to and have a mutual respect for the concerns and needs of the respective parties. For example, the State recognizes that many residents have full time jobs outside the park and they may not be available if their interpretative program is scheduled during their normal work hours. Further, the State fully supports the residents need to practice the traditions and customs of Native Hawaiians in their most natural unrestricted environment which may at times be scheduled when the visitor is unavailable. At the same time, the residents fully support the State's concerns

that since this is an 'Aina Ho'omalū, or Park of Distinction, the traditional Hawaiian customs and practices should be shared with as many park visitors as possible at various times and days which may require the residents to be available after working hours, on weekends and holidays. Both parties shall make a good faith effort to assist each other in fulfilling their concerns and needs. Requests for assistance from either party shall not be unreasonable and, in accommodating such needs and concerns may require scheduling interpretative programs at times that are inconvenient for the residents and park visitor participation.

All interpretative program activities shall be scheduled in advance. Lessee family participants may submit requests up to one year in advance, but no later than 60 days in advance of the scheduled interpretative program activity. While no family service hours will be credited for scheduling, families are encouraged to assist in the interpretative program scheduling. Lessees shall notify the Park Manager of any changes in their schedule at least 10 days before their scheduled interpretative program assignment. A lessee that is unable to participate in their scheduled interpretative program should have a reasonable excuse and should seek a replacement.

Lessees will be encouraged to participate in a variety of interpretative programs. Each lessee's family must be willing to participate in at least two different programs in order to meet their program participation commitment.

The Park Manager will be responsible for coordinating all scheduling assignments, keeping records and monitoring program assignments. Each lessee shall receive a monthly record of their service hours and the Park Manager will review these records annually with each family.

Penalties - Lessees shall be on time and work the hours scheduled. Lessees shall be assessed one penalty hour for being late and one penalty hour for each program hour or part thereof missed, unless excused. Lessees have the responsibility for notifying the park office of sickness or other emergencies, as soon as possible. Excused absence shall be worked within 30 days of the date the lessee or qualified family members are able to resume program participation.

Lessees who fall behind in their required service hours shall be rescheduled as soon as possible. Any lessee who falls one month (25 hours) behind shall be give a written notice that the lessee is in violation of the lease. At that time, the violation will follow the dispute resolution procedures established in Section III, Item 2 of this Lease.

0543E
(7/28/92)

LEASE NUMBER: S-5285

LESSEE NAME : Jose K. Gaceta, Jr.

PARTICIPANTS NAME:

Jose K. Gaceta
Corazon Gaceta

PROGRAM ACTIVITY SUMMARY;

AGRICULTURE

Taro
Sugar
Sweet Potato
Papaya
Banana
Nursery Plants
Wauke
Hawaiian medicinal plants

ARCHEOLOGICAL SITE DEV:

Fishponds
Heiau
Loi's
Burial Grounds
Others

ENVIRONMENTAL EDUCATION

Tidal Pools
Estuary
Oceans
Valley
Forest
Mountains

FISHING:

Fishpond
Net making/repair
Spears, traps, equip.
Stream fishing
Ocean fishing
Crabbing
Hukilau
Throw net

FOOD PREPARATION:

Ancient
Current
Others;Filippino

HAWN.CRAFTS:

Lauhala weaving
Coconut frond weav
Wood carving
Hula Implements
Kapa making/dyes
Feather leis
Seed crafts
Fresh leis

HIKING

Knowledge of trail
History of area
Legends and Story of areas
Knowledge of plants on trails
Knowledge of birds
Backpac./safety in hiking

HISTORICAL PRES:

Knowledge of
store/chapel

MUSIC AND DANCE :

Singing

VISITOR CENTER:

Greeting/Orientation/Information
Check In/Out hiker/hunters/campers

SCHEDULING:

Mon - Sun

COMMENTS:

Open schedule, check with lessee.

PLEASE CHECK YOUR ACTIVITY SUMMARY. SHOULD YOU HAVE ANY CHANGES OR ADDITIONS, PLEASE LIST THEM BELOW OR USE THE ATTACHED PAGE PROVIDED. PLEASE SIGN BELOW AND TURN IN THE ORIGINAL COPY ALONG WITH YOUR COMMENTS OR CHANGES TO OUR PARK OFFICE MONDAY - FRIDAY.

I HAVE READ AND UNDERSTAND EXHIBIT C. I UNDERSTAND THIS FORM CAN BE CHANGED AS CONDITIONS CHANGE AND AS NEEDED.

Jose Kikahenan Gaceta Jr.
JOSE K. GACETA, JR.

5/11/93
Date

State Parks Acceptance:

A. L. Rogers
Park Manager

May 12, 1993
Date

EXHIBIT D
RESIDENTIAL LEASE
KAHANA VALLEY STATE PARK

Lessee's Name Jose K. Giaceta Lease No. _____

DESIGNATION OF SUCCESSOR:

Pursuant to the terms of the lease, Lessee shall designate a successor. The designation shall comply with the following criteria:

- 1) The designee is a member of Lessee's immediate family.
- 2) Preference shall be is given to those immediate family members residing in Kahana Valley.

In addition, the designee shall be able to comply with the terms of this lease and be financially qualified to assume any mortgage obligations under the lease.

I hereby designate Brummell B. Giaceta to be my successor to this lease in case of my inability to fulfill the requirements of the lease. The person named is qualified as follows:

Member of Lessee's family (state how related)

Son

Present resident of Kahana Valley; or

Not resident of Kahana Valley. His/her address is:

Zip code: _____

Phone: (H) _____ (B) _____

Lessee's Signature Jose K. Giaceta Date 5/11/93

OR

I do not choose to name a successor and I understand that the Board of Land and Natural Resources will name a successor under the provisions of the lease.

Lessee's Signature _____ Date _____

OFFICE USE ONLY: (Exhibit D not valid without Park Managers validation)

Park Manager's Signature A. L. Rogers Date May 12, 1993

COPIES TO:

ANNUAL REVIEW:

___ Land Management Division	1992 ___	1996 ___	2000 ___
___ State Parks Division	1993 ___	1997 ___	2001 ___
___ Kahana Valley State Park Office	1994 ___	1998 ___	2003 ___
___ Other	1995 ___	1999 ___	2004 ___

EXHIBIT 2