

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

September 25, 2015

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

PSF No. 13OD-098
OAHU

Approval for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort and Set Aside to the Division of Forestry and Wildlife situate at Kahuku, Koolauloa, Oahu, Tax Map Keys (1) 5-6-003:various; 5-7-001:various; 5-7-006:various; and Approval of Acquisition of Private Lands, with Sixty-Five (65) Year Direct Lease Back and Right of Entry to Turtle Bay Resort, LLC for the Acquired Private Lands, situate at Kahuku, Koolauloa, Oahu, Tax Map Key (1) 5-7-006:portion 001, portion 002 and portion 023 and 5-7-001:portion 020 and portion 022.

APPLICANT (Fee and Conservation Easement Acquisition):

STATE OF HAWAII, Department of Land and Natural Resources (DLNR).

PRIVATE LANDOWNER & APPLICANT (Direct Lease & Right of Entry):

Turtle Bay Resort, LLC, a foreign limited liability company, whose mailing address is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. (TBR)

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as amended, and Act 121, Session Law of Hawaii 2015.

LOCATION:

Land encompassing the area known as the Turtle Bay Resort, situate at Kahuku, Koolauloa, Oahu.

AREA:

Approximately 650.278 acres, more or less¹. A map of the proposed fee acquisition and current easement configuration and a preliminarily approved subdivision map are attached as Exhibit A.

ZONING:

State: Urban, Agriculture, Conservation
County: Resort, P-2

CURRENT USE:

Recreational and commercial use including golf course and horseback riding, and the Punaho'olapa Wildlife Preserve.

CONSIDERATION:

Purchase price will be \$37,500,000.00, subject to confirmation of the fair market value as determined by independent appraisal contracted for by the Department.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00

METHOD OF PAYMENT:

Annual payments, in advance.

PERFORMANCE BOND:

Twice the annual rental amount.

PURPOSE:

Public recreation, open space, and wildlife preserve.

¹ The area that is presently subject for acquisition by the State is approximately 620.952 acres, more or less, but the Board is requested to approve an additional potential acquisition of approximately 29.326 acres, more or less. This issue will be discussed in further detail in the "Background" section of this submittal.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Fee Acquisition:

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

Conservation Easement Acquisition:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, No. 45, that states, "Acquisition of land or interests in land."

Direct Lease:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, No. 47, that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

Right of Entry:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, No. 51, 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."

An Exemption Notice is attached.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

REQUIREMENTS:

Applicant shall be required to:

- 1) Pay its appraisal cost to determine the value of the properties to be acquired; and
- 2) Pay for and conduct a Phase I environmental site assessment and a Phase II environmental site assessment (ESA) including sampling and analysis plan.

Private Landowner shall be required to:

- 1) Process and obtain subdivision approval at own cost;
- 2) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Private Landowner's own cost;
- 3) Obtain title reports for the privately-owned property at its own cost and subject to review and approval by the Department; and
- 4) Following the Phase II ESA, perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.
- 5) Provide baseline documentation for the conservation easement subject to review and approval by the Department. The Trust for Public Land has committed to paying for the baseline documentation.

BACKGROUND:

Senate Concurrent Resolution 164, Legislative Session 2013, requested the Governor to establish a working group to develop a conservation action plan to explore and identify conservation alternatives for the undeveloped portions of the Turtle Bay Hotel and Resort property. As a result, the working group submitted a report dated November 30, 2013. The report stated that the State has been diligently negotiating with the TBR regarding conservation options over the resort lands located makai of Kamehameha Highway. Negotiations focused on the acquisition of a conservation easement (CE) over the undeveloped land rather than a fee purchase since TBR was, at that time, unwilling to sell the land in fee.

Funding for the acquisition was initially approved by the Legislature through Act 81, Session Laws of Hawaii 2014. Act 81 authorized the issuance of \$40 million in revenue bonds with a debt service cap of \$3 million for the acquisition of the conservation easement by the Hawaii Tourism Authority (HTA). The revenue bonds would be issued by the HTA, who would in turn re-finance the existing debt on the Hawaii Convention Center and would reallocate \$3 million of the transient accommodation tax revenue to pay the revenue bond debt. The Act imposed additional requirements on HTA for the acquisition, including:

- 1) HTA must obtain an appraisal and perform due diligence for the acquisition;

- 2) HTA must offer to hold an informational briefing for the Legislature; and
- 3) The conservation easement shall provide for public access in perpetuity.

At its meeting on December 12, 2014, under agenda item D-28, the Board granted approval in principle of the proposed acquisition under the conditions at that time. Following consultation with the Department of Budget and Finance (B&F), concerns were raised regarding the viability of selling \$40 million in revenue bonds with a \$3 million in debt service cap in the normal bond markets. The current administration sought to amend the act during the 2015 Legislative Session in order to make sure that a sale of revenue or other types of bonds to finance this transaction would be assured of raising the necessary monies. As a result, a new financing structure was enacted through Act 121, Session Laws of Hawaii 2015, and further negotiations between the Attorney General and TBR resulted in a restructured acquisition.

Act 121, Session Laws of Hawaii 2015

Act 121, Session Laws of Hawaii 2015, implements major changes to the prior Act 81. Rather than funding the acquisition from the sale of revenue bonds, Act 121 appropriated \$35,000,000.00 to fund the acquisition through the sale of reimbursable general obligation bonds. The debt service for the bonds will be \$3,000,000.00 annually, with \$1.5 million paid by the conveyance taxes, and the other \$1.5 million from the Land Conservation Fund (LCF). As LCF monies are used by the Legacy Land Conservation Program to fund acquisitions through a competitive public grant proposal process, the Act requires that a nonprofit land conservation organization file an application with the Board on annual basis requesting \$1,500,000.00 from the LCF to be used for the debt service payment until the bonds are fully amortized.

Additional changes include the authority to acquire the conservation easement and other real property interests at the Turtle Bay Resort with the funds, the removal of HTA from the acquisition process (placing the authority to acquire with DLNR), and the creation of a Turtle Bay conservation easement special fund. The purpose of the special fund is to expend the monies from the bond issuance to acquire the property interests and collect the revenues for payment of debt service. The Act also authorizes the Board to directly lease lands acquired in fee simple as part of this acquisition back to the grantor (TBR), at nominal rent. A copy of the Act is attached as Exhibit B.

Restructured Acquisition

Subsequent to the prior Board approval in principle, the current administration, through the Attorney General, continued to negotiate with TBR, resulting in significant changes to the scope of the acquisition. Rather than a conservation easement encompassing approximately 654.781 acres, more or less, the acquisition will now be an acquisition of land in fee totaling approximately 52.535 acres, more or less, and a conservation easement of approximately 568.417 acres, more or less. The State contribution to the acquisition is reduced from \$40,000,000.00 to \$35,000,000.00. In addition, the Trust of

Public Land (TPL) has secured \$2,500,000.00 in Army Compatible Use Buffer (ACUB) funds, resulting in a purchase price of \$37,500,000.00.

The fee acquisition is an area designated at Resort Residential 1 and Resort Residential 2 (RR-1 and RR-2). RR-1 and RR-2 are shoreline properties on the western end of the resort area, fronting Kawela Bay, which were initially intended to become highly priced residential developments. The area is adjacent to the properties intended to be acquired by the City and County of Honolulu (City) to be used as a county beach park. However, as a condition of the sale, TBR requests a direct lease back to them for long term management of the property in conjunction with its other adjacent property. The lease term would be for the maximum sixty-five (65) years, and for nominal consideration. Act 121 authorizes a direct lease under such conditions, limited to this specific acquisition. Pursuant to the lease, TBR will manage the land in a manner consistent with the terms and conditions of the conservation easement. As the commencement date of the lease will be the first day of the month following the closing date, the Board is also requested to approve a right-of-entry to TBR for management of the land until the commencement date. This would serve as an interim measure and for purposes consistent with the lease and CE.

In tandem with the State acquisition, the City initially contributed \$5,000,000.00 to purchase approximately 5 acres, more or less, at Kawela Bay for beach park purposes. The property is situated between a 4.8 acre area intended to be dedicated to the City for use as a beach park, and the RR-1 and RR-2 areas to be acquired by the State. The City intends to use this property as an extension to the future beach park. Under the restructured acquisition, the City will increase their contribution from \$5,000,000.00 to \$7,500,000.00. To ensure that the City receives fair market value for their expenditure, the City will acquire an additional 2.5 acres located in the original RR-1 footprint, for a total area of approximately 7.5 acres. As a result, the State's fee acquisition will be approximately 52.535 acres.

The conservation easement will now encompass an area of approximately 568.417 acres, more or less. The footprint of the CE will consist of the same area as previously contemplated, with the exception of the RR-1 and RR-2 area now intended to be acquired in fee. Additionally, an area of approximately 29.326 acres, more or less, identified as RR-4, will be excluded from the CE. RR-4 is located on the eastern end of the resort area, adjacent to the golf course. The State will retain an option to acquire a CE over the RR-4 area for a limited time, should additional funds become available. Additionally, the CE will cover an area surrounding and inclusive of Kahuku Point, which is designated for a future City and County park. Upon the dedication of the land to the City, the CE will be released from that area.

Lots 6, 9, 10, 11, 12, 13, 15 and 27 of the resort area will be excluded from the acquisition and will remain available for future hotel and residential development under the ownership of TBR. These lots comprise the location of the existing hotel and the immediately surrounding areas stretching both west and east along the coast. Further, the

land comprising the Kuilima Estates condominiums will also be excluded from the acquisition.

REMARKS

In regards to due diligence requirements, TBR has provided survey maps and descriptions which have been forwarded to the State Surveyor for review and approval and for creation of CSF's. Also, TBR has received preliminary approval from the City for their various subdivision requirements for RR-1 and RR-2 fee simple lots and the conservation easement. Furthermore, TBR has provided preliminary title reports for the parcels to be acquired in fee and encumbered by the conservation easement subject to review and approval by the DLNR and the Attorney General. TBR has managed to resolve many of the encumbrances of concern, and is currently working to address the remaining title issues. The outstanding issues focus on covenants on the property that require development to realize the economic potential of the property, as well as mortgages and related documents. TBR is working to amend the development covenants as well as remove and subordinate the mortgages and related documents from properties to be acquired in fee simple and CE, respectively. TBR is required to resolve the outstanding title issues to the State's satisfaction prior to the closing of the fee and CE acquisitions.

As noted previously, DLNR has contracted with John Child & Company to provide appraisal consultation services. The appraiser shall determine the fair market value of both the CE and the fee simple interests to be acquired. The valuation for the fee simple properties shall take into account the impact of the lease back to TBR for a term of 65 years at nominal rent, as it is a condition of the sale of the fee simple properties. As a total of \$37,500,000.00 has been allocated for the acquisition, this will serve as the purchase price subject to confirmation of the fair market value by the appraisal.

DLNR has contracted with AMEC Environment and Infrastructure, Inc. (AMEC) to provide a Phase I Environmental Site Assessment (ESA). The Phase I ESA determined that Recognized Environmental Conditions (REC's) were present at the wash racks located in the golf course maintenance yards. The areas were used for pesticide mixing, as well as chemical disposal. In addition, runoff from one of the maintenance yards is collected in a sump, and the water from the sump is used for the golf course sprinkler systems. In addition, the eastern portion of the resort area was used for military purposes as the former Kahuku Airfield Military Reservation (KAMR). As the KAMR was inundated by a tsunami, there are data gaps as to whether hazardous materials or unexploded ordnance are present on the property. An investigation by the U.S. Army Corps of Engineers concluded that the KAMR property could potentially pose a threat to human health or the environment.

To resolve the environmental issues, DLNR will contract with AMEC to provide a Phase II ESA. In order to qualify for landowner liability protection as a Bona Fide Prospective Purchaser under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), DLNR must take the necessary steps to meet the all appropriate

inquiry standard. In consideration of the findings of the Phase I ESA, DLNR cannot ignore the presence of the REC's, and must proceed with the Phase II ESA to conduct further testing and remediation as may be needed. Furthermore, as a result of the acquisition, the public will now have increased access to these areas. It is therefore paramount that these measures be taken to address public health and safety.

As the scheduled closing date will precede the completion of the Phase II ESA, TBR has offered to withhold \$250,000.00 from the sale proceeds in the escrow account to conduct remediation. The State will verify this amount against an estimate provided by its consultant AMEC. In any event, should the portion set aside in escrow be insufficient to cover remediation costs, TBR has agreed to pay the deficiency. The parties will enter into a purchase and sale agreement for this transaction and these requirements will be incorporated into the agreement as post-closing obligations. The draft Purchase and Sale Agreement is attached as Exhibit C. Note that any property description included in the draft documents is preliminary and subject to review and approval by the State Surveyor.

TBR has agreed to convey fee properties via the State's standard form warranty deed. However, TBR has stated that a condition of this acquisition is that the acquisition must not result in prohibiting TBR from engaging in hotel and residential development on the resort area that is not subject to conservation restrictions. Therefore, the parties have agreed to revise the warranty deed allowing TBR to reserve rights for easements and access rights over the fee property for the purpose of fulfilling certain obligations imposed under the terms and conditions of existing land use permits and approvals. The rights reserved by TBR shall be limited to the following land use permits and approvals: Unilateral Agreement and Declaration for Conditional Zoning, dated September 23, 1968, and approved by the Honolulu City Council pursuant to Ordinance 86-99; State Land Use Commission Findings of Fact, Conclusions of Law, and Decision and Order, dated March 27, 1986; and Special Management Area Use Permit and Shoreline Setback Variance granted by the Honolulu City Council pursuant to Resolution No. 86-308. The draft Warranty Deed is attached as Exhibit D.

The direct lease back of the properties acquired in fee simple will be via the State's standard form lease. The lease is intended to allow TBR to manage the land in conjunction with its other adjacent property in a manner consistent with the CE, which will be attached to the lease as an exhibit. TBR's use of the property under the lease will be limited to current uses such as recreational and limited commercial activities. The standard form lease has been amended similarly to the deed to allow TBR to fulfill its entitlement obligations pursuant to the aforementioned permits and approvals. The lease has also been amended in order to achieve consistency with the terms of the CE. Finally, the State has agreed to limit the lease's withdrawal provision at TBR's request. The reason is that TBR asserts that the standard withdrawal provision would impede their ability to carry out their development plans on the unprotected parcels. Furthermore, since the property is only being acquired by the State through this transaction, the State is not forfeiting any control over its currently owned land. The draft Lease is attached as Exhibit E.

Upon acquisition, the conservation easement will be managed by the DLNR Division of Forestry and Wildlife (DOFAW), while the fee property and the lease will remain under the jurisdiction of Land Division. DOFAW has agreed to execute a memorandum of agreement with Land Division to assist with the management and enforcement of the lease, as the land uses are consistent with the CE. DOFAW staff possesses the necessary expertise to properly evaluate compliance issues as it relates to the conservation easement objectives of protecting the environment and natural resource of the area; TBR will retain the fee interest and manage the land subject to the conservation easement objectives and restrictions. TPL has submitted baseline documentation for the CE to DOFAW for their review and approval. Furthermore, DOFAW has an interest in the lands due to the presence of the Punaho'olapa Wildlife Preserve within the conservation easement area. Although DOFAW will be the primary holder of the conservation easement, other divisions may be asked to provide assistance in the monitoring and enforcement of the conservation easement as may be appropriate.² The draft Deed of Conservation Easement is attached as Exhibit F.

The parties continue to negotiate the terms and conditions of the deed of conservation easement. The central issue is balancing TBR's need for flexibility in the CE terms and conditions in order to fulfill regulatory requirements to develop the resort areas not set aside for conservation against the ability to effectively protect the resource values identified in the CE. While DLNR is cognizant of TBR's need to retain their ability to develop the resort area, the Department will not agree to acquire a CE whose terms and conditions fail to provide clear, certain and effective means to effectuate or enforce its conservation goals. Therefore, the Board is requested to authorize the Chairperson to prescribe terms and conditions as may be necessary to carry out the intent of the Board and best serve the interests of the State.

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, 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.
2. Authorize the Chairperson to enter into a purchase and sale agreement under the terms and conditions cited above which by the reference incorporated herein and further subject to the following:
 - A. Review and approval by the Department of the Attorney General;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

² The Department intends to seek other sources of funds (whether private, federal or otherwise) to assist with monitoring and enforcing the terms and conditions of the conservation easement, and possibly seek other entities to assist with the monitoring of the terms and conditions of the conservation easement.

3. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current warranty deed document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the acquisition of the subject conservation easement under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The terms and conditions of the draft conservation easement document, as may be amended;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject conservation easement to the Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Turtle Bay Resort, 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:

incorporated herein and further subject to the following:

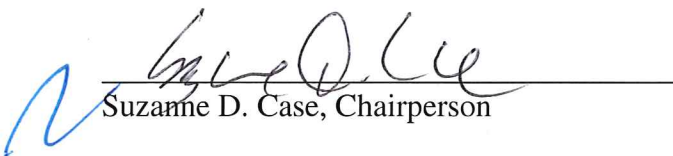
- A. The standard terms and conditions of the most current lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
7. Authorize the issuance of a right-of-entry permit to Turtle Bay Resort, 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 right of entry permit form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



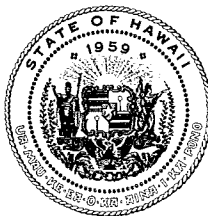
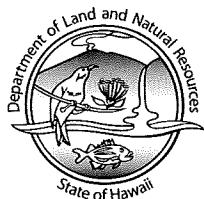
Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 25, 2015

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Approval for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort and Set Aside to the Division of Forestry and Wildlife; and Approval of Acquisition of Private Lands, and Sixty-Five (65) Year Direct Lease and Right of Entry to Turtle Bay Resort, LLC, for the Acquired Private Lands

Project / Reference No.: PSF 13OD-098

Project Location: Kahuku, Koolauloa, Oahu, Tax Map Keys (1) 5-6-003:various; 5-7-001:various; 5-7-006:various

Project Description: Acquisition of private land and conservation easement, issuance of right of entry and direct lease.

Chap. 343 Trigger(s): Use of State Funds and State Land.

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject requests are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing":

Acquisition of Conservation Easement:

Item No. 45: "Acquisition of land or interests in land".

Direct Lease:

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Item No. 47: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing".

Right of Entry:

Item No. 51: "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

Recommendation:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



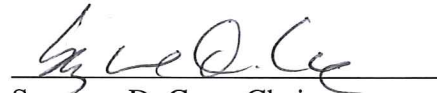

Suzanne D. Case, Chairperson
Date 9/16/15

Exhibit A



Maps

LEGEND



Conservation Easement Lands Open Space/Existing Zoning

	State Fee Simple Owned Conserved Lands (with 65 Year Lease Back)	52.8 Acres
	State Conserved Lands - Phase 1	531.0 Acres
	State Conserved Lands - Phase 2 (RR-4)	29.3 Acres
Total State Conserved Lands		613.2 Acres




City "Conserved" Lands Areas

	City Owned - Conservation Lands	7.5 Acres
	Future City Owned - Park Lands	42.8 Acres
Total City "Conserved" Lands		50.3 Acres



Total Conserved Lands 663.8 Acres

	Subdivision Lot
	Subdivision Easement

Public Access Trails

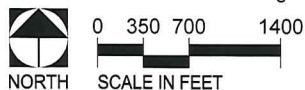
	Existing Public Access	0.7 Miles
	Interim Trails (Public Access)	1.0 Miles
	Permanent Trails (Public Access)	6.8 Miles
Total Public Access / Trails		8.5 Miles

Public Parking Areas

	Existing Public Parking Areas (2) and Number of Stalls	40
	Contingent Interim Parking Areas (2) and Number of Stalls	40
Total		80 Stalls



Source:
 Aerial Photo from Google Earth dated 01/29/2013



Turtle Bay Resort
 June 2015

EXHIBIT "A"

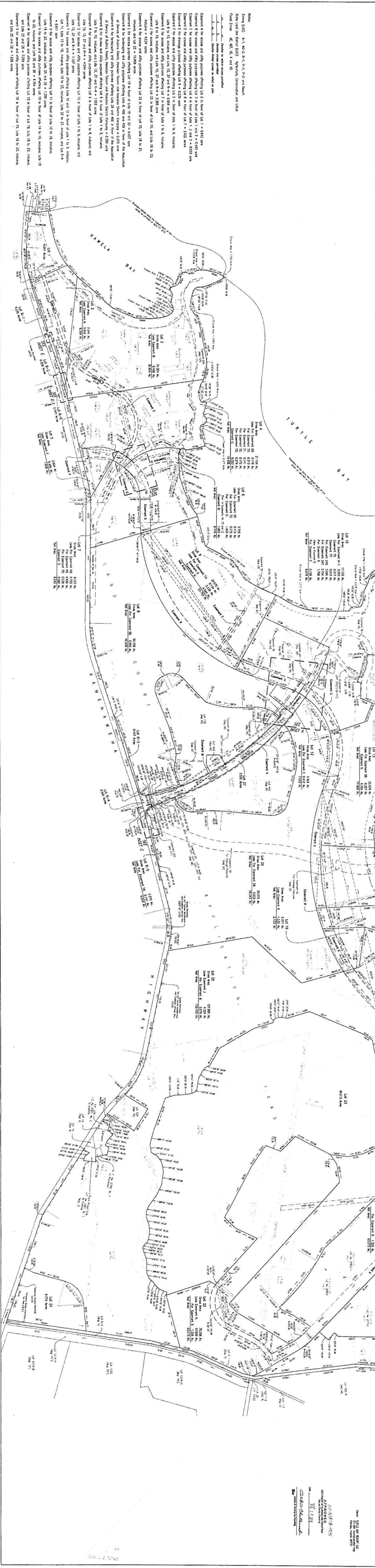
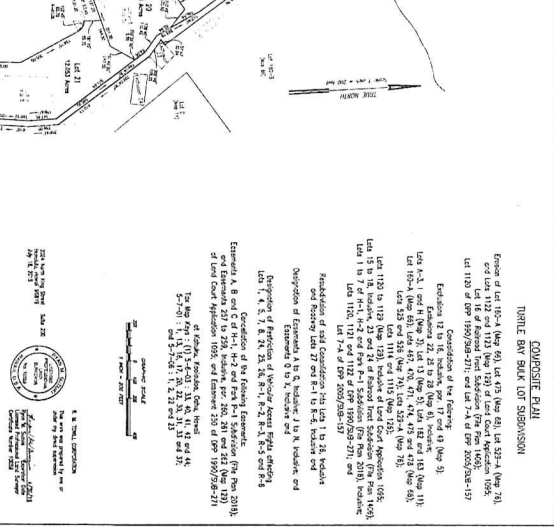
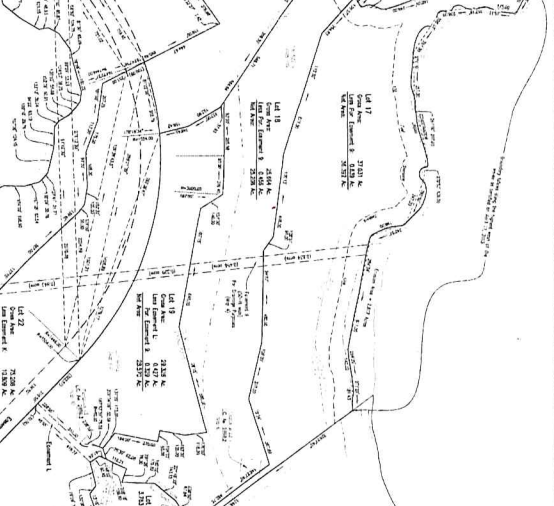
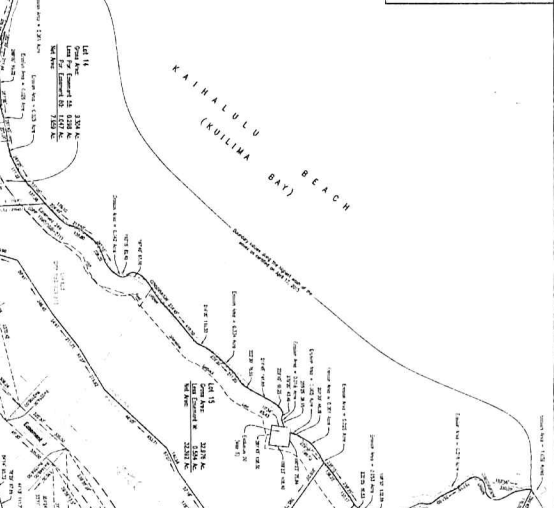
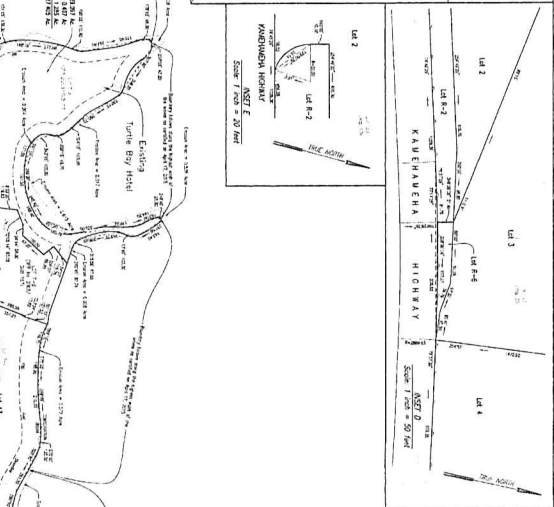
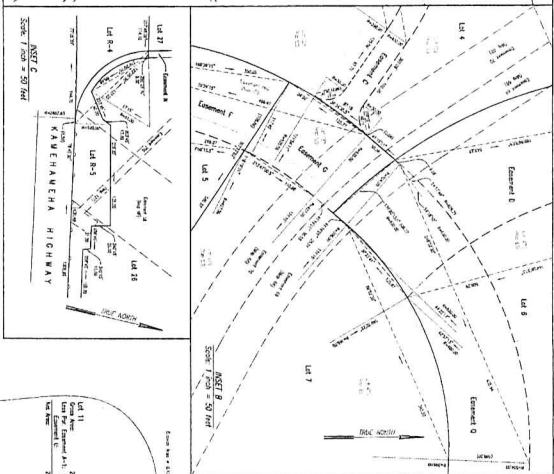
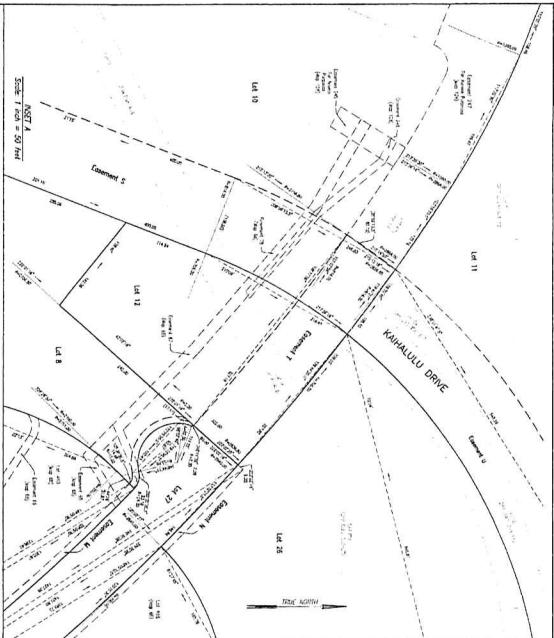


EXHIBIT "A"

Exhibit B

Act 121, Session Laws of Hawaii 2015



GOV. MSG. NO. 1221

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 12, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 12, 2015, the following bill was signed into law:

SB284 SD2 HD2 CD1

RELATING TO THE TRANSIENT
ACCOMMODATIONS TAX
ACT 121 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXHIBIT "B"

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

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THE SENATE
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Approved by the Governor

on JUN 12 2015

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

ACT 121

S.B. NO. 284
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish a
2 method to use transient accommodations tax revenues and moneys
3 from the land conservation fund to reimburse the state general
4 fund for the debt service on reimbursable general obligation
5 bonds, the proceeds of which will be used to acquire a
6 conservation easement and other real property interests in
7 Turtle Bay, Oahu, for the protection, preservation, and
8 enhancement of natural resources important to the State.

9 The legislature finds and deems that the transient
10 accommodations tax revenues and moneys from the land
11 conservation fund comprise user taxes. The source of funding
12 for the Turtle Bay conservation easement will be reimbursable
13 general obligation bonds issued by the department of budget and
14 finance. The debt service on the reimbursable general
15 obligation bonds will be reimbursed from the transient
16 accommodations tax revenues and moneys from the land
17 conservation fund. The proceeds from the reimbursable general
18 obligation bonds, the transient accommodations tax revenues, and

SB284 CD1 HMS 2015-3495-3



1 moneys from the land conservation fund will be deposited into
2 the Turtle Bay conservation easement special fund. The role of
3 the department of budget and finance is solely to facilitate the
4 financing of this transaction with the department of land and
5 natural resources purchasing the Turtle Bay conservation
6 easement and other real property interests. The legislature
7 finds that the financing of the Turtle Bay conservation easement
8 and other real property interests is essential to the execution
9 of the transaction and is for a public purpose.

10 The legislature also finds that the acquisition of the
11 Turtle Bay conservation easement and other real property
12 interests by the department of land and natural resources is
13 for the purpose of supporting, encouraging, and enhancing the
14 natural beauty of Oahu's north shore, and is land having value
15 as a resource to the State. The legislature further finds that
16 the acquisition of the Turtle Bay conservation easement and
17 other real property interests by the department of land and
18 natural resources is crucial to the protection, preservation,
19 and enhancement of the State's natural resources and to the
20 State's economic well-being, and is for a public purpose.

21 Specifically, this Act:



- 1 (1) Authorizes the department of budget and finance to
2 issue \$35,000,000 in reimbursable general obligation
3 bonds and to deposit the proceeds into the Turtle Bay
4 conservation easement special fund;
- 5 (2) Appropriates \$35,000,000 out of the Turtle Bay
6 conservation easement special fund for the department
7 of land and natural resources to acquire a
8 conservation easement and other real property
9 interests at Turtle Bay, Oahu;
- 10 (3) Allocates transient accommodations tax revenues of
11 \$1,500,000 annually to the Turtle Bay conservation
12 easement special fund;
- 13 (4) Provides that a nonprofit land conservation
14 organization shall file an application annually with
15 the board of land and natural resources requesting
16 \$1,500,000 from the land conservation fund to be used
17 for the reimbursement of debt service on the Turtle
18 Bay reimbursable general obligation bonds;
- 19 (5) Appropriates \$ 3,000,000 out of the Turtle Bay
20 conservation easement special fund to reimburse the



1 state general fund for payment of debt service on the
2 reimbursable general obligation bonds; and
3 (6) Appropriates \$500,000 from the transient
4 accommodations tax revenues to the department of land
5 and natural resources to pay for appraisal costs, due
6 diligence costs, and closing costs relating to the
7 acquisition of a conservation easement and other real
8 property interests in Turtle Bay, Oahu.

9 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
10 amended by adding four new sections to be appropriately
11 designated and to read as follows:

12 "§171-A Reimbursable general obligation bonds for
13 conservation easement and other real property interests in
14 Turtle Bay, Oahu. (a) The department of budget and finance
15 shall issue reimbursable general obligation bonds for the
16 department of land and natural resources to acquire a
17 conservation easement and other real property interests in
18 Turtle Bay, Oahu, for the protection, preservation, and
19 enhancement of natural resources, while maintaining public
20 access, as important to the State. The public shall have
21 perpetual public access to said conservation easement. The



1 conservation easement shall be in compliance with chapters 171
2 and 198. The other real property interests shall be in
3 compliance with chapter 171.

4 (b) For the purpose of this section, the acquisition of
5 the conservation easement and other real property interests
6 shall be deemed an undertaking under chapter 39.

7 (c) The reimbursable general obligation bonds issued to
8 acquire the conservation easement and other real property
9 interests shall be payable from the transient accommodations tax
10 revenues allocated to the Turtle Bay conservation easement
11 special fund established by section 171-B and from moneys from
12 the land conservation fund. The transient accommodations tax
13 revenues and moneys from the land conservation fund are and
14 shall be deemed user taxes. The revenues allocated shall be
15 deemed user taxes pursuant to chapter 39 for the undertaking.

16 (d) The reimbursable general obligation bonds shall be
17 issued in accordance with chapter 39.

18 **§171-B Turtle Bay conservation easement special fund.** (a)

19 There is established the Turtle Bay conservation easement
20 special fund to be administered by the department of land and
21 natural resources.



1 (b) Transient accommodations tax revenues allocated to
2 the Turtle Bay conservation easement special fund pursuant to
3 section 237D-6.5 and moneys from the land conservation fund
4 shall be deposited into the special fund. All interest earned
5 on the moneys in the special fund shall be credited to the
6 special fund.

7 (c) Moneys in the Turtle Bay conservation easement special
8 fund shall be expended to reimburse the state general fund for
9 payment of debt service on reimbursable general obligation bonds
10 issued to acquire the conservation easement and other real
11 property interests in Turtle Bay, Oahu.

12 (d) The Turtle Bay conservation easement special fund
13 shall be exempt from the central service expenses of section 36-
14 27 and departmental administrative expenses of section 36-30.

15 (e) Upon reimbursement to the state general fund of all
16 debt service on reimbursable general obligation bonds issued to
17 acquire the conservation easement in Turtle Bay, Oahu, any
18 unencumbered and unexpended moneys in the Turtle Bay
19 conservation easement special fund shall be transferred to the
20 tourism special fund established under section 201B-11.



1 §171-C Turtle Bay appraisal and due diligence. Any
2 appraisal and due diligence completed by the Hawaii tourism
3 authority may be used by the department of land and natural
4 resources for the acquisition of the Turtle Bay conservation
5 easement and other real property interests.

6 §171-D Lease of Turtle Bay lands. Notwithstanding any law
7 to the contrary, the board of land and natural resources may,
8 without public auction, lease lands purchased in fee simple
9 pursuant to section 171-A, to the grantor of the conservation
10 easement or its successor in interest. The purpose of the lease
11 shall be for the protection, preservation, and enhancement of
12 natural resources, while maintaining public access. The lease
13 rental shall be on a nominal basis, shall not exceed a term of
14 sixty five years, and be upon such other terms and conditions as
15 the board may determine."

16 SECTION 3. Chapter 173A, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§173A- Payment of debt service on the Turtle Bay
20 reimbursable general obligation bonds. Notwithstanding any laws
21 to the contrary:



1 (1) Beginning July 1, 2015, a nonprofit land conservation
2 organization shall file an application annually with
3 the board requesting \$1,500,000 from the land
4 conservation fund to be used for the reimbursement of
5 debt service on the Turtle Bay reimbursable general
6 obligation bonds until the bonds are fully amortized;

7 (2) The board shall not require the nonprofit land
8 conservation organization that is the recipient of a
9 grant for the payment of debt service on the Turtle
10 Bay reimbursable general obligation bonds to provide
11 any additional matching funds; and

12 (3) Moneys awarded for the payment of debt service on the
13 Turtle Bay reimbursable general obligation bonds shall
14 be deposited into the Turtle Bay conservation easement
15 special fund."

16 SECTION 4. Section 87A-42, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) In any fiscal year subsequent to the 2017-2018 fiscal
19 year in which a county public employer's contributions into the
20 fund are less than the amount of the annual required
21 contribution, the amount that represents the excess of the



1 annual required contribution over the county public employer's
2 contributions shall be deposited into the fund from a portion of
3 all transient accommodations tax revenues collected by the
4 department of taxation under section [~~237D-6.5(b)(3)~~] 237D-
5 6.5(b)(4). The director of finance shall deduct the amount
6 necessary to meet the county public employer's annual required
7 contribution from the revenues derived under section [~~237D-~~
8 ~~6.5(b)(3)~~] 237D-6.5(b)(4) and transfer the amount to the board
9 for deposit into the appropriate account of the separate trust
10 fund."

11 SECTION 5. Section 171-19, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) There is created in the department a special fund to
14 be designated as the "special land and development fund".
15 Subject to the Hawaiian Homes Commission Act of 1920, as
16 amended, and section 5(f) of the Admission Act of 1959, all
17 proceeds of sale of public lands, including interest on deferred
18 payments; all moneys collected under section 171-58 for mineral
19 and water rights; all rents from leases, licenses, and permits
20 derived from public lands; all moneys collected from lessees of
21 public lands within industrial parks; all fees, fines, and other



1 administrative charges collected under this chapter and chapter
2 183C; a portion of the highway fuel tax collected under chapter
3 243; all moneys collected by the department for the commercial
4 use of public trails and trail accesses under the jurisdiction
5 of the department; transient accommodations tax revenues
6 collected pursuant to section [~~237D-6.5(b)(2)~~] 237D-6.5(b)(5);
7 and private contributions for the management, maintenance, and
8 development of trails and accesses shall be set apart in the
9 fund and shall be used only as authorized by the legislature for
10 the following purposes:

- 11 (1) To reimburse the general fund of the State for
12 advances made that are required to be reimbursed from
13 the proceeds derived from sales, leases, licenses, or
14 permits of public lands;
- 15 (2) For the planning, development, management, operations,
16 or maintenance of all lands and improvements under the
17 control and management of the board[~~7~~] pursuant to
18 title 12, including but not limited to permanent or
19 temporary staff positions who may be appointed without
20 regard to chapter 76; provided that transient
21 accommodations tax revenues allocated to the fund



1 shall be expended as provided in section 237D-

2 6.5(b)(5);

3 (3) To repurchase any land, including improvements, in the
4 exercise by the board of any right of repurchase
5 specifically reserved in any patent, deed, lease, or
6 other documents or as provided by law;

7 (4) For the payment of all appraisal fees; provided that
8 all fees reimbursed to the board shall be deposited in
9 the fund;

10 (5) For the payment of publication notices as required
11 under this chapter; provided that all or a portion of
12 the expenditures may be charged to the purchaser or
13 lessee of public lands or any interest therein under
14 rules adopted by the board;

15 (6) For the management, maintenance, and development of
16 trails and trail accesses under the jurisdiction of
17 the department;

18 (7) For the payment to private land developers who have
19 contracted with the board for development of public
20 lands under section 171-60;



- 1 (8) For the payment of debt service on revenue bonds
2 issued by the department, and the establishment of
3 debt service and other reserves deemed necessary by
4 the board;
- 5 (9) To reimburse the general fund for debt service on
6 general obligation bonds issued to finance
7 departmental projects, where the bonds are designated
8 to be reimbursed from the special land and development
9 fund;
- 10 (10) For the protection, planning, management, and
11 regulation of water resources under chapter 174C; and
- 12 (11) For other purposes of this chapter."

13 SECTION 6. Section 201B-8, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Moneys in the convention center enterprise special
16 fund shall be used by the authority for the payment of any and
17 all of the following:

- 18 (1) Debt owed to the department of budget and finance
19 relating to the convention center [~~provided that,~~
20 ~~after the restructuring required by section 5 of Act~~
21 ~~81, Session Laws of Hawaii 2014, the annual debt~~



1 ~~service payment owed to the department shall not~~
2 ~~exceed \$16,500,000 from fiscal year 2014-2015 until~~
3 ~~fully retired]; and~~

4 (2) Expenses arising from any and all use, operation,
5 maintenance, alteration, improvement, or any
6 unforeseen or unplanned repairs of the convention
7 center, including without limitation the food and
8 beverage service and parking service provided at the
9 convention center facility, the sale of souvenirs,
10 logo items, or other items, for any future major
11 repair, maintenance, and improvement of the convention
12 center facility as a commercial enterprise or as a
13 world class facility for conventions, entertainment,
14 or public events, and for marketing the facility
15 pursuant to section 201B-7(a)(7)."

16 SECTION 7. Section 237D-6.5, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Revenues collected under this chapter shall be
19 distributed [~~as follows,~~] in the following priority, with the
20 excess revenues to be deposited into the general fund:



1 (1) \$1,500,000 shall be allocated to the Turtle Bay
2 conservation easement special fund beginning July 1,
3 2015, for the reimbursement to the state general fund
4 of debt service on reimbursable general obligation
5 bonds, including ongoing expenses related to the
6 issuance of the bonds, the proceeds of which were used
7 to acquire the conservation easement and other real
8 property interests in Turtle Bay, Oahu, for the
9 protection, preservation, and enhancement of natural
10 resources important to the State, until the bonds are
11 fully amortized;

12 [~~(1)~~] (2) \$26,500,000 shall be allocated to the convention
13 center enterprise special fund established under
14 section 201B-8;

15 [~~(2)~~] (3) \$82,000,000 shall be allocated to the tourism
16 special fund established under section 201B-11;
17 provided that:

18 (A) Beginning on July 1, 2012, and ending on June 30,
19 2015, \$2,000,000 shall be expended from the
20 tourism special fund for development and
21 implementation of initiatives to take advantage



of expanded visa programs and increased travel opportunities for international visitors to Hawaii;

(B) Of the \$82,000,000 allocated:

(i) \$1,000,000 shall be allocated for the operation of a Hawaiian center and the museum of Hawaiian music and dance at the Hawaii convention center; and

(ii) 0.5 per cent of the \$82,000,000 shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; and

(C) Of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency trust fund, established in section 201B-10, in a manner



1 sufficient to maintain a fund balance of
2 \$5,000,000 in the tourism emergency trust fund;
3 [~~(3)~~] (4) \$103,000,000 for fiscal year 2014-2015,
4 \$103,000,000 for fiscal year 2015-2016, and
5 \$93,000,000 for each fiscal year thereafter shall be
6 allocated as follows: Kauai county shall receive 14.5
7 per cent, Hawaii county shall receive 18.6 per cent,
8 city and county of Honolulu shall receive 44.1 per
9 cent, and Maui county shall receive 22.8 per cent;
10 provided that commencing with fiscal year 2018-2019, a
11 sum that represents the difference between a county
12 public employer's annual required contribution for the
13 separate trust fund established under section 87A-42
14 and the amount of the county public employer's
15 contributions into that trust fund shall be retained
16 by the state director of finance and deposited to the
17 credit of the county public employer's annual required
18 contribution into that trust fund in each fiscal year,
19 as provided in section 87A-42, if the respective
20 county fails to remit the total amount of the county's



1 required annual contributions, as required under
2 section 87A-43; and

3 ~~[(4) \$3,000,000 shall be allocated to the Turtle Bay~~
4 ~~conservation easement special fund established under~~
5 ~~section 201B-8.6 for the payment of debt service on~~
6 ~~revenue bonds, the proceeds of which were used to~~
7 ~~acquire the conservation easement in Turtle Bay, Oahu,~~
8 ~~until the bonds are fully amortized; and]~~

9 (5) Of the excess revenues deposited into the general fund
10 pursuant to this subsection, \$3,000,000 shall be
11 allocated subject to the mutual agreement of the board
12 of land and natural resources and the board of
13 directors of the Hawaii tourism authority in
14 accordance with the Hawaii tourism authority strategic
15 plan for:

16 (A) The protection, preservation, and enhancement of
17 natural resources important to the visitor
18 industry;

19 (B) Planning, construction, and repair of facilities;
20 and



1 (C) Operation and maintenance costs of public lands
2 connected with enhancing the visitor experience.

3 All transient accommodations taxes shall be paid into the
4 state treasury each month within ten days after collection and
5 shall be kept by the state director of finance in special
6 accounts for distribution as provided in this subsection.

7 As used in this subsection, "fiscal year" means the twelve-
8 month period beginning on July 1 of a calendar year and ending
9 on June 30 of the following calendar year."

10 SECTION 8. Section 201B-8.5, Hawaii Revised Statutes, is
11 repealed.

12 [~~"§201B-8.5] Revenue bonds for conservation easement in~~
13 ~~Turtle Bay, Oahu. (a) As authorized by section 6 of Act 81,~~
14 ~~Session Laws of Hawaii 2014, the authority shall issue revenue~~
15 ~~bonds to acquire a conservation easement in Turtle Bay, Oahu.~~
16 ~~The public shall have perpetual public access to said~~
17 ~~conservation easement. The conservation easement shall be in~~
18 ~~compliance with chapter 198.~~

19 ~~Prior to executing the agreement to acquire the~~
20 ~~conservation easement, the authority shall:~~



1 ~~(1) Obtain an appraisal and perform its due diligence on~~
2 ~~the conservation easement and property rights proposed~~
3 ~~to be acquired; and~~

4 ~~(2) Offer to hold an informational briefing for the~~
5 ~~legislature. The offer shall be made through the~~
6 ~~president of the senate and speaker of the house of~~
7 ~~representatives.~~

8 ~~(b) For the purpose of this section, the authority shall~~
9 ~~be deemed a "department" and the acquisition of the conservation~~
10 ~~easement shall be deemed an "undertaking" under chapter 39.~~

11 ~~(c) The revenue bonds issued to acquire the conservation~~
12 ~~easement shall be secured by and payable from the transient~~
13 ~~accommodations tax revenues allocated to the Turtle Bay~~
14 ~~conservation easement special fund established pursuant to~~
15 ~~section 201B 8.6. For this purpose, the revenues allocated~~
16 ~~shall be deemed "user taxes" for the undertaking.~~

17 ~~(d) The revenue bonds shall be issued in accordance with~~
18 ~~chapter 39, part III. The authority shall request the director~~
19 ~~of finance, on behalf of the authority, to perform the duties~~
20 ~~specified under section 39 68 regarding the preparation, sale,~~
21 ~~and administration of the revenue bonds."]~~



1 SECTION 9. Section 201B-8.6, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§201B-8.6] Turtle Bay conservation easement special~~
4 ~~fund. (a) There is established the Turtle Bay conservation~~
5 ~~easement special fund.~~

6 ~~(b) Transient accommodations tax revenues allocated to the~~
7 ~~Turtle Bay conservation easement special fund pursuant to~~
8 ~~section 237D-6.5 shall be deposited into the special fund. All~~
9 ~~interest earned on the moneys in the special fund shall be~~
10 ~~credited to the special fund.~~

11 ~~(c) Moneys in the Turtle Bay conservation easement special~~
12 ~~fund shall be expended to pay the debt service on revenue bonds~~
13 ~~issued to acquire the conservation easement in Turtle Bay, Oahu,~~
14 ~~pursuant to section 201B-8.5.~~

15 ~~(d) The Turtle Bay conservation easement special fund~~
16 ~~shall be exempt from the central service expenses of section 36-~~
17 ~~27 and departmental administrative expenses of section 36-30."]~~

18 SECTION 10. Act 81, Session Laws of Hawaii 2014, is
19 amended by repealing sections 5 through 8.

20 ~~["SECTION 5. (a) The executive director of the Hawaii~~
21 ~~tourism authority and the director of finance shall enter into~~



1 ~~negotiations to restructure the debt owed to the department of~~
2 ~~budget and finance for the convention center so that the annual~~
3 ~~amount payable on the debt service is not more than \$16,500,000~~
4 ~~until fully retired.~~

5 ~~(b) If the debt is not restructured as required under~~
6 ~~subsection (a), no state funds, including revenue bond funds,~~
7 ~~shall be expended to acquire any conservation easement or other~~
8 ~~real property interest in Turtle Bay, Oahu, notwithstanding the~~
9 ~~authorization under section 201B A, Hawaii Revised Statutes, and~~
10 ~~sections 6 and 7 of this Act.~~

11 ~~SECTION 6. (a) The board of directors of the Hawaii~~
12 ~~tourism authority, with the approval of the governor, is~~
13 ~~authorized to issue revenue bonds in the sum of \$40,000,000 or~~
14 ~~so much thereof as may be necessary for fiscal year 2014-2015~~
15 ~~for the purpose of acquiring a conservation easement in Turtle~~
16 ~~Bay, Oahu, as authorized under section 201B A, Hawaii Revised~~
17 ~~Statutes.~~

18 ~~(b) The board of directors, with the approval of the~~
19 ~~governor, shall issue the revenue bonds under such terms,~~
20 ~~conditions, and maturity dates that do not require any debt~~
21 ~~service payment to exceed \$3,000,000 in any fiscal year.~~



~~(c) If the board of directors cannot issue revenue bonds in accordance with the conditions of this section or section 201B-A or chapter 39, part III, Hawaii Revised Statutes, no state funds shall be expended to acquire any conservation easement or other real property interest in Turtle Bay, Oahu.~~

~~SECTION 7. There is appropriated out of the revenue bond proceeds authorized by section 6 of this Act the sum of \$40,000,000 or so much thereof as may be necessary for fiscal year 2014-2015 to carry out the purpose of section 6; provided that any unexpended or unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2014-2015 and shall lapse instead on June 30, 2016.~~

~~The sum appropriated shall be expended by the Hawaii tourism authority for the purpose of this Act.~~

~~SECTION 8. This Act shall not be severable. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, then the entire Act shall be invalid."]~~

SECTION 11. (a) The department of budget and finance, with the approval of the governor, is authorized to issue reimbursable general obligation bonds in the sum of \$35,000,000



1 or so much thereof as may be necessary for fiscal year 2015-2016
2 for the purpose of acquiring a conservation easement and other
3 real property interests in Turtle Bay, Oahu, and the same sum
4 shall be deposited into the Turtle Bay conservation easement
5 special fund.

6 (b) The department of budget and finance, with the
7 approval of the governor, shall issue the reimbursable general
8 obligation bonds in such aggregate principal amount and under
9 such terms, conditions, and maturity dates such that the
10 required payments of principal and interest on the reimbursable
11 general obligation bonds shall not exceed \$3,000,000 in any
12 fiscal year.

13 SECTION 12. There is appropriated out of the Turtle Bay
14 conservation easement special fund the sum of \$35,000,000 or so
15 much thereof as may be necessary for fiscal year 2015-2016 to
16 finance the acquisition of a conservation easement and other
17 real property interests in Turtle Bay, Oahu.

18 The sum appropriated shall be expended by the department of
19 land and natural resources for the purposes of this Act.

20 SECTION 13. There is appropriated out of the Turtle Bay
21 conservation easement special fund the sum of \$3,000,000 or so



1 much thereof as may be necessary for fiscal year 2015-2016 for
2 the reimbursement of the state general fund for the payment of
3 debt service on the reimbursable general obligation bonds.

4 The sum appropriated shall be expended by the department of
5 land and natural resources for the purposes of this Act.

6 SECTION 14. Of the excess revenues deposited into the
7 general fund pursuant to section 237D-6.5(b), Hawaii Revised
8 Statutes, \$500,000, or so much thereof as may be necessary for
9 fiscal year 2015-2016 shall be appropriated to the department of
10 land and natural resources to pay for appraisal costs, due
11 diligence costs, and closing costs relating to the acquisition
12 of the Turtle Bay conservation easement and other real property
13 interests.

14 The sum appropriated shall be expended by the department of
15 land and natural resources for the purposes of this Act.

16 SECTION 15. In codifying the new sections added by section
17 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 16. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 17. This Act shall take effect upon approval;
2 provided that:

3 (1) If a contract to acquire the Turtle Bay Conservation
4 easement has not been entered into by December 31,
5 2015, part I of the Act shall be repealed on January
6 1, 2016;

7 (2) The amendments made to section 36-27(a), Hawaii
8 Revised Statutes, by Section 2 of this Act shall not
9 be repealed when that section is reenacted on June 30,
10 2015, pursuant to Act 79, Session Laws of Hawaii 2009;
11 and

12 (3) The amendments made to section 36-30(a), Hawaii
13 Revised Statutes, by Section 2 of this Act shall not
14 be repealed when that section is reenacted on June 30,
15 2015, pursuant to Act 79, Session Laws of Hawaii 2009.

APPROVED this 12 day of JUN, 2015



GOVERNOR OF THE STATE OF HAWAII

Exhibit C

Draft Purchase and Sale Agreement

**Turtle Bay Resort
North Shore, Island of Oahu, Hawai'i**

PURCHASE AND SALE AGREEMENT

BETWEEN

TURTLE BAY RESORT, LLC

AND

THE STATE OF HAWAI'I

AND

THE TRUST FOR PUBLIC LAND

EXHIBIT "C"

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made as of _____, 2015 (the "**Effective Date**"), by and between **TURTLE BAY RESORT, LLC** ("**Seller**"), a Delaware limited liability company, having an office at 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731, the **STATE OF HAWAII** (the "**State**") by its Board of Land and Natural Resources, having an office at 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("**BLNR**"), and **THE TRUST FOR PUBLIC LAND** ("**TPL**"), a California non-profit public benefit corporation, having an office address at 1003 Bishop Street, Pauahi Tower, Suite 740, Honolulu Hawai'i 96813. Seller, the State, and TPL shall be referred to collectively as the "**Parties**".

RECITALS

A. Seller owns certain lands situated in Kahuku, Hawai'i including, but not limited to, those lands described in **Exhibit A** and shown in **Exhibit A-1** attached hereto (collectively, the "**Phase I CE Property**") and described in **Exhibit B** and shown in **Exhibit B-1** attached hereto (the "**Phase II CE Property**"). The Phase I CE Property and Phase II CE Property are sometimes referred to collectively as the "**CE Properties**".

B. The State desires to buy, and Seller desires to sell, a conservation easement over the Phase I CE Property, subject to the terms and conditions contained herein. The State desires to reserve, and Seller desires to grant, a right to purchase a conservation easement over the Phase II CE Property, subject to the terms and conditions contained herein (the "**Phase II CE Option**"). The conveyance of each conservation easement from Seller to the State would be made by a separate deed of conservation easement in favor of BLNR (the "**Deed of Conservation Easement**").

C. Seller also owns those certain parcels of land situated in Kahuku, Hawai'i and described in **Exhibit C** and shown in **Exhibit C-1** attached hereto (the "**State Fee Simple Property**").

D. The State desires to buy, and Seller desires to sell, the State Fee Simple Property, subject to the terms and conditions contained herein. The conveyance of the State Fee Simple Property from Seller to the State would be by warranty deed (the "**State Deed**"). Immediately following the conveyance of the State Fee Simple Property by the Seller to the State, the State agrees to lease the State Fee Simple Property to Seller (the "**Lease Back**"), as more fully described herein.

E. Pursuant to its Cooperative Agreement with the U.S. Army, TPL desires to contribute funds to the State's purchase of the Phase I CE Property and the State Fee Simple Property. TPL also desires to have its Army Compatible Use Buffer ("**ACUB**") language, and associated use restrictions, encumber the Phase I CE Property.

F. Conveyance of the State Fee Simple Property is expressly contingent upon conveyance of other real property interests pursuant to a separate Purchase and Sale Agreement

(the "**City PSA**"), made by and between the Seller and the **CITY AND COUNTY OF HONOLULU** (the "**City**"), a municipal corporation of the State having an office at 530 South King Street, Honolulu, Hawai'i 96813.

NOW, THEREFORE, for and in consideration of mutual covenants and agreements hereinafter set forth, the Seller and State hereby agree as follows:

DEFINED TERMS

For purposes of this Agreement, the capitalized terms listed below have the meanings set forth below:

"**ACUB**" shall have the meaning ascribed thereto in Recital E.

"**Agreement**" shall have the meaning ascribed thereto in opening paragraph of this Agreement.

"**Apportionment Date**" shall have the meaning ascribed thereto in Section 4.8.

"**BLNR**" shall have the meaning ascribed thereto in opening paragraph of this Agreement.

"**Bureau**" shall have the meaning ascribed thereto in Section 4.7(a).

"**CE Properties**" shall have the meaning ascribed thereto in Recital A.

"**City**" shall have the meaning ascribed thereto in Recital F.

"**City Deed**" shall have the meaning ascribed thereto in Section 1.1(d).

"**City Fee Simple Closing**" shall have the meaning ascribed thereto in Section 4.1(a).

"**City Fee Simple Property**" shall have the meaning ascribed thereto in Section 1.1(d).

"**City PSA**" shall have the meaning ascribed thereto in Recital F.

"**Closing**" shall have the meaning ascribed thereto in Section 4.1.

"**Continuing Obligation**" shall have the meaning ascribed thereto in Section 4.23.

"**Deed of Conservation Easement**" shall have the meaning ascribed thereto in Recital B.

"**Designated Employees**" shall have the meaning ascribed thereto in Section 5.2.

"**DPP**" shall have the meaning ascribed thereto in Section 4.16(f).

"**Effective Date**" shall have the meaning ascribed thereto in opening paragraph of this Agreement,

"**Entitlements**" shall have the meaning ascribed thereto in Section 2.4.

"**Entitlement Improvement**" shall mean constructing, developing, improving, undertaking, maintaining, repairing, replacing, and using on, under and/or across the CE Properties, of any improvement as needed in order to fulfill the requirements of the Entitlements.

"**Environmental Escrow Instructions**" shall have the meaning ascribed thereto in Section 4.23(b)(iii).

"**Environmental Law**" means any federal, State or local law, statute, ordinance, code, rule, regulation, or rule of common law, which pertains to health, safety, any Hazardous Substance, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous

Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control 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 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; and any other State or federal environmental statutes, and all rules, and regulations, now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

“Environmental Security” shall have the meaning ascribed thereto in Section 4.23(b)(iii).

“ESA” shall have the meaning ascribed thereto in Section 4.15(o).

“Escrow Company” shall have the meaning ascribed thereto in Section 1.3(a).

“Fee Title Objection” shall have the meaning ascribed thereto in Section 2.2(a).

“Golf Agreement” shall have the meaning ascribed thereto in Section 2.6.

“Golf Memorandum” shall have the meaning ascribed thereto in Section 2.6.

“Hazardous Substances” means any substance or material which (A) has been or is at any time determined by any state or federal court in a reported decision to be a waste, pollutant, contaminant, hazardous waste or hazardous substance, (B) has been or is determined by any governmental authority to be a waste, pollutant, contaminant, hazardous waste, hazardous substance or hazardous material capable of posing a risk of injury to health, safety or property, or (C) is described as, or has been or is determined to be a waste, pollutant, contaminant, hazardous waste, hazardous substance, or hazardous material under any Environmental Law.

“HST” shall mean Hawai‘i Standard Time.

“Lease” shall have the meaning ascribed thereto in Section 2.4.

“Lease Back” shall have the meaning ascribed thereto in Recital B.

“NFA” shall have the meaning ascribed thereto in Section 4.23(b)(ii).

“NFR” shall have the meaning ascribed thereto in Section 4.23(b)(ii).

“Parties” shall have the meaning ascribed thereto in the opening paragraph of this Agreement.

“Pending Challenges” shall have the meaning ascribed thereto in Section 5.1(e).

“Permitted Encumbrance” shall have the meaning ascribed thereto in Section 2.2(c).

“Phase I CE” shall have the meaning ascribed thereto in Section 1.1(a).

“Phase I CE and State Fee Simple Purchase Price” shall have the meaning ascribed thereto in Section 1.2(a).

“Phase I CE and State Fee Simple Baseline Inspection” shall have the meaning ascribed thereto in Section 3.4(a).

“Phase I CE and State Fee Simple Baseline Report” shall have the meaning ascribed thereto in Section 3.4(a).

“Phase I CE Closing” shall have the meaning ascribed thereto in Section 4.1.

“Phase I CE Conditions” shall have the meaning ascribed thereto in Section 3.3(a).

“Phase I CE Property” shall have the meaning ascribed thereto in Recital A.

“Phase I CE Purchase Price” shall have the meaning ascribed thereto in Section 1.2(a).

“Phase I CE Survey” shall have the meaning ascribed thereto in Section 2.1(a).

“Phase I CE Title Policy” shall have the meaning ascribed thereto in Section 2.3(a).

“Phase I CE Title Report” shall have the meaning ascribed thereto in Section 2.1(a).

“Phase I CE/Fee Simple Closing Date” shall mean October 15, 2015.

“Phase I CE/Fee Simple Closing Deadline” shall mean November 30, 2015.

“Phase II CE” shall have the meaning ascribed thereto in Section 1.1(b).

3.4(a). **"Phase II CE Baseline Inspection"** shall have the meaning ascribed thereto in Section 3.4(a).

3.4(b). **"Phase II CE Baseline Report"** shall have the meaning ascribed thereto in Section 3.4(b).

"Phase II CE Closing Date" shall have the meaning ascribed thereto in Section 4.1(c).

"Phase II CE Closing" shall have the meaning ascribed thereto in Section 4.1.

"Phase II CE Conditions" shall have the meaning ascribed thereto in Section 3.3(b).

"Phase II CE Option" shall have the meaning ascribed thereto in Recital B of this Agreement.

"Phase II CE Property" shall have the meaning ascribed thereto in Recital A.

"Phase II CE Purchase Price" shall have the meaning ascribed thereto in Section 1.2(b).

"Phase II CE Survey" shall have the meaning ascribed thereto in Section 2.1(a).

"Phase II CE Title Policy" shall have the meaning ascribed thereto in Section 2.3(b).

"Phase II CE Title Report" shall have the meaning ascribed thereto in Section 2.1(a).

"Act 121" shall mean and refer to the terms and provisions of Act 121, Session Laws of Hawai'i 2015, as the same may be amended and supplemented from time to time.

"Seller" shall have the meaning ascribed thereto in opening paragraph of this Agreement.

"State" shall have the meaning ascribed thereto in opening paragraph of this Agreement.

"State Deed" shall have the meaning ascribed thereto in Recital D.

"State Fee Simple Closing" shall have the meaning ascribed thereto in Section 4.1.

3.3(c). **"State Fee Simple Conditions"** shall have the meaning ascribed thereto in Section 3.3(c).

"State Fee Simple Property" shall have the meaning ascribed thereto in Recital C.

1.2(a). **"State Fee Simple Purchase Price"** shall have the meaning ascribed thereto in Section 1.2(a).

"State Fee Simple Survey" shall have the meaning ascribed thereto in Section 2.1(b).

2.3(c). **"State Fee Simple Title Policy"** shall have the meaning ascribed thereto in Section 2.3(c).

2.1(b). **"State Fee Simple Title Report"** shall have the meaning ascribed thereto in Section 2.1(b).

"State Inspection Period" shall mean the period ending at 5:00 p.m. HST on October 7, 2015, except for inspections to complete the Phase II Environmental Site Assessment which shall end on April 15, 2016.

"State's Title Objections" shall have the meaning ascribed thereto in Section 2.2(b).

"Taxes" shall have the meaning ascribed thereto in Section 4.8.

"Title Company" shall have the meaning ascribed thereto in Section 2.1(a).

"TPL" shall have the meaning ascribed thereto in opening paragraph of this Agreement.

"U.S. Army" means the U.S. Army Garrison Hawai'i.

ARTICLE I

PURCHASE AND SALE

1.1 Agreement of Purchase and Sale.

(a) Phase I CE. Subject to the terms and on the conditions set forth in this Agreement, Seller agrees to sell and convey and the State agrees to purchase a conservation easement over the Phase I CE Property (the "**Phase I CE**").

(b) Phase II CE. Subject to the terms and on the conditions set forth in this Agreement, upon exercise by the State of the Phase II CE Option, Seller agrees to sell and convey and the State agrees to purchase a conservation easement over the Phase II CE Property (the "**Phase II CE**"). The State shall give the Seller written notice of the State's intention and desire to exercise the Phase II CE Option no later than six (6) months prior to the Phase II CE Closing Date, as such a term is herein defined.

(c) State Fee Simple Property. Subject to the terms and on the conditions set forth in this Agreement, Seller agrees to sell and convey, and the State agrees to purchase, the State Fee Simple Property. The State Deed shall be a warranty deed.

(d) Purchase and Sale Contingent. The obligations of the Parties to close the transactions contemplated herein are expressly contingent upon the sale and conveyance of the Phase I CE to the State, the sale and conveyance of the State Fee Simple Property to the State, and the simultaneous closing of the transactions contemplated in the City PSA. The transaction contemplated in the City PSA may be generally summarized as follows: Seller owns that certain parcel of land situated in Kahuku, Hawai'i and described in Exhibit D and shown in Exhibit D-1 attached hereto (the "**City Fee Simple Property**"). The City desires to buy, and Seller desires to sell, the City Fee Simple Property, subject to the terms and conditions contained in the City PSA. The conveyance of the City Fee Simple Property from Seller to the City would be by deed (the "**City Deed**").

1.2 Purchase Price.

(a) The purchase price for the Phase I CE and the State Fee Simple Property shall be THIRTY SEVEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$37,500,000.00) (the "**Phase I CE and State Fee Simple Purchase Price**", or separately the "**Phase I CE Purchase Price**" and the "**State Fee Simple Purchase Price**"), which is comprised of THIRTY FIVE MILLION AND NO/DOLLARS (\$35,000,000.00) of funds from the State, and TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00) in U.S. Army funds from TPL.

(b) The purchase price for the Phase II CE shall be THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00) (the "**Phase II CE Purchase Price**").

1.3 Payment of Purchase Price.

(a) Phase I CE Property/State Fee Simple Property. The Phase I CE Purchase Price and the State Fee Simple Purchase Price shall be payable in full at Phase I CE Closing and State Fee Simple Closing, as such terms are herein defined, respectively, in cash by check or by wire transfer of immediately available federal funds to a bank account designated by TITLE GUARANTY ESCROW SERVICES, INC. ("Escrow Company") in writing to the State prior to the Phase I CE Closing and State Fee Simple Closing. The Phase I CE and State Fee Simple Purchase Price shall be so deposited at least two (2) business days prior to the Phase I CE/Fee Simple Closing Date.

(b) Phase II CE. Provided the State has timely exercised the Phase II CE Option, the Phase II CE Purchase Price shall be payable in full at the Phase II CE Closing in cash by check or by wire transfer of immediately available federal funds to a bank account designated by Escrow Company in writing to the State prior to the Phase II CE Closing. The Phase II CE Purchase Price shall be so deposited at least two (2) business days prior to the date of the Phase II CE Closing.

1.4 Delivery to Escrow Company. Upon full execution of this Agreement, Seller shall, on behalf of and with a copy to the State, deposit an executed copy of this Agreement with Escrow Company and this Agreement shall (along with any instructions not inconsistent with this Agreement as any party hereto may deliver to Escrow Company) serve as escrow instructions to Escrow Company for the consummation of the purchase and sale transactions contemplated hereby. The Parties agree to execute such additional joint escrow instructions as Escrow Company may reasonably require and which are not inconsistent with the provisions hereof; provided, however, that in the event of any conflict between the provisions of this Agreement and any escrow instructions external to this Agreement, the terms of this Agreement shall control.

ARTICLE II

TITLE, SURVEY AND CONVEYANCE

2.1 Delivery of Title Report and Survey.

(a) Seller has delivered to the State a current title report from TITLE GUARANTY OF HAWAII, INC. (the "Title Company"), covering the Phase I CE Property and the Phase II CE Property (the "Phase I CE Title Report" and the "Phase II CE Title Report", respectively), along with Seller's current or updated survey(s) and map(s) covering the Phase I CE Property and the Phase II CE Property (the "Phase I CE Survey" and the "Phase II CE Survey", respectively).

(b) Seller has delivered to the State a current title report from the Title Company, covering the State Fee Simple Property (the "State Fee Simple Title Report"), along with Seller's current or updated survey(s) and map(s) covering the State Fee Simple Property (the "State Fee Simple Survey").

2.2 Title Objections.

(a) The State has notified the Seller in writing of its objections to any exceptions listed in the State Fee Simple Title Report or State Fee Simple Survey (the “**Fee Title Objections**”), and except for the Fee Title Objections, the State has accepted all exceptions to the State Fee Simple Title Report and State Fee Simple Survey and any other items shown thereon. Seller has informed the State in writing that (a) Seller will remove or cause the removal of or modify to the State’s satisfaction, all Fee Title Objections, or (b) Seller is unable or unwilling to remove or cause the removal of or modify to the State’s satisfaction one or more of the Fee Title Objections. Notwithstanding anything to the contrary contained herein, Seller shall have no obligation to take any steps or bring any action or proceeding or otherwise to incur any expense whatsoever to eliminate or modify any of the Fee Title Objections. If Seller advises the State that Seller is unable or unwilling to eliminate or modify all of the Fee Title Objections to the State’s satisfaction, then anytime thereafter but prior to the expiration of the State Inspection Period, the State may terminate this Agreement by delivering notice thereof in writing to Seller, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein.

(b) The State has notified the Seller in writing of its objections to any exceptions listed in the Phase I CE Title Report, the Phase I CE Survey, the Phase II CE Title Report or Phase II CE Survey (the “**State’s Title Objections**”), and except for the State’s Title Objections, the State has accepted all exceptions to the Phase I CE Title Report, the Phase I CE Survey, the Phase II CE Title Report, and Phase II CE Survey and any other items shown thereon. Seller has informed the State in writing that (a) Seller will remove or cause the removal of or modify to the State’s satisfaction, as the case may be, all State’s Title Objections, or (b) Seller is unable or unwilling to remove or cause the removal of or modify to the State’s satisfaction one or more of the State’s Title Objections. Notwithstanding anything to the contrary contained herein, Seller shall have no obligation to take any steps or bring any action or proceeding or otherwise to incur any expense whatsoever to eliminate or modify any of the State’s Title Objections. If Seller advises the State that Seller is unable or unwilling to eliminate or modify all of the State’s Title Objections to the State’s satisfaction, then any time thereafter but prior to the expiration of the State Inspection Period, the State may terminate this Agreement by delivering notice thereof in writing to Seller, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section 9.19 herein.

(c) The term “**Permitted Encumbrances**” as used herein includes: (a) with respect to the State Fee Simple Property, any exception that is reflected in the State Fee Simple Title Report or State Fee Simple Survey and has not been objected to in the Fee Title Objections, excepting only those Fee Title Objections that Seller has agreed to remove or cause the removal of or modify to the State’s satisfaction as set forth in Section 2.2(a); (b) with respect to the CE Properties, any exception that is reflected in the Phase I CE Title Report, the Phase I CE Survey, the Phase II CE Title Report or Phase II CE Survey and has not been objected to in the State’s Title Objections, excepting only those State’s Title Objections that Seller has agreed to remove or cause the removal of or modify to the State’s satisfaction as set forth in Section 2.2(b); and (c) with respect to the CE Properties and State Fee Simple Property, the lien of real property taxes and/or assessments not yet due and owing as of the date of the applicable closing.

(d) Notwithstanding the foregoing paragraph 2.2(c), the Parties agree that mortgages, security interests or monetary liens in, to or encumbering the State Fee Simple Property are not Permitted Encumbrances.

(e) Any tenant lease, occupancy agreement, license agreement, right of use, right of entry, mortgage, security interest or monetary lien in, to or encumbering the CE Properties shall be considered a Permitted Encumbrance to the extent and only to the extent fully and irrevocably subordinated.

2.3 Conveyance of Title.

(a) Seller shall convey and transfer to BLNR on behalf of the State at the Phase I CE Closing a conservation easement which will enable the Title Company to issue to the State a standard owner's policy of title insurance (the "**Phase I CE Title Policy**") covering the State's conservation easement interest in the Phase I CE Property, in the full amount of the Phase I CE Purchase Price and in such form as shall be agreed by the State and Title Company prior to expiration of the State Inspection Period.

(b) Seller shall convey and transfer to the BLNR on behalf of the State at the Phase II CE Closing a conservation easement which will enable the Title Company to issue to the State a standard owner's policy of title insurance (the "**Phase II CE Title Policy**") covering the State's conservation easement interest in the Phase II CE Property, in the full amount of the Phase II CE Purchase Price and in such form as shall be agreed by the State and Title Company prior to expiration of the State Inspection Period, or such later date as may be agreed upon in writing by the State and Seller.

(c) Seller shall convey and transfer to the State at the State Fee Simple Closing the fee simple interest in the State Fee Simple Property which will enable the Title Company to issue to the State a standard owner's policy of title insurance (the "**State Fee Simple Title Policy**") covering the State's ownership interest in the State Fee Simple Property, in the full amount of the State Fee Simple Purchase Price and in such form and with such endorsements as shall be agreed by the State and Title Company prior to expiration of the State Inspection Period.

2.4 Lease. The State and Seller shall negotiate in good faith a separate lease agreement (the "**Lease**"), wherein the State would lease the State Fee Simple Property to Seller. The Lease shall be for a term of sixty-five (65) years, for a nominal annual rent, and include such terms and conditions as approved by the Board and as mutually acceptable to the State and Seller. The Lease shall contain terms and conditions substantially similar to the conservation covenants and restrictions contained in the Phase I CE Deed of Conservation Easement.

2.5 ACUB Language. The Phase I Deed of Conservation Easement shall incorporate language substantially similar to the language that appears in **Exhibit E** attached hereto, which language shall bind the Phase I CE Property and run with the land.

2.6 Golf Privileges. The State and Seller agree that, concurrently with the Phase I CE Closing, the Parties shall execute an Agreement Regarding Golf Privileges, documenting the intention to grant practice rights in perpetuity to the Kahuku High School, or successor high

school, golf team and coaching staff at the Turtle Bay Resort golf courses and range during the official Oahu Interscholastic Association golf season, at no cost (the "**Golf Agreement**"), and record a Memorandum of Agreement Regarding Golf Privileges (the "**Golf Memorandum**"). The Kahuku High School coaching staff must reserve tee times no earlier than seven (7) days in advance, unless otherwise approved by the Turtle Bay Resort Director of Golf. Upon request, golf carts will be provided at no charge to the coaching staff, subject to availability.

ARTICLE III

INSPECTION PERIOD

3.1 Right of Inspection.

(a) Seller has granted to the State certain rights of inspection and investigation of the CE Properties and the State Fee Simple Property. During the State Inspection Period, the State has the right, at the State's sole cost and expense, to make physical inspections and investigations of the CE Properties and the State Fee Simple Property. The State understands and agrees that any on-site inspections of the CE Properties and the State Fee Simple Property shall be conducted upon at least twenty-four (24) hours' prior written notice to Seller and in the presence of Seller or its representative. Such physical inspections shall not unreasonably interfere with the use of the CE Properties and the State Fee Simple Property by Seller or its tenants, visitors, concessionaires, licensees or guests. Physical inspections that include drilling, boring or other invasive techniques shall be subject to Seller's prior written consent, and in any event shall be conducted in accordance with standards customarily employed in the industry and in compliance with law. No consent by the Seller to any entries, surveys, tests, investigations or the like shall be deemed to constitute a waiver by Seller or assumption of liability or risk by Seller. Following each entry by the State with respect to inspections or tests on the CE Properties and the State Fee Simple Property, the State shall restore such property to a condition which is as near to its original condition as existed prior to any such inspections or tests. Seller shall reasonably cooperate with the State in its due diligence but shall not be obligated to incur any cost or liability to third parties in connection therewith except as set forth in Section 3.1(b) herein. The State shall not contact any tenants, visitors, concessionaires, licensees or guests of Seller without obtaining Seller's prior written consent and shall not disrupt Seller's, any tenant's, visitor's, concessionaire's, licensee's or guest's activities on or around the CE Properties and the State Fee Simple Property in any material respect.

(b) Seller has, at Seller's cost and expense, provided all materials, data and information it has related to the State Fee Simple Property and the CE Properties to the State.

3.2 Condition of Inspection. The State shall not permit any mechanic's or materialmen's liens or other liens to attach to the CE Properties or the State Fee Simple Property by reason of the performance of any work or the purchase of any materials by the State or any other person in connection with any rights of inspection and investigation conducted by or for the State, as described in Sections 3.1(a) and 3.4.

3.3 Objections to Conditions on the CE Properties and State Fee Simple Property.

(a) If, based upon the inspections and investigations by the State described hereinabove, the State determines in its sole and absolute discretion not to proceed with the Phase I CE, then the State may terminate this Agreement by giving written notice thereof to the Seller, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein. In the event that the State determines in its sole and absolute discretion that it is willing to proceed with the Phase I CE subject to certain modified conditions ("**Phase I CE Conditions**"), then the State shall notify Seller in writing of the State's proposed Phase I CE Conditions on or before the expiration of the State Inspection Period. In the event that the State timely and properly notifies Seller of its Phase I CE Conditions, Seller shall within three (3) days after the State Inspection Period ends either (i) accept and agree to the Phase I CE Conditions, or (ii) terminate this Agreement by giving written notice thereof to the State, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein.

(b) If, based upon the inspections and investigations by the State described hereinabove, the State determines in its sole and absolute discretion not to proceed with the Phase II CE, then the State may terminate this Agreement by giving written notice thereof to the Seller, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein. In the event that the State determines in its sole and absolute discretion that it is willing to proceed with the Phase II CE subject to certain modified conditions ("**Phase II CE Conditions**"), then the State shall notify Seller in writing of the State's proposed Phase II CE Conditions on or before the expiration of the State Inspection Period. In the event that the State timely and properly notifies Seller of its Phase II CE Conditions, Seller shall within three (3) days after the State Inspection Period ends either (i) accept and agree to the Phase II CE Conditions, or (ii) terminate this Agreement by giving written notice thereof to the State, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein.

(c) If, based upon the inspections and investigations by the State described hereinabove, the State determines in its sole and absolute discretion not to proceed with the State Fee Simple Property acquisition, then the State may terminate this Agreement by giving written notice thereof to the Seller, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein. In the event that the State determines in its sole and absolute discretion that it is willing to proceed with the State Fee Simple Property acquisition subject to certain modified conditions (the "**State Fee Simple Conditions**"), the State shall notify Seller in writing of the State's

proposed State Fee Simple Conditions on or before the expiration of the State Inspection Period. In the event that the State timely and properly notifies Seller or its any State Fee Simple Conditions, Seller shall within three (3) days after the State Inspection Period ends either (i) accept and agree to the State Fee Simple Conditions, or (ii) terminate this Agreement by giving written notice thereof to the State, in which case the Parties shall be released from all further obligations under this Agreement, except with respect to the surviving obligations in Section(s) 9.19 herein. The State's failure to provide written notice to Seller of termination or State Fee Simple Conditions prior to the expiration of the State Inspection Period shall be deemed to constitute the State's waiver of such objections and acceptance of the condition of the State Fee Simple Property.

3.4 Baseline Inspection and Baseline Reports.

(a) Seller has granted to the State certain rights of inspection and investigation of the Phase I CE Property and the State Fee Simple Property (the "**Phase I CE and State Fee Simple Baseline Inspection**") in order to collect data for the baseline report and documentation (the "**Phase I CE and State Fee Simple Baseline Report**"). The Phase I CE and State Fee Simple Baseline Report is intended to provide an accurate representation of the Phase I CE Property and the State Fee Simple Property as of the Phase I CE/Fee Simple Closing Date, and to serve as an objective information baseline for monitoring compliance with the terms of the Phase I Deed of Conservation Easement and the Lease. The date(s) of the Phase I CE and State Fee Simple Baseline Inspection shall be agreed upon in writing by the State, TPL, and Seller. Following each entry by TPL, on behalf of itself and the State, with respect to the Phase I CE and State Fee Simple Baseline Inspection, TPL shall restore such property to a condition which is as near to its original condition as existed prior to any such Phase I CE and State Fee Simple Baseline Inspection. All fees and costs incurred in connection with the Phase I CE and State Fee Simple Baseline Inspection and the Phase I CE and State Fee Simple Baseline Report shall be at TPL's sole expense, for the benefit of the State and the US Army. TPL shall take all reasonable actions and implement all reasonable protections necessary to ensure that all actions taken in connection with the Phase I CE and State Fee Simple Baseline Inspection, and all equipment, materials and substances generated, used or brought onto the Phase I CE Property and the State Fee Simple Property pose no material threat to the safety of persons or the environment and do not unreasonably disrupt the operations of the Phase I CE Property or the State Fee Simple Property, damage the Phase I CE Property or the State Fee Simple Property, or damage other property of Seller or other persons.

(b) Seller hereby grants to the State certain rights of inspection and investigation of the Phase II CE Property (the "**Phase II CE Baseline Inspection**") in order to collect data for the baseline report and documentation (the "**Phase II CE Baseline Report**"). The Phase II CE Baseline Report is intended to provide an accurate representation of the Phase II CE Property as of the Phase II CE Closing Date, and to serve as an objective information baseline for monitoring compliance with the terms of the Phase II Deed of Conservation Easement. If the Phase II CE Baseline Inspection and Phase II CE Baseline Report are completed in conjunction with the Phase I CE and State Fee Simple Baseline Report, the State may inspect the property and collect data in order to update the Phase II Baseline Report prior to the Phase II CE Closing Date. The date(s) of the Phase II CE Baseline Inspection shall be agreed upon in writing by the State and Seller. Following each entry by the State with respect to the

Phase II CE Baseline Inspection, the State shall restore such property to a condition which is as near to its original condition as existed prior to any such Phase II CE Baseline Inspection. All fees and costs incurred in connection with the Phase II CE Baseline Inspection and the Phase II CE Baseline Report shall be at the State's sole expense. The State shall take all reasonable actions and implement all reasonable protections necessary to ensure that all actions taken in connection with the Phase II CE Baseline Inspection, and all equipment, materials and substances generated, used or brought onto the Phase II CE Property pose no material threat to the safety of persons or the environment and do not unreasonably disrupt the operations of the Phase II CE Property, damage the Phase II CE Property or damage other property of Seller or other persons.

ARTICLE IV

CLOSING

4.1 Time and Place. The Parties shall conduct a closing through the Escrow Company (the "**Closing**") on the dates specified hereinbelow, or such later dates as may be agreed upon in writing by the Parties. The Closing of the Phase I CE Property transaction shall be referred to as the "**Phase I CE Closing**". The Closing of the Phase II CE Property transaction shall be referred to as the "**Phase II CE Closing**". The Closing of the State Fee Simple Property transaction shall be referred to as the "**State Fee Simple Closing**".

(a) The Phase I CE Closing and the State Fee Simple Closing shall occur simultaneously with the closing of City Fee Simple Property transaction (the "**City Fee Simple Closing**") as described in the City PSA.

(b) The Phase I CE Closing and the State Fee Simple Closing shall occur on or before Phase I CE/Fee Simple Closing Date; provided, however, that in no event whatsoever shall the Phase I CE/Fee Simple Closing Date be later than the Phase I CE/Fee Simple Closing Deadline.

(c) If the State exercises the Phase II CE Option by the time specified in Section 1.1(b), the Phase II CE Closing shall occur no later than two (2) years following Phase I CE/Fee Simple Closing Date. The date of the Phase II CE Closing will be determined upon the mutual agreement of Seller and the State after all of the conditions precedent set forth in Sections 4.18 and 4.19 are satisfied (the "**Phase II CE Closing Date**").

4.2 Failure of Phase I CE Closing or State Fee Simple Closing. In the event the Phase I CE Closing and State Fee Simple Closing do not occur on or before the Phase I CE/Fee Simple Closing Date, the Escrow Company shall, unless it is notified by Seller or the State to the contrary within three (3) days after the scheduled Phase I CE/Fee Simple Closing Date, return to the depositor thereof any items which were deposited thereunder.

4.3 Phase I CE Closing and State Fee Simple Closing. At the Phase I CE Closing and State Fee Simple Closing, Seller, the State, and TPL shall perform the obligations

set forth in Sections 4.4, 4.5 and 4.6, respectively, the performance of which obligations shall be concurrent conditions.

4.4 Seller's Obligations at the Phase I CE Closing and State Fee Simple Closing. Not later than two (2) business days prior to the Phase I CE/Fee Simple Closing Date, Seller shall deliver to Escrow Company:

(a) four (4) duly executed counterparts of the Phase I CE Deed of Conservation Easement, granting a conservation easement over the Phase I CE Property to the State;

(b) four (4) duly executed counterparts of the State Deed;

(c) four (4) duly executed counterparts of the Lease;

(d) such evidence as the Escrow Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller;

(e) the Environmental Security in cash by check or by wire transfer of immediately available federal funds to a bank account designated by Escrow Company;

(f) one (1) duly executed Environmental Escrow Instructions;

(g) two (2) duly executed counterparts of the Golf Agreement;

(h) two (2) duly executed counterparts of the Golf Memorandum;

(i) two (2) duly executed affidavits by Seller stating that Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984;

(j) two (2) duly executed affidavits by Seller stating that the withholding of tax is not required upon the disposition of Hawai'i real property in accordance with Section 235-68 of the Hawai'i Revised Statutes;

(k) one (1) duly executed State of Hawai'i Conveyance Tax Certificate (Form P-64A) for the State Fee Simple Property transaction; and

(l) such additional documents as shall be reasonably required to consummate the transactions expressly contemplated by this Agreement.

4.5 The State's Obligations at the Phase I CE Closing and State Fee Simple Closing. Not later than two (2) business days prior to the Phase I CE/Fee Simple Closing Date, the State shall deliver to Escrow Company:

(a) four (4) duly executed counterparts of the State Deed;

(b) four (4) duly executed counterparts of the Lease;

(c) four (4) counterparts of the Phase I CE Deed of Conservation Easement, granting a conservation easement over the Phase I CE Property to the State, duly executed by BLNR on behalf of the State;

(d) two (2) duly executed counterparts of the Golf Agreement;

(e) two (2) duly executed counterparts of the Golf Memorandum;

(f) such evidence as the Escrow Company may reasonably require as to the authority of the person or persons executing documents on behalf of the State; and

(g) such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

In addition, no later than two (2) business days prior to (and as a condition to the consummation of) the Phase I CE Closing and the State Fee Simple Closing, the State shall deliver to Escrow Company the Phase I CE and State Fee Simple Purchase Price in cash by check, or by immediately available wire transferred funds pursuant to Section 1.3(a).

4.6 TPL's Obligations at the Phase I CE Closing and State Fee Simple Closing. Not later than two (2) business days prior to the Phase I CE/Fee Simple Closing Date, TPL shall deliver to Escrow Company \$2,500,000.00 in immediately available wire transferred funds pursuant to Section 1.3(a).

4.7 Escrow Company's Obligations at the Phase I CE Closing and State Fee Simple Closing. At such time as Escrow Company has received confirmation that it has received the State Fee Simple Purchase Price, and the Phase I CE Purchase Price, and the documents required under Sections 4.4, 4.5 and 4.6, Escrow Company shall proceed with the Phase I CE Closing and the State Fee Simple Closing and shall:

(a) record the Phase I CE Deed of Conservation Easement, the State Deed, and the Golf Memorandum in the Bureau of Conveyances of the State of Hawai'i (the "Bureau");

(b) deliver to each of Seller and the State one (1) fully executed, recorded original of the Phase I CE Deed of Conservation Easement;

(c) deliver to each of Seller and the State one (1) fully executed, recorded original of the State Deed;

(d) deliver to each of Seller and the State one (1) fully executed, recorded original of the Golf Agreement;

(e) deliver to each of Seller and the State one (1) fully executed original of the Golf Memorandum;

(f) deliver to each of Seller and the State the documents described in Sections 4.4(l) and 4.5(g);

(g) deliver to Seller and the State the settlement statements prepared by Escrow Company and approved by Seller and the State not less than two (2) business days prior to the Phase I CE Closing and the State Fee Simple Closing;

(h) deliver to the State the Phase I CE Title Policy; and

(i) deliver to the State the State Fee Simple Title Policy.

4.8 Apportionments. With respect to the sale of the State Fee Simple Property, the following apportionments shall be made between Seller and the State as of 11:59 p.m. HST, on the day immediately preceding the Phase I CE/Fee Simple Closing Date (the "Apportionment Date"). Real estate taxes, personal property taxes (if any), or any other governmental tax or charge levied or assessed against the State Fee Simple Property (collectively, the "Taxes"), relating to the State Fee Simple Property and payable during the year in which State Fee Simple Closing occurs. If the State Fee Simple Closing shall occur before the actual Taxes payable during the year of State Fee Simple Closing are known, the apportionment of Taxes shall be upon the basis of the latest available tax rates and assessed value of the State Fee Simple Property, provided that, if the Taxes for the year of State Fee Simple Closing are thereafter determined to be more or less than the Taxes for the preceding year (after any appeal of the assessed valuation thereof is concluded), Seller and the State promptly (but no later than the date that is thirty (30) days from and after the date that the final invoices for taxes for the State Fee Simple Property for the year in which the State Fee Simple Closing occurs are issued by the applicable taxing authority, except in the case of an ongoing tax protest) shall adjust the proration of such Taxes, and Seller shall, in the event of underpayment, pay to the applicable taxing authority any amount required as a result of such adjustment or, in the event of overpayment, apply to the applicable taxing authority for reimbursement for overpayment of Taxes. Further, if Seller or the State undertakes a tax protest with respect to all or any portion of the Taxes for the year in which the State Fee Simple Closing occurs or Seller does so with respect to any previous year (Seller reserving the right to do so at its sole cost and expense), any refund relating to any previous year shall be the property of Seller, and any refund relating to the year in which the State Fee Simple Closing occurs shall be prorated as of the Apportionment Date. All Taxes assessed for the period prior to the State Fee Simple Closing shall be paid by the Seller. All Taxes assessed for periods after the State Fee Simple Closing Date for the State Fee Simple Property shall be paid by the State.

4.9 Phase II CE Closing. At the Phase II CE Closing, Seller and the State shall perform the obligations set forth in Section 4.10 and Section 4.11, respectively, the performance of which obligations shall be concurrent conditions. In the event the Phase II CE Closing does not occur on or before the Phase II CE Closing Date, the Escrow Company shall, unless it is notified by Seller or the State to the contrary within three (3) days after the scheduled Phase II CE Closing Date, return to the depositor thereof any items which were deposited thereunder.

4.10 Seller's Obligations at the Phase II CE Closing. Not later than two (2) business days prior to the Phase II CE Closing Date, Seller shall deliver to Escrow Company:

(a) four (4) duly executed counterparts of the Phase II CE Deed of Conservation Easement, granting a conservation easement over the Phase II CE Property to the State;

(b) such evidence as the Escrow Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller;

(c) one (1) duly executed affidavit by Seller stating that Seller is not a "foreign person" as defined in the Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984;

(d) one (1) duly executed affidavit by Seller stating that the withholding of tax is not required upon the disposition of Hawai'i real property in accordance with Section 235-68 of the Hawai'i Revised Statutes; and

(e) such additional documents as shall be reasonably required to consummate the transaction expressly contemplated by this Agreement.

4.11 The State's Obligations at the Phase II CE Closing. Not later than two (2) business days prior to the Phase II CE Closing Date, the State shall deliver to Escrow Company:

(a) four (4) counterparts of the Phase II CE Deed of Conservation Easement, granting a conservation easement over the Phase II CE Property to the State, duly executed by BLNR on behalf of the State;

(b) such evidence as the Escrow Company may reasonably require as to the authority of the person or persons executing documents on behalf of the State; and

(c) such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

In addition, not later than two (2) business days prior to (and as a condition to the consummation of) the Phase II CE Closing, the State shall deliver or cause to be delivered to Escrow Company the full amount of the Phase II CE Purchase Price in cash by check, or by immediately available wire transferred funds pursuant to Section 1.3(b).

4.12 Escrow Company's Obligations at the Phase II CE Closing. At the Phase II CE Closing, Escrow Company shall:

(a) at such time as Escrow Company has received confirmation that it has received the Phase II CE Purchase Price, record the Phase II CE Deed of Conservation Easement for the Phase II CE in the Bureau;

(b) deliver to each of Seller and the State one (1) fully executed, recorded original of the Deed of Conservation Easement for the Phase II CE;

(c) deliver to Seller and the State settlement statements prepared by Escrow Company and approved by Seller and the State not less than two (2) business days prior to the Phase II CE Closing; and

(d) deliver to the State the Phase II CE Title Policy.

4.13 Closing Costs. [SUBJECT TO FURTHER DISCUSSION]

(a) Seller shall pay (i) the fees of any counsel representing Seller in connection with the transactions contemplated herein; (ii) any transfer tax, documentary stamp tax or similar tax and any bulk sales tax which becomes payable by reason of the transfer of the Fee Simple Property; and (iii) one-half (1/2) of any escrow fee which may be charged by the Escrow Company with respect to services rendered for the Phase I CE Closing and the Phase II CE Closing; (iv) one-half (1/2) of any escrow fee which may be charged by the Escrow Company with respect to services rendered for the State Fee Simple Closing; and (v) the premiums for a standard owner's title policy with respect to the transactions contemplated herein, excluding the cost of any endorsements thereto; (vi) any recordation fees; and (vii) any conveyance tax related to the transfer of the State Fee Simple Property. In 2016, should the Legislature appropriate and the Governor release money to reimburse Seller for payment of part or all of the conveyance tax, then that money will be paid by State to Seller. Notwithstanding anything to the contrary contained herein, the State shall have no obligation to take any steps to seek any appropriation or release of funds, however, to the extent that additional funds are appropriated and released, this reimbursement shall be considered a post-Closing obligation.

(b) The State shall pay (i) the fees of any counsel representing the State in connection with the transactions contemplated herein; (ii) the premiums for any endorsements to the Phase I CE Title Policy, the Phase II CE Title Policy, or the State Fee Simple Title Policy to be issued to the State by the Title Company at the Phase I CE Closing, the Phase II CE Closing, or the State Fee Simple Closing, respectively; (iii) any cost associated with updating or recertifying the Phase I CE Survey, the Phase II CE Survey, or the State Fee Simple Survey subsequent to approval and issuance of a Copy Survey Form by the State Surveyor; (iv) one-half (1/2) of any escrow fee which may be charged by the Escrow Company with respect to services rendered for Phase I CE Closing and the Phase II CE Closing; and (v) one-half (1/2) of any escrow fee which may be charged by the Escrow Company with respect to services rendered for the State Fee Simple Closing.

(c) All other costs and expenses incident to this transaction and the Closing thereof shall be paid by the party incurring same.

4.14 Utility Services and Deposits. Seller shall be entitled to the return of any deposit(s) posted by it with any utility company not assigned to the State pursuant to the provisions hereof, and Seller shall notify each utility company serving the State Fee Simple Property to terminate Seller's account, effective on the Phase I CE/Fee Simple Closing Date.

4.15 Conditions Precedent to Obligation of the State for Phase I CE Closing and the State Fee Simple Closing. The obligation of the State to consummate the transaction

hereunder shall be subject to the fulfillment on or before the date of the Phase I CE Closing and the State Fee Simple Closing of all of the following conditions:

(a) Approval by the BLNR to purchase the Phase I CE and the State Fee Simple Property.

(b) The appraised value, as performed by an appraiser contracted for by the State, of the Phase I CE and the State Fee Simple Property is equal to or in excess of the Phase I CE and State Fee Simple Property Purchase Price.

(c) Proceeds generated by the sale of reimbursable general obligation bonds issued by the Department of Budget and Finance pursuant to Act 121, after costs, shall be sufficient to pay the State's portion of the Phase I CE and State Fee Simple Purchase Price at the Phase I CE Closing and the State Fee Simple Closing, and the State's share of all other closing costs and prorations in connection with the Phase I CE Closing and the State Fee Simple Closing, and transient accommodations tax revenues and moneys from the Land Conservation Fund pursuant to Act 121 shall be sufficient to satisfy all debt service obligations under such bonds.

(d) State shall have received all legislative, funding, and allotment approvals, including the Governor's release of funds, to pay the State's portion of the Phase I CE Purchase Price and the State Fee Simple Purchase Price at the Phase I CE Closing and the State Fee Simple Closing.

(e) Seller shall have addressed all State's Title Objections as to the Phase I CE Property and the Fee Title Objections as to the State Fee Simple Property to the State's satisfaction in accordance with the provisions of Sections 2.2(a) and 2.2(b) of this Agreement.

(f) Seller shall have fully satisfied and performed all Phase I CE Conditions.

(g) Seller shall have fully satisfied and performed all Fee Simple Conditions.

(h) Seller and the State shall have approved of the Phase I CE and State Fee Simple Baseline Report.

(i) Escrow Company shall have received the Environmental Security.

(j) Escrow Company shall have determined that it is ready to proceed with the City Fee Simple Closing.

(k) Seller and the State shall have approved the Environmental Escrow Instructions.

(l) Seller and the State shall have approved the Golf Agreement and Golf Memorandum;

(m) Seller shall have resolved all Pending Challenges to the State's satisfaction; without limitation to the foregoing, for purposes of this Section 4.15(l), Seller shall

be deemed to have resolved the Pending Challenges to the State's satisfaction if irrevocable stipulations to dismiss the Pending Challenges have been deposited with an escrow holder with an instruction to file the same with the First Circuit Court of the State of Hawai'i upon the Phase I CE Closing.

(n) Seller shall have delivered to the State or Escrow Company, as the case may be, all of the items required to be delivered to the State or Escrow Company, as the case may be, pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.4.

(o) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Phase I CE/Fee Simple Closing Date.

(p) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of the Phase I CE Closing and State Fee Simple Closing, including but not limited to, those provided for in Section 4.4.

(q) The Title Company shall be irrevocably committed to issue, or shall have issued, the Phase I CE Title Policy, insuring the State's title to the Phase I CE free and clear of all liens and encumbrances except Permitted Encumbrances.

(r) The Title Company shall be irrevocably committed to issue, or shall have issued, the State Fee Simple Title Policy, insuring the State's title to the State Fee Simple Property free and clear of all liens and encumbrances except Permitted Encumbrances.

(s) The State shall have received a Phase I Environmental Site Assessment ("ESA") and, if recommended by the State's contractor, a Phase II ESA for the Phase I CE Property and the State Fee Simple Property and further environmental reviews, as necessary, the form and content of which is satisfactory to the State in its sole discretion.

(t) All obligations of Seller with respect to the State Fee Simple Property shall be observed and performed in accordance with the requirements of any zoning or land use laws, or the terms of any current or future Entitlements, including, but not limited to, the (i) Shoreline Management Area Use Permit and Shoreline Setback Variance, approved through City Resolution No. 86-308 on October 1, 1986; (ii) Unilateral Agreement; and (iii) Amendment to Unilateral Agreement, dated December 30, 1988.

4.16 Conditions Precedent to Obligation of Seller for Phase I CE Closing and State Fee Simple Closing. The obligation of Seller to consummate the transactions hereunder shall be subject to the fulfillment on or before the Phase I CE/Fee Simple Closing Date of all of the following conditions:

(a) Escrow Company shall have received the Phase I CE and State Fee Simple Purchase Price.

(b) Escrow Company shall have determined that it is ready to proceed with the City Fee Simple Closing.

(c) The State shall have delivered to Seller or Escrow Company, as the case may be, all of the items required to be delivered to Seller or Escrow Company, as the case may be pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.5.

(d) Seller shall have reached agreement satisfactory to Seller with Seller's existing lenders permitting subordination of Seller's existing mortgage loan to the Phase I CE and permitting a partial release of Seller's existing mortgage loan with respect to the State Fee Simple Property.

(e) All of the representations and warranties of the State contained in this Agreement shall be true and correct in all material respects as of the Phase I CE/Fee Simple Closing Date.

(f) The State shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by the State as of the Phase I CE/Fee Simple Closing Date.

(g) The Department of Planning and Permitting ("**DPP**") shall have granted final approval of Seller's subdivision application, DPP File No. 2014/SUB-145.

(h) The DPP shall have approved Seller's application for zoning district boundary adjustment to cause zoning designations to conform with the newly created subdivision of lots.

(i) The DPP shall have approved Seller's application to amend that certain Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. 3366116, and recorded in the Bureau as Document No. 2005-253259, in order to release the State Fee Simple Property from its coverage.

4.17 Conditions Precedent to Obligation of TPL for Phase I CE Closing and State Fee Simple Closing. The obligation of TPL to consummate the transactions hereunder shall be subject to the fulfillment on or before the Phase I CE/Fee Simple Closing Date of all of the following conditions:

(a) The approval by the U.S. Army of provisions of the Phase I CE Deed of Conservation Easement, granting a conservation easement over the Phase I CE Property to the State; and

(b) The approval by the U.S. Army of the appraisal determining the fair market value of the Phase I CE Property and the State Fee Simple Property.

4.18 Conditions Precedent to Obligation of the State for Phase II CE Closing.
The obligation of the State to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of the Phase II CE Closing of all of the following conditions:

- (a) Approval by the BLNR to purchase the Phase II CE.
- (b) The State shall have received the Phase II Purchase Price from the Trust for Public Lands, another third party, or by legislative appropriation (including the Governor's release of funds), to pay the Phase II CE Purchase Price at the Phase II CE Closing.
- (c) The appraised value, as performed by an appraiser contracted for by the State, of the Phase II CE is equal to or in excess of the Phase II Purchase Price.
- (d) Seller shall have addressed all State's Title Objections as to the Phase II CE Property to the State's satisfaction in accordance with the provisions of Section 2.2(b) of this Agreement.
- (e) Seller shall have fully satisfied and performed all Phase II CE Conditions.
- (f) Seller and the State shall have approved of the Phase II CE Baseline Report.
- (g) Seller shall have resolved all Pending Challenges to the State's satisfaction; without limitation to the foregoing, for purposes of this Section 4.18(f), Seller shall be deemed to have resolved the Pending Challenges to the State's satisfaction if irrevocable stipulations to dismiss the Pending Challenges have been deposited with an escrow holder with an instruction to file the same with the First Circuit Court of the State of Hawai'i upon the Phase II CE Closing.
- (h) Seller shall have delivered to the State or Escrow Company, as the case may be, all of the items required to be delivered to the State or Escrow Company, as the case may be, pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.10.
- (i) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of the Phase II CE Closing.
- (j) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of the Phase II CE Closing, including but not limited to, those provided for in Section 4.10.
- (k) The Title Company shall be irrevocably committed to issue, or shall have issued, the Phase II CE Title Policy insuring the State's title to the Phase II CE free and clear of all liens and encumbrances except Permitted Encumbrances.

(l) The State shall have received a Phase I ESA and further environmental reviews for the Phase II CE Property, as necessary, the form and content of which is satisfactory to the State in its sole discretion.

4.19 Conditions Precedent to Obligation of Seller for Phase II CE Closing. The obligation of Seller to consummate the transactions hereunder shall be subject to the fulfillment on or before the date of the Phase II CE Closing of all of the following conditions:

(a) Seller shall have received the Phase II CE Purchase Price.

(b) The State shall have delivered to Seller or Escrow Company, as the case may be, all of the items required to be delivered to Seller or Escrow Company, as the case may be pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.11.

(c) All of the representations and warranties of the State contained in this Agreement shall be true and correct in all material respects as of the date of the Phase II CE Closing.

(d) The State shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by the State as of the date of Phase II CE Closing.

4.20 Report of Bulk Sale. Prior to the State Fee Simple Closing, Seller shall file a Report of Bulk Sale or Transfer (Form G-8A) with the Department of Taxation of the State of Hawai'i pursuant to the requirements of Section 237-43 of the Hawai'i Revised Statutes, and shall provide the State and the City with a copy thereof bearing the Certificate of Director of Taxation of the State of Hawai'i.

4.21 Notice of Mortgage, Pledge or Purchase. Seller shall cooperate with the State and the City in filing one or more Notice of Mortgage, Pledge or Purchase (Form D-37) regarding this transaction with the Department of Taxation of the State of Hawai'i in accordance with Section 231-33(e) of the Hawai'i Revised Statutes. Such filing shall be made no later than fifteen (15) days prior to the Phase I CE/Fee Simple Closing Date.

4.22 Termination Event. If for any reason the Phase I CE Closing and State Fee Simple Closing have not occurred on or before the Phase I CE/Fee Simple Closing Deadline, or such later date as Seller, in its sole discretion, may determine, then Seller may terminate this Agreement by delivering written notice thereof to the State and the City.

4.23 Post-Closing.

(a) Release of Certain Entitlements. The Parties covenant that they will jointly file, at no cost to the State, a petition(s) with the City to amend the Unilateral Agreement, the Shoreline Management Area Use Permit and Shoreline Setback Variance, approved through City Resolution No. 86-308 on October 1, 1986, and any other applicable land use permit or approval, to remove the State Fee Simple Property from the terms and conditions contained therein. Notwithstanding the foregoing, the obligations relating to the State Fee Simple Property under

any applicable land use permit or approval (the “Continuing Obligations”) shall not be impacted by the transactions contemplated herein. Accordingly, Seller shall have a right of entry onto the State Fee Simple Property for the limited purpose of ensuring compliance with the Continuing Obligations, subject to approval of the State which approval shall not be unreasonably withheld by the State.

(b) Phase II Environmental Site Assessment. If the Phase I ESA conducted on the Phase I CE Property and the State Fee Simple Property discloses any Recognized Environmental Conditions on either the Phase I CE Property or the State Fee Simple Property (hereinafter, a “Hazardous Substance”), and recommends that a Phase II ESA be conducted on either the Phase I CE Property or the State Fee Simple Property, the Parties hereto agree that the preparation of a Phase II ESA shall be considered a post-Closing obligation.

i. Preparation. The State shall have up to one (1) year after the date of the Phase I CE/Fee Simple Closing Date to complete any Phase II ESA. Within such one (1) year period, the State may share the results of the Phase II ESA with Seller.

ii. Access for Preparation. Seller shall grant to the State certain rights of entry onto portions of the Phase I CE Property to do anything necessary and proper, at the State’s sole cost and expense, in connection with the preparation of a Phase II ESA. The State understands and agrees that any access rights of the Phase I CE Property shall be conducted upon at least twenty-four (24) hours’ prior written notice to Seller and in the presence of Seller or its representative. Physical inspections that include drilling, boring or other invasive techniques shall be subject to Seller’s prior written consent, and in any event shall be conducted in accordance with standards customarily employed in the industry and in compliance with law. No consent by the Seller to any entries, surveys, tests, investigations or the like shall be deemed to constitute a waiver by Seller or assumption of liability or risk by Seller. Following each entry by the State with respect to inspections or tests on the Phase I-CE Property, the State shall restore such property to a condition which is as near to its original condition as existed prior to any such inspections or tests, provided however, that a reasonable amount of non-maintained woody vegetation may be removed for the investigation. Seller shall reasonably cooperate with the State in its due diligence but shall not be obligated to incur any cost or liability to third parties in connection therewith except as set forth in Section 4.23(b)(iii) herein. The State shall not contact any tenants, visitors, concessionaires, licensees or guests of Seller without obtaining Seller’s prior written consent and shall not disrupt Seller’s, any tenant’s, visitor’s, concessionaire’s, licensee’s or guest’s activities on or around the Phase I CE Property in any material respect.

iii. Remediation. If the Phase II ESA identifies any Hazardous Substance on the Phase I CE Property or the State Fee Simple Property, as the case may be, and the Phase II ESA recommends remediation of such Hazardous Substance to satisfy any applicable Environmental Law, Seller shall, at its own expense, promptly take all actions as shall be required under applicable Environmental Law for the clean-up of any and all portions of the Phase I CE Property or the State Fee Simple Property, as the case may be, so that a No Further Action (NFA)/No Further Remediation (NFR) Letter can be issued by the State of Hawaii Department of Health, acknowledging the Hazardous Substance has been abated to the satisfaction of the State. The State agrees to cooperate and assist the Seller, where necessary, in obtaining any permit or approval that may be required under any applicable law or regulation to

complete the remediation plan. Any dispute, controversy, or claim arising out of, relating to or in connection with the Phase II ESA, including the findings or any remediation plan recommended thereunder, shall be finally resolved by a determination of the State Department of Health, or any other governmental agency with appropriated regulating authority.

iv. Security. In order to secure the performance by Seller of any action properly requested pursuant to a Phase II ESA remediation plan, Seller shall deposit with Escrow Company at the Phase I CE Closing and the State Fee Simple Closing a sum equal to _____ Dollars and ___/100 (\$ _____) (the "**Environmental Security**"), the sum of which represents a reasonable and good faith estimate, made by both parties, of funds necessary to complete any such remediation plan. The Environmental Security shall only be disbursed pursuant to the terms and conditions contained in a separate escrow instruction letter (the "**Environmental Escrow Instructions**"). The Environmental Security shall be held by the Escrow Company for two (2) years following the Phase I CE/Fee Simple Closing Date, after which any unused portion of the Environmental Security shall be refunded to Seller. Seller agrees to pay for all costs and expenses in excess of the Environmental Security incurred in connection with remediating any Undiscovered Hazardous Substance found on the Phase I CE Property or the State Fee Simple Property.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to the State as of the Effective Date and shall confirm as of the Phase I CE/Fee Simple Closing Date:

(a) Organization and Authority. Seller has been duly organized and is validly existing under the laws of the State of Delaware and is duly registered to do business in the State of Hawai'i. Seller has the full right and authority to enter into this Agreement and, to transfer all of the CE Properties and the State Fee Simple Property to be conveyed by Seller pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein to be made by Seller. The person signing this Agreement on behalf of Seller is authorized to do so. This Agreement has been duly approved and authorized by all entity action required on the part of Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon the execution and delivery by Seller of the Seller's closing documents, the Seller's closing documents will constitute the legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

(b) Lawfulness of Agreement. Neither the entering into of this Agreement by Seller nor the consummation of the transactions contemplated by this Agreement at the various Closings will constitute a material violation or breach by Seller of any material agreement or other material instrument to which Seller is a party or to which it is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule or regulation of any governmental authority, in each case, where such violation or breach will have a material adverse effect on title to, use or operation of the

Property or any portion thereof or on the ability of Seller to consummate the transactions contemplated by this Agreement.

(c) No Insolvency. Seller is not insolvent or bankrupt. Seller has not commenced (within the meaning of any federal or state bankruptcy law) a voluntary case, consented to the entry of an order for relief against it in an involuntary case, or consented to the appointment of a custodian of it or for all or any substantial part of its property, nor has a court of competent jurisdiction entered an order or decree under any federal or state bankruptcy law for relief against Seller in an involuntary case or appointed a custodian of Seller for all or any substantial part of its property.

(d) Notices with Respect to Legal Requirements and Applicable Governmental Authorizations. Seller has not received any written notice from any governmental body regarding any violation of, or failure to comply with, any applicable governmental authorization or any legal requirement with respect to the CE Properties or the State Fee Simple Property, other than any such violations or failures to comply as have been cured prior to the date hereof.

(e) Legal Proceedings. Except for (i) *Keep the North Shore Country, et al. v. City and County of Honolulu, et al.*, Civil No. 13-1-3143-12 RAN, Circuit Court of the First Circuit, State of Hawai'i; and (ii) *Unite Here! Local 5 v. City and County of Honolulu, et al.*, Civil No. 13-1-3324-12 VLC, Circuit Court of the First Circuit, State of Hawai'i (collectively, the "**Pending Challenges**"), there is no pending proceeding by or against Seller with respect to the CE Properties or the State Fee Simple Property and no such proceeding by or against Seller with respect to the CE Properties or the State Fee Simple Property has been threatened. Except for the Pending Challenges, there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending which, if adversely determined, could prevent, make illegal or individually or in the aggregate materially interfere with or delay the consummation of the transactions contemplated by this Agreement.

(f) Environmental Matters. Except as disclosed to the State in **Exhibit E** attached hereto, or as set forth in any ESA or study performed by or on behalf of the State, Seller has not received any written notice from any governmental body, nor does Seller have any knowledge, of any violation or failure to comply with any Environmental Law, which violation or failure remains uncured as of the date hereof.

(g) Condemnation. Seller has received no notice from any governmental body of, and has no knowledge of any actual or threatened, condemnation or eminent domain proceedings affecting the CE Properties or the State Fee Simple Property.

5.2 Knowledge Defined. References to the "knowledge" or "actual knowledge" of Seller shall refer only to the actual knowledge of the Designated Employees (defined below), and shall not be construed, by imputation or otherwise, to impose upon such Designated Employees any additional duty to investigate actively the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "**Designated Employees**" shall refer to the following persons: Drew Stotesbury and Scott McCormack.

5.3 Survival of Seller's Representations and Warranties. The representations and warranties of the Seller set forth in Section 5.1 shall survive the Phase I CE Closing, the State Fee Simple Closing, and Phase II CE Closing, and shall be continuing representations and warranties without limitation. All other representations and warranties of the Seller with respect to the Phase I CE Property and transaction shall survive the Phase I CE Closing, for a period of eighteen (18) months, at which time they shall terminate. All other representations and warranties of the Seller with respect to the Phase II CE Property and transaction shall survive the Phase II CE Closing for a period of eighteen (18) months, at which time they shall terminate. All other representations and warranties of the Seller with respect to the State Fee Simple Property and transaction shall survive the State Fee Simple Closing for a period of eighteen (18) months, at which time they shall terminate.

5.4 Covenant of Seller. Seller hereby covenants with the State that from the Effective Date hereof until the Closing of the CE Properties and the State Fee Simple Property or earlier termination of this Agreement, Seller shall use reasonable efforts to operate and maintain the CE Properties and the State Fee Simple Property in a manner consistent with the manner in which the CE Properties and the State Fee Simple Property have been operated and maintained prior to the date hereof.

5.5 Representations and Warranties of the State. As an inducement to Seller to enter into this Agreement, the State hereby represents and warrants to Seller as of the Effective Date, as follows:

(a) Authorization. The State has the full right, power and authority to purchase conservation easements over the CE Properties, and to purchase the State Fee Simple Property, as provided in this Agreement and to carry out the State's obligations hereunder, and all requisite action necessary to authorize the State to enter into this Agreement and to carry out its obligations hereunder have been, or by the Phase I CE Closing, the State Fee Simple Closing, and Phase II CE Closing will have been, taken. The person signing this Agreement on behalf of the BLNR or the State is authorized to do so. The joinder of no person or entity other than the BLNR or the State is necessary to consummate the transactions to be performed by the State.

(b) Lawfulness of Agreement. Neither the entering into of this Agreement by the State nor the consummation of the transaction contemplated by this Agreement at the Phase I CE Closing and Phase II CE Closing will constitute a material violation or breach by the State of any material agreement or other material instrument to which the State is a party or to which it is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule or regulation of any governmental authority, in each case, where such violation or breach will have a material adverse effect on the ability of the State to consummate the transactions contemplated by this Agreement.

(c) Legal Proceedings. Except for the Pending Challenges, there is no action, suit, arbitration, unsatisfied order or judgment, or known government investigation or proceeding pending against the State which, if adversely determined, could prevent, make illegal or individually or in the aggregate materially interfere with or delay the consummation of the transactions contemplated by this Agreement.

5.6 Survival of the State's Representations and Warranties. The representations and warranties of the State set forth in Section 5.5 shall survive the Phase I CE Closing, the State Fee Simple Closing, and Phase II CE Closing and shall be continuing representations and warranties without limitation. All other representations and warranties of the State with respect to the Phase I CE and the State Fee Simple Property shall survive the Phase I CE Closing and the State Fee Simple Closing, for a period of eighteen (18) months, at which time they shall terminate. All other representations and warranties of the State with respect to the Phase II CE shall survive the Phase II CE Closing for a period of eighteen (18) months, at which time they shall terminate.

ARTICLE VI

DEFAULT

6.1 Default by the State. In the event that the State defaults in its obligation to purchase the Phase I CE, the Phase II CE, or the State Fee Simple Property pursuant to this Agreement, Seller's sole recourse shall be termination of this Agreement.

6.2 Default by Seller. In the event that Seller fails to consummate this Agreement for any reason other than the State's default or the permitted termination of this Agreement by any of the Parties as herein expressly provided, the State's sole recourse shall be to either (A) seek specific performance of the Seller's obligations to execute the documents required to (i) grant a conservation easement over the CE Properties to the State; and (ii) convey the State Fee Simple Property to the State; or (B) immediately terminate this Agreement by providing written notice to Seller. Nothing in this Section 6.2 is intended to limit Seller's indemnity obligations under other Sections of this Agreement.

ARTICLE VII

COMMISSIONS

7.1 Brokerage Commissions. Neither the State nor the Seller has employed any broker or finder or incurred any liability for any brokerage fee, commission, finder's fee, assist fee, or agency fee (or similar fees, commissions, or reimbursement expenses) in connection with the transactions contemplated by this Agreement.

ARTICLE VIII

DISCLAIMERS AND WAIVERS

8.1 No Reliance on Documents. Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller to the State in connection with the transactions contemplated hereby. The State acknowledges and agrees that all materials, data and information delivered by Seller to the State in connection with the transactions contemplated hereby are provided to the

State as a convenience only and that any reliance on or use of such materials, data or information by the State shall be at the sole risk of the State, except as otherwise expressly stated herein.

8.2 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PHASE I CE GRANT OF CONSERVATION EASEMENT, THE PHASE II CE GRANT OF CONSERVATION EASEMENT, OR IN THE STATE DEED, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE CE PROPERTIES OR THE STATE FEE SIMPLE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE CE PROPERTIES OR THE STATE FEE SIMPLE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE CE PROPERTIES', OR THE STATE FEE SIMPLE PROPERTY'S, DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO THE STATE, OR ANY OTHER MATTER OR THING REGARDING THE CE PROPERTIES OR THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY. THE STATE ACKNOWLEDGES AND AGREES THAT UPON THE PHASE I CE CLOSING AND THE STATE FEE SIMPLE CLOSING, SELLER SHALL SELL AND CONVEY TO THE STATE AND THE STATE SHALL ACCEPT THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE PHASE I CE GRANT OF CONSERVATION EASEMENT, THE PHASE II CE GRANT OF CONSERVATION EASEMENT, OR IN THE STATE DEED. THE STATE HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT , THE PHASE I CE GRANT OF CONSERVATION EASEMENT, THE PHASE II CE GRANT OF CONSERVATION EASEMENT, OR IN THE STATE DEED. EXCEPT FOR THE PHASE II ESA WHICH IS A POST-CLOSING OBLIGATION, THE STATE ACKNOWLEDGES THAT THE STATE HAS CONDUCTED, OR WILL CONDUCT PRIOR TO THE PHASE I CE CLOSING AND THE STATE FEE SIMPLE CLOSING, SUCH INVESTIGATIONS OF THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS THE STATE DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCES ON OR DISCHARGED FROM THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH

RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PHASE I CE GRANT OF CONSERVATION EASEMENT, THE PHASE II CE GRANT OF CONSERVATION EASEMENT, OR IN THE STATE DEED. UPON THE PHASE I CE CLOSING AND THE STATE FEE SIMPLE CLOSING, EXCEPT FOR HAZARDOUS SUBSTANCES THAT MAY BE IDENTIFIED BY THE PHASE II ESA, THE STATE SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY THE STATE'S INVESTIGATIONS, AND THE STATE, UPON THE PHASE I CE CLOSING AND THE STATE FEE SIMPLE CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN CONTRACT, TORT, OR EQUITY), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH THE STATE MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAW, EXCEPT FOR GRANTOR'S OWN LIABILITY UNDER ANY ENVIRONMENTAL LAW) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE CE PROPERTIES AND THE STATE FEE SIMPLE PROPERTY BUT WITHOUT WAIVER OF THE STATE'S RIGHTS TO RELY ON AND OTHERWISE WITH RESPECT TO REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PHASE I CE GRANT OF CONSERVATION EASEMENT, THE PHASE II CE GRANT OF CONSERVATION EASEMENT, OR IN THE STATE DEED.

ARTICLE IX

MISCELLANEOUS

9.1 No Governmental Approval. Seller acknowledges that the execution of this Agreement does not constitute, and shall not be construed as, by imputation or otherwise, the State's consent to, concurrence with, or approval of, any permit, license, application being sought, or to be sought in the future, by Seller in connection with the transactions contemplated herein or in connection with any business activities of the Seller. Any such permits, licenses, or applications shall be reviewed, evaluated, and decided upon in the normal course by the relevant governmental entity or agency. Denials of any such permits, licenses, or applications shall not be considered a breach or default under the terms of this Agreement.

9.2 Assignment. The State may assign and delegate all or portions of its rights and obligations under this Agreement to agencies, boards, divisions and departments of the State. Except as aforesaid, the State may not assign its rights under this Agreement without first

obtaining Seller's written approval, which approval may be given or withheld in Seller's sole discretion.

9.3 Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) nationally recognized overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of United States Mail, three days after mailing, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller:

Turtle Bay Resort, LLC
57-091 Kamehameha Highway
Kahuku, Hawai'i 96731
Attention: Drew Stotesbury
Scott McCormack
Tel.: (808) 232-2285
Fax: (808) 232-2396
E-mail: drew@replayresorts.com
SMcCormack@replayresorts.com

with a copy to:

McCorriston Miller Mukai MacKinnon LLP
Five Waterfront Plaza, Suite 400
500 Ala Moana Boulevard
Honolulu, Hawai'i 96813
Attention: Randall F. Sakumoto, Esq.
Tel: (808) 529-7300
Fax: (808) 524-8293
E-mail: sakumoto@m4law.com

If to the State:

Department of the Attorney General,
State of Hawai'i
333 Queen Street, Second Floor
Honolulu, Hawai'i 96813
Attention: Douglas S. Chin, Esq.
Julie H. China, Esq.

Tel: (808) 586-1282
Fax: (808) 586-1239
E-mail: Douglas.S.Chin@hawaii.gov
Julie.H.China@hawaii.gov

with a copy to:

Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawai'i, 96813
Attention: Russell Tsuji
Tel: (808) 587-0422
E-mail: Russell.Y.Tsuji@hawaii.gov

If to TPL:

The Trust for Public Land
1003 Bishop Street, #740
Honolulu, Hawai'i, 96813
Attention: Lea Hong
Tel: (808) 524-8560
E-mail: Lea.Hong@tpl.org

If to Escrow Company:

Title Guaranty Escrow Services, Inc.
235 Queen Street, First Floor
Honolulu, Hawai'i 96813
Attention: Barbara Paulo
Tel: (808) 521-0209
Fax: (808) 521-0280
E-mail: bpaulo@tghawaii.com

9.4 Binding Effect. This Agreement shall not be binding in any way upon the Parties unless and until Seller, the State, and TPL shall execute and deliver the same to the other Parties.

9.5 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the party or parties against whom enforcement of any waiver, change, modification or discharge is sought.

9.6 Time of the Essence; Calculation of Time Periods. Time of performance is of the essence of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of Hawai'i, in which

event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m. HST.

9.7 Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the Parties hereto.

9.8 Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the Parties pertaining to such subject matter.

9.9 Counterparts; Signatures. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement. Facsimile signatures on this Agreement shall be same as original signatures for all purposes.

9.10 Invalid Provision; Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or illegal under present or future laws, such provision shall be fully severable, and the remainder of this Agreement shall nonetheless remain in full force and effect.

9.11 Governing Law and Venue. The laws of the State of Hawai'i shall govern the validity, construction, enforcement, and interpretation of this Agreement, unless otherwise specified herein except for the conflict of laws provisions thereof. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in the Circuit Court of the First Circuit, State of Hawai'i, and the Parties expressly consent to the venue and jurisdiction of such court. The Parties agree that the provisions of this Section 9.11 shall survive the Closing of the transactions contemplated by this Agreement.

9.12 Jury Waiver. The Parties do hereby knowingly, voluntarily and intentionally waive their right to a trial by jury in respect of any litigation based hereon, or arising out of, or under or in connection with this Agreement, the documents delivered by the Parties at the Closing of the CE Properties and the State Fee Simple Property, or any course of conduct, course of dealings, statements (whether verbal or written) or any actions of any party arising out of or related in any manner with this Agreement or the CE Properties and the State Fee Simple Property. This waiver is a material inducement for Seller to enter into and accept this Agreement and the documents delivered by Buyers at the Closing of the CE Properties and the State Fee Simple Property, and shall survive the Closing of the CE Properties and the State Fee Simple Property or termination of this Agreement.

9.13 No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing of the CE Properties and the State Fee Simple Property are and will be for the benefit of the Parties (and their respective permitted successors and assigns) only and are not for the benefit of any third party (including, without limitation, Escrow Company), and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

9.14 Exhibits. The following exhibits, which are attached to this Agreement, are incorporated in and shall be deemed to be an integral part of this Agreement:

<u>Exhibit A</u>	Phase I CE Property Description
<u>Exhibit A-1</u>	Phase I CE Property Diagram
<u>Exhibit B</u>	Phase II CE Property Description
<u>Exhibit B-1</u>	Phase II CE Property Diagram
<u>Exhibit C</u>	State Fee Simple Property
<u>Exhibit C-1</u>	State Fee Simple Property Diagram
<u>Exhibit D</u>	City Fee Simple Property
<u>Exhibit D-1</u>	City Fee Simple Property Diagram
<u>Exhibit E</u>	ACUB Language

9.15 Captions. References in this Agreement to any "Section" are to the numbered Sections herein. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

9.16 Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any Exhibits or amendments hereto.

9.17 Termination of Agreement. It is understood and agreed that if any of the Parties terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve all Parties from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

9.18 No Personal Liability. No member or manager of Seller, no officer, director or partner of a member or manager of Seller, no disclosed or undisclosed principal of Seller, no officials, officers, employees or agents of the State, and no person in any way affiliated with Seller or the State shall have any personal liability with respect to this Agreement, any instrument delivered by the Parties at the Closing of the CE Properties and the State Fee Simple Property, nor shall the property of any such person or entity be subject to attachment, levy, execution or other judicial process.

9.19 Survival. The provisions of the following Sections of this Agreement shall survive the Phase I CE Closing and State Fee Simple Closing and shall not be merged into the execution and delivery of the Phase I CE Deed of Conservation Easement, and the State Deed, as the case may be: Sections 5.1, 5.3, 5.5, 5.6, 8.2, 9.11 and 9.12. The provisions of the following Sections of this Agreement shall survive the Phase II CE Closing and shall not be merged into the execution and delivery of the Phase II CE Deed of Conservation Easement: Sections 5.1, 5.3, 5.5, 5.6, 8.2, 9.11 and 9.12.

9.20 Waiver of Rights. The Parties each have knowledge and experience in financial and business matters that enable them to analyze the merits and risks of the transaction

contemplated hereby, and none is in a significantly disparate bargaining position with respect to the others or such transaction.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

TURTLE BAY RESORT, LLC,
a Delaware limited liability company

By: TURTLE BAY HOLDINGS, LLC,
a Delaware limited liability company
Title: Sole Member

By: _____
Name: Drew Stotesbury
Title: Authorized Signatory

STATE OF HAWAII:

By: _____
Suzanne D. Case
Chairperson
Board of Land and Natural Resources

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

Approved as to Form:

Julie H. China
Dated: _____

THE TRUST FOR PUBLIC LAND,
a California non-profit public benefit corporation

By: _____
Name: _____
Its: _____

Exhibit A

PHASE I CE PROPERTY DESCRIPTION

[to be added]

DRAFT

EXHIBIT A (Phase I CE Property):

ITEM I:

LOT 5

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Lots 1126 and 1127, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46920560) situate at Kahuku, District of Koolaulupoko, City and County of Honolulu State of Hawaii, being LOT 5 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 2.604 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,237.21 feet north and 7,415.14 feet west and thence running by azimuths measured clockwise from true South:

1. Along the north side of Kamehameha Highway, on a curve to the left with a radius of 742.49 feet, the chord azimuth and distance being:

84° 31' 45" 128.67 feet;

2. 79° 33' 30" 465.00 feet along the north side of Kamehameha Highway;

3. Thence along Lot 4 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:

214° 33' 30" 84.85 feet;

4. Thence along Lot 4 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 535.00 feet,
the chord azimuth and
distance being:

188° 39' 15" 350.05 feet;

5. 303° 23' 23" 580.37 feet along Lot 7 of
Turtle Bay Bulk Lot
Subdivision to the
point of beginning and
containing an area of
2.604 Acres, more or
less.

Together with the following Easements for access and
utility purposes:

Easement G affecting Lot 7 of Turtle Bay Bulk Lot
Subdivision;
Easement Q affecting Lot 6 of Turtle Bay Bulk Lot
Subdivision;
Easement R affecting Lot 9 of Turtle Bay Bulk Lot
Subdivision;
Easement S affecting Lot 10 of Turtle Bay Bulk Lot
Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk
Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot
Subdivision, which were designated in the Subdivision map
approved by City and County of Honolulu on July 17, 2015,
File No. 2014/SUB-145, as particularly described in
Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-006-(por.) 001

Oahu TMK: 5-7-006-(por.) 002

ITEM II:

LOT 7

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Lot 470, Map 68 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46920556 and Lots 1126 and 1127, Map 129, of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46920560) situate at Kahuku, District of Koolaula, City and County of Honolulu State of Hawaii, being LOT 7 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 9.103 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,206.79 feet north and 6,876.53 feet west and thence running by azimuths measured clockwise from true South:

1. 93° 25' 488.75 feet along the north side of Kamehameha Highway;
2. Thence along the north side of Kamehameha Highway, on a curve to the left with a radius of 742.49 feet, the chord azimuth and distance being:
91° 27' 30" 50.75 feet;
3. 123° 23' 23" 580.37 feet along Lot 5 of Turtle Bay Bulk Lot Subdivision;
4. Thence along Lot 4 of Turtle Bay Bulk Lot Subdivision, on a curve

to the right with a
radius of 535.00 feet,
the chord azimuth and
distance being:

- | | | | | |
|--|------|-----|--------|-------|
| | 214° | 30' | 125.77 | feet; |
|--|------|-----|--------|-------|
5. 221° 19' 01" 50.38 feet along Lot 4 of
Turtle Bay Bulk Lot
Subdivision;
6. Thence along Lot 6 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 630.00 feet,
the chord azimuth and
distance being:
- | | | | | | |
|--|------|-----|-------|--------|-------|
| | 319° | 20' | 13.5" | 109.07 | feet; |
|--|------|-----|-------|--------|-------|
7. 221° 19' 01" 25.01 feet along Lot 6 of
Turtle Bay Bulk Lot
Subdivision;
8. Thence along Lot 6 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 396.00 feet,
the chord azimuth and
distance being:
- | | | | | | |
|--|------|-----|-----|--------|-------|
| | 246° | 52' | 30" | 342.52 | feet; |
|--|------|-----|-----|--------|-------|
9. 272° 30' 272.70 feet along Lot 6 of
Turtle Bay Bulk Lot
Subdivision;
10. Thence along Lot 6 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 1,744.00
feet, the chord azimuth
and distance being:
- | | | | | | |
|--|------|-----|-------|--------|-------|
| | 270° | 39' | 08.5" | 112.46 | feet; |
|--|------|-----|-------|--------|-------|
11. 346° 33' 564.17 feet along Lot 8 of
Turtle Bay Bulk Lot
Subdivision to the
point of beginning and
containing an area of
9.103 Acres, more or

less.

Together with the following Easements for access and utility purposes:

Easement F affecting Lot 5 of Turtle Bay Bulk Lot Subdivision;
Easement Q affecting Lot 6 of Turtle Bay Bulk Lot Subdivision;
Easement R affecting Lot 9 of Turtle Bay Bulk Lot Subdivision;
Easement S affecting Lot 10 of Turtle Bay Bulk Lot Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;

Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership
GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company
DATED : February 23, 2010
FILED : Land Court Document No. 3942089
RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-001-(por.) 022
Oahu TMK: 5-7-006-(por.) 001
Oahu TMK: 5-7-006-(por.) 002

ITEM III:

LOT 8

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Lots 470 and 471, Map 68, of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as

Document No. A-46920556) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 8 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 50.766 acres, more or less. as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,359.69 feet north and 5,082.80 feet west and thence running by azimuths measured clockwise from true South:

1. 75° 25' 30" 662.52 feet along the north side of Kamehameha Highway;
2. Thence along Kamehameha Highway, on a curve to the right with a radius of 1,122.65 feet, the chord azimuth and distance being:
84° 25' 15" 351.08 feet;
3. 93° 25' 804.54 feet along the north side of Kamehameha Highway;
4. 166° 33' 564.17 feet along Lot 7 of Turtle Bay Bulk Lot Subdivision;
5. Thence along Lots 9 and 10 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 1,744.00 feet, the chord azimuth and distance being:
235° 01' 38.5" 1,939.21 feet;
6. 201° 15' 285.06 feet along Lot 10 of Turtle Bay Bulk Lot Subdivision;
7. 308° 40' 142.08 feet along Lot 12 of Turtle Bay Bulk Lot

- Subdivision;
8. 222° 02' 16" 242.00 feet along Lot 12 of Turtle Bay Bulk Lot Subdivision;
9. Thence along Lot 27 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 2.00 feet, the chord azimuth and distance being:
- 346° 41' 38" 2.28 feet;
10. Thence along Lot 27 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 53.00 feet, the chord azimuth and distance being:
- 319° 03' 05.5" 93.87 feet;
11. Thence along Lot 27 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 24.00 feet, the chord azimuth and distance being:
- 285° 35' 20.5" 23.16 feet;
12. 44° 26' 32.87 feet along Lot 469 (Map 68) of Land Court Application 1095;
13. Thence along Lot 469 (Map 68) of Land Court Application 1095, on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
- 22° 13' 264.68 feet;
14. 360° 00' 127.34 feet along Lot 469 (Map 68) of Land Court Application 1095;
15. Thence along Lot 469 (Map 68) of Land Court Application 1095, on a

curve to the right with
a radius of 1,000.00
feet, the chord azimuth
and distance being:

- | | | | |
|--|---------|--------|-------|
| | 11° 30' | 398.74 | feet; |
|--|---------|--------|-------|
16. 49° 40' 363.49 feet along Lot 469 (Map 68) of Land Court Application 1095;
17. Thence along Lot 469 (Map 68) of Land Court Application 1095, on a curve to the left with a radius of 150.00 feet, the chord azimuth and distance being:
- | | | | |
|--|---------|--------|-------|
| | 13° 50' | 175.63 | feet; |
|--|---------|--------|-------|
18. 338° 00' 41.82 feet along Lot 469 (Map 68) of Land Court Application 1095;
19. Thence along Lot 469 (Map 68) of Land Court Application 1095, on a curve to the left with a radius of 150.00 feet, the chord azimuth and distance being:
- | | | | |
|--|----------|--------|-------|
| | 294° 45' | 205.55 | feet; |
|--|----------|--------|-------|
20. 251° 30' 370.00 feet along Lot 469 (Map 68) of Land Court Application 1095;
21. 256° 40' 263.00 feet along Lot 469 (Map 68) of Land Court Application 1095;
22. Thence along Lot 469 (Map 68) of Land Court Application 1095, on a curve to the right with a radius of 200.00 feet, the chord azimuth and distance being:
- | | | | |
|--|----------|--------|-------|
| | 274° 20' | 121.39 | feet; |
|--|----------|--------|-------|
23. Thence along Lot 469 (Map 68) of Land Court Application 1095, on a

curve to the left with
a radius of 200.00
feet, the chord azimuth
and distance being:

- | | | | | | |
|-----|--|-----|-----|--------|---|
| | 271° | 52' | 15" | 137.66 | feet; |
| 24. | 251° | 44' | 30" | 150.00 | feet along Lot 469 (Map
68) of Land Court
Application 1095; |
| 25. | Thence along Lot 27 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 618.00 feet,
the chord azimuth and
distance being: | | | | |
| | 345° | 02' | 15" | 71.06 | feet; |
| 26. | 348° | 20' | | 216.12 | feet along Lot 27 of
Turtle Bay Bulk Lot
Subdivision; |
| 27. | Thence along Lot 27 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 632.00 feet,
the chord azimuth and
distance being: | | | | |
| | 346° | 52' | 45" | 32.08 | feet; |
| 28. | 345° | 25' | 30" | 33.35 | feet along Lot 27 of
Turtle Bay Bulk Lot
Subdivision; |
| 29. | 75° | 25' | 30" | 9.00 | feet along Lot R-3 of
Turtle Bay Bulk Lot
Subdivision; |
| 30. | Thence along Lot R-3 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 91.00 feet,
the chord azimuth and
distance being: | | | | |
| | 19° | 12' | 45" | 101.21 | feet; |
| 31. | 76° | 45' | | 580.00 | feet along Lot R-3 of
Turtle Bay Bulk Lot |

			Subdivision;
32.	71° 15'	245.00	feet along Lot R-3 of Turtle Bay Bulk Lot Subdivision;
33.	75° 30'	20.00	feet along Lot R-3 of Turtle Bay Bulk Lot Subdivision;
34.	58° 15'	38.89	feet along Lot R-3 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 50.766 Acres, more or less.

Together with the following non-exclusive easements:

Portion of Easement M for landscaping and utility purposes of Turtle Bay Bulk Lot Subdivision;
 Easement F for access and utility purposes affecting Lot 5 of Turtle Bay Bulk Lot Subdivision;
 Easement G for access and utility purposes affecting Lot 7 of Turtle Bay Bulk Lot Subdivision;
 Easement Q for access and utility purposes affecting Lot 6 of Turtle Bay Bulk Lot Subdivision;
 Easement R for access and utility purposes affecting Lot 9 of Turtle Bay Bulk Lot Subdivision;
 Easement S for access and utility purposes affecting Lot 10 of Turtle Bay Bulk Lot Subdivision;
 Easement T for access and utility purposes affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
 Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-001-(por.) 020

ITEM IV:

LOT 14

All of that certain parcel of land (being portion(s) of the land described in and covered by Lots 1120, 1121 and 1122 of DPP 1990/SUB-271, approved by City and County of Honolulu on March 28, 1991, being same a portion of Royal Patent Number 533, Land Commission Award Number 2781, Apana 1 to Manukeokeo, being Exclusion 18, a portion of Lot 5 of File Plan 2085, and portion(s) of the land(s) described in and covered by Lots 464, 465 and 480, Map 68, and Lot 529-B, Map 76 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920556 and A-46920558) situate at Kahuku, District of Koolaulopoko, City and County of Honolulu State of Hawaii, being LOT 14 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 9.304 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land and along Kuilima Bay, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 11,531.80 feet north and 2,901.88 feet west and thence running by azimuths measured clockwise from true South:

1. Thence along Lot 13 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 2,106.00 feet, the chord azimuth and distance being:

88° 10' 16.5" 668.09 feet;
2. 185° 33' 576.65 feet along Lot 13 of Turtle Bay Bulk Lot Subdivision;

Thence boundary follows along the highest wash of

the waves for the next four (4) courses, the direct chord azimuths and distances along said highest wash of the waves being:

- | | | | |
|----|----------|--------|--|
| 3. | 267° 55' | 130.75 | feet; |
| 4. | 261° 45' | 221.00 | feet; |
| 5. | 241° 25' | 177.32 | feet; |
| 6. | 231° 05' | 137.38 | feet; |
| 7. | 360° 00' | 760.23 | feet along Lot 15 of Turtle Bay Bulk Lot Subdivision, to the point of beginning and containing an area of 9.304 Acres, more or less. |

Together with the following Easements for access and utility purposes:

Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
Easement U affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
Easement V affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-001-(por.) 001

ITEM V:

LOT 17

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 340, Land Commission Award Number 2698, Apana 2 to Waanui, being Exclusion 22, a portion of Lot 24 of File Plan 1406, and portion(s) of the land(s) described in and covered by Lots A-3, H and I, Map 3, Lot 163, Map 11, Lot 160-A, Map 66, Lot 526, Map 74, and Lot 529-A, Map 76 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920561, A-46920563, A-46920564, A-46920565 and A-46920567) situate at Kahuku, District of Koolaulipo, City and County of Honolulu State of Hawaii, being LOT 17 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 37.031 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being the southwest corner of Lot G-2 (Map 4) of Land Court Application 1095 and along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 7,857.59 feet north and 1,377.54 feet east and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|----------|---|
| 1. | 111° 28' 50" | 32.53 | feet along the north side of Kamehameha Highway; |
| 2. | 191° 10' | 1,568.16 | feet along Lots 24 and 25 of Turtle Bay Bulk Lot Subdivision; |
| 3. | 196° 50' | 455.93 | feet along Lots 25 and 22 of Turtle Bay Bulk Lot Subdivision; |
| 4. | 207° 20' | 579.70 | feet along Lot 22 of Turtle Bay Bulk Lot |

				Subdivision;
5.	196°	00'	136.72	feet along Lots 22 and 21 of Turtle Bay Bulk Lot Subdivision;
6.	175°	33' 30"	1,090.70	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
7.	186°	07'	151.17	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
8.	186°	10'	209.22	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
9.	178°	41'	147.55	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
10.	146°	04' 30"	595.90	feet along Lots 21 and 20 of Turtle Bay Bulk Lot Subdivision;
11.	128°	48'	110.42	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
12.	153°	46'	263.18	feet along Lots 20 and 18 of Turtle Bay Bulk Lot Subdivision;
13.	146°	27' 40"	462.76	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
14.	75°	34'	367.89	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
15.	106°	00'	310.00	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
16.	94°	07'	482.00	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
17.	128°	51'	90.00	feet along Lot 18 of Turtle Bay Bulk Lot

Subdivision;

18.	100°	13'	448.00	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
19.	110°	30'	677.00	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
20.	135°	37'	254.83	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;

Thence boundary follows along the highest wash of
the waves for the next
seventeen (17) courses,
the direct chord
azimuths and distance
along said highest wash
of the waves being:

21.	235°	05'	60.53	feet;
22.	188°	50'	132.98	feet;
23.	168°	09'	248.00	feet;
24.	151°	15'	251.00	feet;
25.	193°	56'	330.00	feet;
26.	299°	40'	170.00	feet;
27.	11°	57'	175.00	feet;
28.	357°	18'	238.00	feet;
29.	306°	33'	261.00	feet;
30.	271°	10'	257.00	feet;
31.	261°	00'	297.00	feet;
32.	279°	53'	139.00	feet;
33.	295°	50'	247.00	feet;
34.	342°	57'	198.00	feet;
35.	284°	34'	611.00	feet;

36.	264°	25'	142.00	feet;
37.	271°	29'	181.43	feet;
38.	326°	27' 40"	1,248.78	feet along Lot 160-B (Map 66) of Land Court Application 1095;
39.	51°	47'	32.94	feet along Lot 160-B (Map 66), being a portion of L.C. Aw. 4341, Ap. 2 to Kaukaha;
40.	308°	48'	108.20	feet along Lot 160-B (Map 66), being a portion of L.C. Aw. 4341, Ap. 2 to Kaukaha;
41.	326°	04' 30"	610.13	feet along Lot 160-B (Map 66) of Land Court Application 1095;
42.	358°	41'	159.00	feet along Lot 160-B (Map 66) of Land Court Application 1095;
43.	6°	10'	211.30	feet along Lot 160-B (Map 66) of Land Court Application 1095;
44.	6°	07'	148.20	feet along Lot 160-B (Map 66) of Land Court Application 1095;
45.	355°	33' 30"	1,093.51	feet along Lot 160-B (Map 66) of Land Court Application 1095;
46.	16°	00'	145.66	feet along Lot F-2 (Map 4) of Land Court Application 1095, Lot 25 of Railroad Tract Subdivision (File Plan 1406) and Lot G-1 (Map 4) of Land Court Application 1095;
47.	27°	20"	579.93	feet along Lot G-1 (Map 4) of Land Court Application 1095;
48.	16°	50'	451.41	feet along Lot G-1 (Map

4) of Land Court
Application 1095;

49. 11° 10' 1,572.40 feet along Lots G-1 and
G-2 (Map 4) of Land
Court Application 1095
to the point of
beginning and
containing an area of
37.031 Acres, more or
less.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership
GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company
DATED : February 23, 2010
FILED : Land Court Document No. 3942089
RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 041
Oahu TMK: 5-6-003-(por.) 042
Oahu TMK: 5-6-003-(por.) 033
Oahu TMK: 5-6-003-(por.) 044
Oahu TMK: 5-7-001-(por.) 033

ITEM VI:

LOT 18

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 340, Land Commission Award Number 2698, Apana 2 to Waanui, being Exclusion 22, and portion(s) of the land(s) described in and covered by Lot 160-A, Map 66, and Lot 529-A, Map 76 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46920567) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 18 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 25.664 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of

Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being the west corner of Lot 20 of Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 12,400.34 feet north and 1,174.33 feet east and thence running by azimuths measured clockwise from true South:

- | | | | |
|-----|--|--------|---|
| 1. | 75° 30' | 62.08 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 2. | 131° 00' | 103.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 3. | 194° 00' | 235.00 | feet along Lot 19 of Turtle Bay Lot Subdivision; |
| 4. | 104° 00' | 60.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 5. | 193° 30' | 135.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 6. | 176° 00' | 118.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 7. | 78° 15' | 580.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 8. | 103° 15' | 640.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 9. | 151° 30' | 140.00 | feet along Lot 19 of Turtle Bay Bulk Lot Subdivision; |
| 10. | Thence along Lot 19 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 3,000.00 | | |

feet, the chord azimuth
and distance being;

	95° 00'	209.40	feet;
11.	93° 00'	285.98	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
12.	126° 30'	546.71	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
13.	129° 20'	395.15	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;

Thence boundary follows along the highest wash of
the waves for the next
two (2) courses, the
direct chord azimuths
and distances along
said highest wash of
the waves being:

14.	235° 15'	138.22	feet;
15.	238° 25'	133.17	feet;
16.	315° 37'	254.83	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
17.	290° 30'	677.00	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
18.	280° 13'	448.00	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
19.	308° 51'	90.00	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
20.	274° 07'	482.00	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
21.	286° 00'	310.00	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;

22.	255°	34'	367.89	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
23.	326°	27' 40"	462.76	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
24.	333°	46'	180.54	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
25.	130°	49'	125.60	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
26.	58°	50'	87.84	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
27.	41°	48' 30"	143.15	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
28.	5°	02'	175.80	feet along Lot 20 of Turtle Bay Lot Subdivision;
29.	111°	26'	76.20	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
30.	28°	18'	118.21	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 25.664 Acres, more or less.

Together with the following Easements for access and utility purposes:

Easement J affecting Lot 25 of Turtle Bay Bulk Lot Subdivision;
 Easement K affecting Lot 22 of Turtle Bay Bulk Lot Subdivision;
 Easement L affecting Lot 19 of Turtle Bay Bulk Lot Subdivision;
 Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;

Easement U affecting Lot 11 of Turtle Bay Bulk Lot
Subdivision;
Easement V affecting Lot 13 of Turtle Bay Bulk Lot
Subdivision;
Easement W affecting Lot 15 of Turtle Bay Bulk Lot
Subdivision;
Easement X affecting Lot 16 of Turtle Bay Bulk Lot
Subdivision;

Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot
Subdivision, which were designated in the Subdivision map
approved by City and County of Honolulu on July 17, 2015,
File No. 2014/SUB-145, as particularly described in
Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 041

ITEM VII:

LOT 20

All of that certain parcel of land (being portion(s) of
the land(s) described in and covered by Lot A-3, Map 3 of
Land Court Application No. 1095 of the Trustees under the
Will and of the Estate of James Campbell, deceased,
having been deregistered and recorded in the Bureau of
Conveyances of the State of Hawaii as Document No. A-
46920565) situate at Kahuku, District of Koolaupoko, City
and County of Honolulu State of Hawaii, being LOT 20 of
"TURTLE BAY BULK LOT SUBDIVISION", containing an area of
3.783 acres, more or less, as shown on Subdivision map
prepared by Ryan M. Suzuki, with R.M. Towill Corporation,
approved by Department of Planning and Permitting, City
and County of Honolulu, on July 17, 2015, File No.
2014/SUB-145, and thus bounded and described as follows:

Beginning at the southwest corner of this parcel of land, same being the southeast corner of Lot 19 of Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 12,311.82 feet north and 1,185.63 feet east and thence running by azimuth measured clockwise from true South:

1. 148° 52' 60.40 feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
2. 208° 18' 159.85 feet along Lots 19 and 18 of Turtle Bay Bulk Lot Subdivision;
3. 291° 26' 76.20 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
4. 185° 02' 175.80 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
5. 221° 48' 30" 143.15 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
6. 238° 50' 87.84 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
7. 310° 49' 125.60 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
8. 333° 46' 82.64 feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
9. 308° 48' 110.42 feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
10. 326° 04' 30" 64.06 feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
11. 350° 59' 30" 5.85 feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;

- | | | | |
|-----|-------------|--------|--|
| 12. | 31° 49' 30" | 147.55 | feet along Lot 21 of
Turtle Bay Bulk Lot
Subdivision; |
| 13. | 73° 16' | 321.70 | feet along Lots 21 and
19 of Turtle Bay Bulk
Lot Subdivision; |
| 14. | 130° 08' | 53.40 | feet along Lot 19 of
Turtle Bay Bulk Lot
Subdivision; |
| 15. | 79° 29' | 131.30 | feet along Lot 19 of
Turtle Bay Bulk Lot
Subdivision to the
point of beginning and
containing an area of
3.783 Acres more or
less. |

Together with the following Easements for access and utility purposes:

Easement J affecting Lot 25 of Turtle Bay Bulk Lot Subdivision;
 Easement K affecting Lot 22 of Turtle Bay Bulk Lot Subdivision;
 Easement L affecting Lot 19 of Turtle Bay Bulk Lot Subdivision;
 Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
 Easement U affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
 Easement V affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
 Easement W affecting Lot 15 of Turtle Bay Bulk Lot Subdivision;
 Easement X affecting Lot 16 of Turtle Bay Bulk Lot Subdivision;
 Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision,
 which were designated in the Subdivision map approved by City
 and County of Honolulu on July 17, 2015, File No. 2014/SUB-145,
 as particularly described in Affidavit recorded as Document No.
 _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
 general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
 limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 033

ITEM VIII:

LOT 21

All of that certain parcel of land (being a portion of Lot 24 of File Plan 1406, and portion(s) of the land(s) described in and covered by Lots H and I, Map 3, Lot 163, Map 11 and Lot 160-A, Map 66 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920567, A-46920563, and A-46920561) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 21 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 12.053 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the south corner of this parcel of land, same being the southeast corner of Lot 22 of Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 10,463.76 feet north and 2,079.15 feet east and thence running by azimuths measured clockwise from true South:

1. Along Lot 22 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 500.00 feet, the chord azimuth and distance being:

158° 50' 33" 110.47 feet;
2. 152° 30' 481.66 feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
3. Thence along Lot 22 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 553.00 feet, the chord azimuth and distance being:

	144° 42' 30"	149.94	feet;
4.	136° 55'	128.40	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
5.	223° 45'	128.00	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
6.	133° 45'	100.00	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
7.	223° 45'	60.00	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
8.	183° 30'	495.00	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
9.	154° 15'	355.00	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
10.	Thence along Lot 19 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:		
	122° 45'	62.70	feet;
11.	181° 15'	89.70	feet along Lot 19 of Turtle Bay Bulk Lot Subdivision;
12.	253° 16'	144.50	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
13.	211° 49' 30"	147.55	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
14.	170° 59' 30"	5.85	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
15.	326° 04' 30"	531.84	feet along Lot 17 of

				Turtle Bay Bulk Lot Subdivision;
16.	358° 41'	147.55		feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
17.	6° 10'	209.22		feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
18.	6° 07'	151.17		feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
19.	355° 33' 30"	1,090.70		feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
20.	16° 00'	28.08		feet along Lot 17 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 12.053 Acres, more or less.

Together with the following Easements for access and utility purposes:

Easement J affecting Lot 25 of Turtle Bay Bulk Lot Subdivision;
 Easement K affecting Lot 22 of Turtle Bay Bulk Lot Subdivision;
 Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
 Easement U affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
 Easement V affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
 Easement W affecting Lot 15 of Turtle Bay Bulk Lot Subdivision;
 Easement X affecting Lot 16 of Turtle Bay Bulk Lot Subdivision;
 Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision,
 which were designated in the Subdivision map approved by City
 and County of Honolulu on July 17, 2015, File No. 2014/SUB-145,
 as particularly described in Affidavit recorded as Document No.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
 general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
 limited liability company

DATED : February 23, 2010
FILED : Land Court Document No. 3942089
RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 041

ITEM IX:

LOT 22

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 530, Land Commission Award Number 2779, Apana 2 to Makilo, being Exclusion 26, all of the land described in and covered by Royal Patent Number 338, Land Commission Award Number 2880, Apana 2 to Kupau, being Exclusion 27, and all of the land described in and covered by Royal Patent Number 339, Land Commission Award Number 2690, Apana 2 to Luiki, being Exclusion 28, a portion of Lot 24 of File Plan 1406, and portion(s) of the land(s) described in and covered by Lots 162 and 163, Map 11, Lot 160-A, Map 66, Lots 525 and 526, Map 74, and Lot 529-A, Map 76 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920556, A-46920563, A-46920564, and A-46920567) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 22 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 75.208 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the northwest corner of this parcel of land, same being the west corner of Lot 15 of Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 12,716.09 feet north and 931.19 feet west and thence running by azimuths measured clockwise from true South:

1. Along Lots 15 and 19 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 1,554.00

feet, the chord azimuth
and distance being:

- | | | | | | |
|-----|--|-----|-----|----------|---|
| | 285° | 21' | 09" | 1,626.89 | feet; |
| 2. | 316° | 55' | | 1,600.30 | feet along Lots 19 and
21 of Turtle Bay Bulk
Lot Subdivision; |
| 3. | Thence along Lot 21 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 553.00 feet,
the chord azimuth and
distance being: | | | | |
| | 324° | 42' | 30' | 149.94 | feet; |
| 4. | 332° | 30' | | 481.66 | feet along Lot 21 of
Turtle Bay Bulk Lot
Subdivision; |
| 5. | Thence along Lot 21 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 500.00 feet,
the chord azimuth and
distance being: | | | | |
| | 338° | 50' | 33" | 110.47 | feet; |
| 6. | 16° | 00' | | 108.64 | feet along Lot 17 of
Turtle Bay Bulk Lot
Subdivision; |
| 7. | 27° | 20' | | 579.70 | feet along Lot 17 of
Turtle Bay Bulk Lot
Subdivision; |
| 8. | 16° | 50' | | 141.96 | feet along Lot 17 of
Turtle Bay Bulk Lot
Subdivision; |
| 9. | 78° | 15' | | 582.10 | feet along Lot 25 of
Turtle Bay Bulk Lot
Subdivision; |
| 10. | 164° | 09' | 30" | 488.68 | feet along Lot 23 of
Turtle Bay Bulk Lot
Subdivision; |
| 11. | 214° | 38' | | 76.15 | feet along Lot 23 of |

Turtle Bay Bulk Lot
Subdivision;

12. Thence along Lot 23 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius 327.00 feet, the
chord azimuth and
distance being:

	131°	33'	29"	42.11	feet;
13.	135°	15'		629.34	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
14.	28°	25'		262.62	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
15.	46°	47'		157.98	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
16.	120°	58'		619.67	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
17.	126°	50'		275.10	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
18.	204°	41'		172.18	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
19.	136°	34'		228.46	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
20.	210°	53'		425.08	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
21.	238°	58'		121.60	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
22.	263°	39'		194.40	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;

23.	315° 11'	1,770.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
24.	231° 00'	125.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
25.	213° 45'	654.09	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
26.	152° 30'	71.76	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
27.	Thence along Lot 25 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 445.00 feet, the chord azimuth and distance being:		
	144° 42' 30"	120.66	feet;
28.	136° 55'	106.59	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
29.	35° 30'	225.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
30.	28° 15'	130.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
31.	51° 15'	40.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
32.	Thence along Lot 25 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 2,000.00 feet, the chord azimuth and distance being:		
	132° 00'	642.97	feet;
33.	122° 45'	170.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;

34.	140° 15'	300.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
35.	137° 15'	645.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
36.	139° 45'	387.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
37.	131° 00'	50.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
38.	102° 30'	100.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
39.	91° 00'	185.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
40.	113° 30'	175.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
41.	101° 00'	207.25	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
42.	156° 00'	251.02	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 75.208 acres, more or less.

Together with the following Easements for access and utility purposes:

Easement J affecting Lot 25 of Turtle Bay Bulk Lot Subdivision;
 Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
 Easement U affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
 Easement V affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
 Easement W affecting Lot 15 of Turtle Bay Bulk Lot Subdivision;
 Easement X affecting Lot 16 of Turtle Bay Bulk Lot Subdivision;
 Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision,

which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 040
Oahu TMK: 5-6-003-(por.) 041
Oahu TMK: 5-6-003-(por.) 042
Oahu TMK: 5-6-003-(por.) 044
Oahu TMK: 5-7-001-(por.) 033

ITEM X:

LOT 23

All of that certain parcel of land (being a portion of Lot 24 of File Plan 1406, all of Lot 23 of File Plan 1406, and portion(s) of the land(s) described in and covered by Lots 525 and 526, Map 74, and Lot 529-A, Map 76 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920556, A-46920567, and A-46920564, and a portion of Lot 1122 of DPP 1990/SUB-271 approved by City and County of Honolulu on March 28, 1991, being same a portion of Lot 7 of File Plan 2085, portions of Lots 463 and 481, Map 68, and Lot 529-B, Map 76 of Land Court Application No. 1095 having been deregistered and recorded as Document Nos. A-46920556 and A-46920558) situate at Kahuku, District of Koolau-poko, City and County of Honolulu State of Hawaii, being LOT 23 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 99.910 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City

and County of Honolulu, on July 17, 2015, File No.
2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land,
same being the southeast corner of Lot 22 of Turtle Bay
Bulk Lot Subdivision, the coordinates of said point of
beginning referred to Government Survey Triangulation
Station "PUUKI" being 10,122.66 feet north and 1,081.96
feet west and thence running by azimuths measured
clockwise from true South:

1.	34° 38'	76.15	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
2.	344° 09' 30"	488.68	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
3.	103° 56'	33.30	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
4.	24° 36'	74.48	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
5.	39° 48'	24.05	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
6.	48° 42'	39.21	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
7.	56° 59'	42.65	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
8.	47° 52'	76.34	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
9.	71° 14'	53.93	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
10.	89° 40'	60.56	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
11.	95° 57'	71.56	feet along Lot 25 of

				Turtle Bay Bulk Lot Subdivision;
12.	76° 21'	71.77	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
13.	71° 55'	53.71	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
14.	89° 50'	28.72	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
15.	123° 14'	35.52	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
16.	147° 37'	37.91	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
17.	106° 13'	59.86	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
18.	101° 53'	59.49	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
19.	85° 54'	69.20	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
20.	75° 00'	87.32	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
21.	92° 09'	50.99	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
22.	112° 40'	69.42	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
23.	128° 44'	153.34	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;	
24.	119° 04'	120.40	feet along Lot 25 of	

				Turtle Bay Bulk Lot Subdivision;
25.	100°	38'	141.80	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
26.	81°	52'	100.26	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
27.	56°	09'	76.80	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
28.	35°	41'	77.18	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
29.	84°	34'	91.59	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
30.	108°	17'	141.54	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
31.	112°	25'	381.55	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
32.	165°	31'	104.50	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
33.	180°	15'	75.68	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
34.	176°	15'	85.19	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
35.	165°	01'	56.32	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
36.	130°	34'	41.69	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
37.	102°	53'	124.15	feet along Lot 25 of

				Turtle Bay Bulk Lot Subdivision;
38.	122°	54'	81.14	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
39.	129°	10'	47.06	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
40.	155°	38'	59.90	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
41.	122°	48'	211.08	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
42.	153°	36'	424.87	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
43.	165°	51'	210.67	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
44.	114°	26'	42.48	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
45.	160°	10'	24.97	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
46.	170°	31'	40.04	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
47.	187°	58'	47.47	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
48.	197°	17'	27.90	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
49.	165°	51'	251.34	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
50.	205°	17'	612.09	feet along Lot 25 of

				Turtle Bay Bulk Lot Subdivision;
51.	215°	09'	132.04	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
52.	264°	14'	95.73	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
53.	258°	29'	87.66	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
54.	221°	18'	111.77	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
55.	213°	11'	121.55	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
56.	171°	24'	48.93	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
57.	211°	55'	65.67	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
58.	236°	50'	104.75	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
59.	261°	30'	65.69	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
60.	256°	59'	165.02	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
61.	279°	29'	53.23	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
62.	304°	53'	39.25	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
63.	315°	55'	58.89	feet along Lot 25 of

			Turtle Bay Bulk Lot Subdivision;
64.	332° 36'	60.91	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
65.	313° 13'	38.94	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
66.	274° 22'	93.19	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
67.	280° 10'	29.76	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
68.	287° 06'	124.15	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
69.	309° 41'	31.77	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
70.	318° 09'	38.38	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
71.	347° 08'	83.54	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
72.	4° 00'	108.90	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
73.	336° 29'	162.48	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
74.	352° 16'	163.01	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
75.	9° 06'	190.71	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
76.	30° 53'	425.08	feet along Lot 22 of

				Turtle Bay Bulk Lot Subdivision;
77.	316° 34'	228.46		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
78.	24° 41'	172.18		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
79.	306° 50'	275.10		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
80.	300° 58'	619.67		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
81.	226° 47'	157.98		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
82.	208° 25'	262.62		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
83.	315° 15'	629.34		feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
84.	Thence along Lot 22 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 327.00 feet, the chord azimuth and distance being:			
	311° 33' 29"	42.11		feet to the point of beginning and containing an area of 99.910 Acres, more or less.

Together with the following Easements for access and
utility purposes:

Easement J affecting Lot 25 of Turtle Bay Bulk Lot Subdivision;
Easement K affecting Lot 22 of Turtle Bay Bulk Lot Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot
Subdivision;

Easement U affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
Easement V affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
Easement W affecting Lot 15 of Turtle Bay Bulk Lot Subdivision;
Easement X affecting Lot 16 of Turtle Bay Bulk Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision,
which were designated in the Subdivision map approved by City
and County of Honolulu on July 17, 2015, File No. 2014/SUB-145,
as particularly described in Affidavit recorded as Document No.
_____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 040
Oahu TMK: 5-6-003-(por.) 042
Oahu TMK: 5-6-003-(por.) 044
Oahu TMK: 5-7-001-(por.) 001
Oahu TMK: 5-7-001-(por.) 017
Oahu TMK: 5-7-001-(por.) 033

ITEM XI:

LOT 24

All of that certain parcel of land (being portion(s) of
the land(s) described in and covered by Lot 526, Map 74
of Land Court Application No. 1095 of the Trustees under
the Will and of the Estate of James Campbell, deceased,
having been deregistered and recorded in the Bureau of
Conveyances of the State of Hawaii as Document No. A-
46920564) situate at Kahuku, District of Koolaupoko, City
and County of Honolulu State of Hawaii, being LOT 24 of
"TURTLE BAY BULK LOT SUBDIVISION", containing an area of
8.774 acres, more or less. as shown on Subdivision map
prepared by Ryan M. Suzuki, with R.M. Towill Corporation,
approved by Department of Planning and Permitting, City
and County of Honolulu, on July 17, 2015, File No.
2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land,

same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 7,869.49 feet north and 1,347.30 east and thence running by azimuths measured clockwise from true South:

1. 111° 28' 50" 590.47 feet along the north side of Kamehameha Highway;
2. 211° 20' 58" 105.65 feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
3. 198° 23' 352.93 feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
4. Thence along Lot 25 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 276.30 feet, the chord azimuth and distance being:

233° 11' 30" 315.44 feet;
5. 268° 00' 296.77 feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
6. 11° 10' 856.94 feet along Lot 17 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 8.774 Acres, more or less.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 044

ITEM XII:

LOT 25

All of that certain parcel of land (being a portion of Lot 24 of File Plan 1406, portions of the lands described in and covered by Lot 13, Map 4, Lots 162 and 163, Map 11, Lot 160-A, Map 66, Lots 525 and 526, Map 74, and Lot 529-A, Map 76 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920564, A-46920556, A-46920567, A-46920562 and A-46920563, and portion(s) of Lots 1120, 1121 and 1122 of DPP 1990/SUB-271, approved by City and County of Honolulu on March 28, 1991, being same all of the land described in and covered by Royal Patent Number 337, Land Commission Award Number 2913, Apana 2 to Kekua, being Exclusion 19, a portion of Lot 7 of File Plan 2085, and portion(s) of the land(s) described in and covered by Lots 463, 465 and 481, Map 68, and Lot 529-B, Map 76 of Land Court Application No. 1095 having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920556 and A-46920558) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 25 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 157.885 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 8,085.71 feet north and 797.85 east and thence running by azimuths measured clockwise from true South:

1. 111° 28' 50" 526.71 feet along the north side of Kamehameha Highway;
2. Thence along the north side of Kamehameha Highway, on a curve to the right with a radius of 549.26 feet, the chord azimuth and distance being:

118° 23' 55" 132.32 feet;

3.	125° 19'	787.38	feet along the side of Kamehameha Highway;
4.	281° 00'	21.38	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
5.	212° 24'	60.90	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
6.	321° 00	68.00	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
7.	287° 04'	40.80	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
8.	188° 40'	129.40	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
9.	94° 05'	51.50	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
10.	168° 32'	77.70	feet along L.C. Aw. 2744, Ap. 1 to Pakanaka;
11.	173° 20'	48.80	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
12.	106° 40'	80.50	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
13.	38° 10'	46.20	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
14.	118° 20'	56.10	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;
15.	135° 30'	80.50	feet along R.P. 524, L.C. Aw. 2861, Ap. 1 to Kaohele;

- | | | | |
|-----|--|----------|---|
| 16. | 54° 10' | 48.20 | feet along R.P. 524,
L.C. Aw. 2861, Ap. 1 to
Kaohele; |
| 17. | 16° 35' | 19.80 | feet along R.P. 524,
L.C. Aw. 2861, Ap. 1 to
Kaohele; |
| 18. | 106° 35' | 104.30 | feet along R.P. 524,
L.C. Aw. 2861, Ap. 2 to
Kaohele; |
| 19. | 16° 35' | 82.85 | feet along R.P. 524,
L.C. Aw. 2861, Ap. 2 to
Kaohele; |
| 20. | Thence along the north side of Kamehameha Highway,
on a curve to the right
with a radius of 930.37
feet, the chord azimuth
and distance being: | | |
| | 131° 08' 11" | 78.09 | feet; |
| 21. | 215° 19' | 340.43 | feet along Lot 524 (Map
74) of Land Court
Application 1095; |
| 22. | 125° 19' | 275.28 | feet along Lot 524 (Map
74) of Land Court
Application 1095; |
| 23. | 35° 19' | 292.08 | feet along Lot 524 (Map
74) of Land Court
Application 1095; |
| 24. | 135° 22' 30" | 44.83 | feet along the north
side of Kamehameha
Highway; |
| 25. | Thence along the north side of Kamehameha Highway,
on a curve to the left
with radius of 844.02
feet, the chord azimuth
and distance being: | | |
| | 120° 09' 45" | 442.94 | feet; |
| 26. | 104° 57' | 1,141.29 | feet along the north
side of Kamehameha
Highway; |

27.	173°	34'	20"	915.00	feet along Lot 26 of Turtle Bay Bulk Lot Subdivision;
28.	226°	12'	40"	723.13	feet along Lot 26 of Turtle Bay Bulk Lot Subdivision;
29.	167°	24'	08"	644.27	feet along Lots 26 and 16 of Turtle Bay Bulk Lot Subdivision;
30.	101°	14'		439.55	feet along Lot 16 of Turtle Bay Bulk Lot Subdivision;
31.	199°	36'		205.90	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
32.	239°	41'		348.45	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
33.	234°	41'		211.71	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
34.	241°	37'		274.92	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
35.	226°	05'		453.71	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
36.	247°	07'		140.94	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
37.	237°	19'		378.98	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
38.	355°	33'	37"	7.42	feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
39.	336°	00'		695.49	feet along Lots 15 and 22 of Turtle Bay Bulk Lot Subdivision;

40.	281° 00'	207.25	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
41.	293° 30'	175.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
42.	271° 00'	185.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
43.	282° 30'	100.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
44.	311° 00'	50.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
45.	319° 45'	387.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
46.	317° 15'	645.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
47.	320° 15'	300.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
48.	302° 45'	170.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
49.	Thence along Lot 22 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 2,000.00 feet, the chord azimuth and distance being:		
	312° 00'	642.97	feet;
50.	231° 15'	40.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
51.	208° 15'	130.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;

52.	215° 30'	225.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
53.	316° 55'	106.59	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
54.	Thence along Lot 22 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 445.00 feet, the chord azimuth and distance being:		
	324° 42' 30"	120.66	feet;
55.	332° 30'	71.76	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
56.	33° 45'	654.09	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
57.	51° 00'	125.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
58.	135° 11'	1,770.00	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
59.	83° 39'	194.40	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
60.	58° 58'	121.60	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
61.	189° 06'	190.71	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
62.	172° 16'	163.01	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
63.	156° 29'	162.48	feet along Lot 23 of Turtle Bay Bulk Lot

				Subdivision;
64.	184°	00'	108.90	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
65.	167°	08'	83.54	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
66.	138°	09'	38.38	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
67.	129°	41'	31.77	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
68.	107°	06'	124.15	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
69.	100°	10'	29.76	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
70.	94°	22'	93.19	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
71.	133°	13'	38.94	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
72.	152°	36'	60.91	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
73.	135°	55'	58.89	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
74.	124°	53'	39.25	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
75.	99°	29'	53.23	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
76.	76°	59'	165.02	feet along Lot 23 of Turtle Bay Bulk Lot

			Subdivision;
77.	81° 30'	65.69	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
78.	56° 50'	104.75	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
79.	31° 55'	65.67	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
80.	351° 24'	48.93	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
81.	33° 11'	121.55	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
82.	41° 18'	111.77	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
83.	78° 29'	87.66	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
84.	84° 14'	95.73	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
85.	35° 09'	132.04	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
86.	25° 17'	612.09	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
87.	345° 51'	251.34	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
88.	17° 17'	27.90	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
89.	7° 58'	47.47	feet along Lot 23 of Turtle Bay Bulk Lot

			Subdivision;
90.	350° 31'	40.04	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
91.	340° 10'	24.97	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
92.	294° 26'	42.48	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
93.	345° 51'	210.67	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
94.	333° 36'	424.87	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
95.	302° 48'	211.08	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
96.	335° 38'	59.90	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
97.	309° 10'	47.06	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
98.	302° 54'	81.14	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
99.	282° 53'	124.15	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
100.	310° 34'	41.69	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
101.	345° 01'	56.32	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
102.	356° 15'	85.19	feet along Lot 23 of Turtle Bay Bulk Lot

			Subdivision;
103.	0° 15'	75.68	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
104.	345° 31'	104.50	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
105.	292° 25'	381.55	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
106.	288° 17'	141.54	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
107.	264° 34'	91.59	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
108.	215° 41'	77.18	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
109.	236° 09'	76.80	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
110.	261° 52'	100.26	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
111.	280° 38'	141.80	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
112.	299° 04'	120.40	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
113.	308° 44'	153.34	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
114.	292° 40'	69.42	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
115.	272° 09'	50.99	feet along Lot 23 of Turtle Bay Bulk Lot

			Subdivision;
116.	255° 00'	87.32	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
117.	265° 54'	69.20	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
118.	281° 53'	59.49	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
119.	286° 13'	59.86	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
120.	327° 37'	37.91	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
121.	303° 14'	35.52	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
122.	269° 50'	28.72	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
123.	251° 55'	53.71	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
124.	256° 21'	71.77	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
125.	275° 57'	71.56	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
126.	269° 40'	60.56	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
127.	251° 14'	53.93	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
128.	227° 52'	76.34	feet along Lot 23 of Turtle Bay Bulk Lot

			Subdivision;
129.	236° 59'	42.65	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
130.	228° 42'	39.21	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
131.	219° 48'	24.05	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
132.	204° 36'	74.48	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
133.	283° 56'	33.30	feet along Lot 23 of Turtle Bay Bulk Lot Subdivision;
134.	258° 15'	582.10	feet along Lot 22 of Turtle Bay Bulk Lot Subdivision;
135.	16° 50'	313.97	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
136.	11° 10'	711.22	feet along Lot 17 of Turtle Bay Bulk Lot Subdivision;
137.	88° 00'	296.77	feet along Lot 24 of Turtle Bay Bulk Lot Subdivision;
138.	Thence along Lot 24 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 276.30 feet, the chord azimuth and distance being:		
	53° 11' 30"	315.44	feet;
139.	18° 23'	352.93	feet along Lot 24 of Turtle Bay Bulk Lot Subdivision;

140. 31° 20' 58" 105.65 feet along Lot 24 of
Turtle Bay Bulk Lot
Subdivision to the
point of beginning and
containing an area of
157.885 Acres, more or
less.

Together with the following Easements for access and
utility purposes:

Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot
Subdivision;
Easement U affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
Easement V affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
Easement W affecting Lot 15 of Turtle Bay Bulk Lot Subdivision;
Easement X affecting Lot 16 of Turtle Bay Bulk Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision,
which were designated in the Subdivision map approved by City
and County of Honolulu on July 17, 2015, File No. 2014/SUB-145,
as particularly described in Affidavit recorded as Document No.
_____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 040

Oahu TMK: 5-6-003-(por.) 041

Oahu TMK: 5-6-003-(por.) 042

Oahu TMK: 5-6-003-(por.) 044

Oahu TMK: 5-7-001-(por.) 001

Oahu TMK: 5-7-001-(por.) 016

Oahu TMK: 5-7-001-(por.) 033

ITEM XIII:

LOT 26

All of that certain parcel of land (being portion(s) of
Lots 1120, 1121 and 1122 of DPP 1990/SUB-271, approved by

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,808.24 feet north and 2,521.13 feet west and thence running by azimuths measured clockwise from true South:

- 329108.2

- | | | | |
|-----|---|--------|--|
| 7. | 78° 45' | 155.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 8. | 165° 15' | 10.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 9. | 78° 45' | 31.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 10. | 165° 15' | 25.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 11. | 76° 30' | 135.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 12. | 23° 45' | 13.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 13. | 53° 45' | 40.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 14. | Thence along Lot R-5 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 91.00 feet, the chord azimuth and distance being: | | |
| | 136° 20' 15" | 88.48 | feet; |
| 15. | 75° 25' 30" | 9.00 | feet along Lot R-5 of Turtle Bay Bulk Lot Subdivision; |
| 16. | 165° 25' 30" | 35.12 | feet along Lot 27 of Turtle Bay Bulk Lot Subdivision; |
| 17. | Thence along Lot 27 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 632.00 feet, the chord azimuth and distance being: | | |

- 163° 17' 05" 47.21 feet;
18. 161° 08' 40" 183.52 feet along Lot 27 of Turtle Bay Bulk Lot Subdivision;
19. 251° 08' 40" 52.96 feet along Lot 466 (Map 68) of Land Court Application 1095;
20. Thence along Lot 466 (Map 68) of Land Court Application 1095, on a curve to the left with a radius of 180.00 feet, the chord azimuth and distance being:
- 214° 54' 20" 212.82 feet;
21. 178° 40' 142.00 feet along Lot 466 (Map 68) of Land Court Application 1095;
22. Thence along Lot 466 (Map 68) of Land Court Application 1095, on a curve to the right with a radius of 1,000.00 feet, the chord azimuth and distance being:
- 183° 20' 162.72 feet;
23. 188° 00' 520.00 feet along Lot 466 (Map 68) of Land Court Application 1095;
24. Thence along Lot 466 (Map 68) of Land Court Application 1095, on a curve to the left with a radius of 180.00 feet, the chord azimuth and distance being:
- 147° 30' 233.80 feet;
25. 107° 00' 360.00 feet along Lot 466 (Map 68) of Land Court Application 1095;
26. Thence along Lot 466 (Map 68) of Land Court Application 1095, on a

curve to the left with
a radius of 400.00
feet, the chord azimuth
and distance being:

92° 15' 203.68 feet;

27. 77° 30' 154.00 feet along Lot 466 (Map
68) of Land Court
Application 1095;

28. Thence along Lot 466 (Map 68) of Land Court
Application 1095, on a
curve to the left with
a radius of 300.00
feet, the chord azimuth
and distance being:

61° 27' 45" 165.76 feet;

29. Thence along Lot 27 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 2,840.00
feet, the chord azimuth
and distance being:

133° 32' 21.5" 148.84 feet;

30. Thence along Lot 12 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 2,836.80
feet, the chord azimuth
and distance being:

129° 44' 20.5" 227.82 feet;

31. Thence along Lots 11 and 13 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 706.00 feet,
the chord azimuth and
distance being:

255° 54' 846.81 feet;

32. 292° 45' 200.00 feet along Lot 13 of
Turtle Bay Bulk Lot
Subdivision;

33. Thence along Lots 13, 15 and 16 of Turtle Bay Bulk

Lot Subdivision, on a curve to the left with a radius of 2,214.00 feet, the chord azimuth and distance being:

	266°	30'	34"	1,957.80	feet;
34.	347°	24'	08"	470.29	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
35.	46°	12'	40"	723.13	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision;
36.	353°	34'	20"	915.00	feet along Lot 25 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 69.072 Acres, more or less.

Together with the following non-exclusive easements:

Portion of Easement N for landscaping and utility purposes of Turtle Bay Bulk Lot Subdivision;
Easement T for access and utility purposes affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
Easement U for access and utility purposes affecting Lot 11 of Turtle Bay Bulk Lot Subdivision;
Easement V for access and utility purposes affecting Lot 13 of Turtle Bay Bulk Lot Subdivision;
Easement W for access and utility purposes affecting Lot 15 of Turtle Bay Bulk Lot Subdivision;
Easement X for access and utility purposes affecting Lot 16 of Turtle Bay Bulk Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-001-(por.) 001

Oahu TMK: 5-7-001-(por.) 016

ITEM XIV:

LOT 1204-A

All of that certain parcel of land situate at Kahuku,
District of Koolauloa, City and County of Honolulu, State
of Hawaii, described as follows:

LOT 1204-A, area 7.260 acres, more or less, as shown on
Map 187, filed in the Office of the Assistant Registrar
of the Land Court of the State of Hawaii with Land Court
Application No. 1095 of the Trustees of the Estate of
James Campbell, deceased.

Together with an easement for flowage of water over the
lands described in Exhibit "C" attached to the
Declaration of Drainage Easement, dated June 15, 2005,
filed as Land Court Document No. 3302322, recorded as
Document No. 2005-146046; subject to the terms and
provisions contained therein. (Not noted on Transfer
Certificate(s) of Title referred to herein)

Being land(s) described in Transfer Certificate of Title
No. 1,073,398 issued to TURTLE BAY RESORT, LLC, a
Delaware limited liability company.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : JAMES CAMPBELL COMPANY LLC, a Delaware
limited liability company

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : December 20, 2013

FILED : Land Court Document No. T-8796038

Oahu TMK: 5-6-003-050

Exhibit A-1

PHASE I CE PROPERTY DIAGRAM

[to be added]



0 1000 2000

TURTLE BAY RESORT
SEPTEMBER 2015

Exhibit B

PHASE II CE PROPERTY DESCRIPTION

[to be added]

LOT 19

Beginning at the southeast corner of this parcel of land, same being the southwest corner of Lot 21 of the Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 11,210.19 feet north and 1,642.54 feet east and thence running by azimuths measured clockwise from true South:

1. 136° 55' 1,471.90 feet along Lot 22 of the Turtle Bay Bulk Lot Subdivision;
2. Thence along Lot 22 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 1,554.00 feet, the chord azimuth and distance being:

112° 36' 47" 1,279.17 feet;
3. 168° 45' 159.42 feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;

4. 153° 00' 193.90 feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
5. 126° 30' 37.93 feet along Lot 15 of Turtle Bay Bulk Lot Subdivision;
6. 273° 00' 285.98 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
7. Thence along Lot 18 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 3,000.00 feet, the chord azimuth and distance being:
- 275° 00' 209.40 feet;
8. 331° 30' 140.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
9. 283° 15' 640.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
10. 258° 15' 580.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
11. 356° 00' 118.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
12. 13° 30' 135.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
13. 284° 00' 60.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
14. 14° 00' 235.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
15. 311° 00' 103.00 feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;

16.	255° 30'	62.08	feet along Lot 18 of Turtle Bay Bulk Lot Subdivision;
17.	28° 18'	41.64	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
18.	328° 52'	60.40	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
19.	259° 29'	131.30	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
20.	310° 08'	53.40	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
21.	253° 16'	177.20	feet along Lot 20 of Turtle Bay Bulk Lot Subdivision;
22.	1° 15'	89.70	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
23.	Thence along Lot 21 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius 60.00 feet, the chord azimuth and distance being:		
	302° 45'	62.70	feet;
24.	334° 15'	355.00	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
25.	3° 30'	495.00	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
26.	43° 45'	60.00	feet along Lot 21 of Turtle Bay Bulk Lot Subdivision;
27.	313° 45'	100.00	feet along Lot 21 of Turtle Bay Bulk Lot

Subdivision;

28. 43° 45' 128.00 feet along Lot 21 of
Turtle Bay Bulk Lot
Subdivision to the
point of beginning and
containing an area of
29.326 Acres, more or
less.

Together with the following Easements for access and
utility purposes:

Easement J affecting Lot 25 of Turtle Bay Bulk Lot
Subdivision;
Easement K affecting Lot 22 of Turtle Bay Bulk Lot
Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk
Lot Subdivision;
Easement U affecting Lot 11 of Turtle Bay Bulk Lot
Subdivision;
Easement V affecting Lot 13 of Turtle Bay Bulk Lot
Subdivision;
Easement W affecting Lot 15 of Turtle Bay Bulk Lot
Subdivision;
Easement X affecting Lot 16 of Turtle Bay Bulk Lot
Subdivision;

Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot
Subdivision, which were designated in the Subdivision map
approved by City and County of Honolulu on July 17, 2015,
File No. 2014/SUB-145, as particularly described in
Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-6-003-(por.) 041

Oahu TMK: 5-7-001-(por.) 033

Exhibit B-1

PHASE II CE PROPERTY DIAGRAM

Exhibit C

STATE FEE SIMPLE PROPERTY

[to be added]

EXHIBIT C (STATE FEE SIMPLE):

ITEM I:

LOTS 3 AND R-6

FIRST:

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 513, Land Commission Award Number 2770, Apana 2 to Makaino, being Exclusion 49, Royal Patent Number 512, Land Commission Award Number 2784, Apana 2 to Moo, being Exclusion 12, Royal Patent Number 507, Land Commission Award Number 2837, Apana 2 to Kamakai, being Exclusion 13, Royal Patent Number 516, Land Commission Award Number 2878, Apana 2 to Kekua, being Exclusion 14 and Royal Patent Number 510, Land Commission Award Number 2838, Apana 2 to Kauwahi, being Exclusion 15 of Land Court Application No. 1095, portion(s) of Lots 2, 3 and 4 of File Plan 2018, and portion(s) of Lots 1121, 1122, 1125, 1128, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920560) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 3 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 31.384 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being the southwest corner of Lot 4 of Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,048.54 feet north and 8,500.46 feet west and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|---------|-------|--|
| 1. | 85° 45' | 40.00 | feet along Lot R-6 of
Turtle Bay Bulk Lot
Subdivision; |
| 2. | 97° 30' | 39.79 | feet along Lot R-6 of
Turtle Bay Bulk Lot
Subdivision; |

3. 80° 00' 80.55 feet along Lot R-6 of
Turtle Bay Bulk Lot
Subdivision;
4. 99° 15' 1,155.11 feet along Lot 2 of
Turtle Bay Bulk Lot
Subdivision;

Thence boundary follows along the highest wash of
the waves for the next
twenty nine (29)
courses, the direct
chord azimuths and
distances along said
highest wash of the
eaves being:

5. 224° 11' 215.00 feet;
6. 226° 00' 190.15 feet;
7. 220° 55' 115.60 feet;
8. 206° 50' 239.00 feet;
9. 187° 30' 158.00 feet;
10. 178° 25' 119.00 feet;
11. 168° 05' 85.70 feet;
12. 150° 15' 45.00 feet;
13. 119° 50' 55.15 feet;
14. 71° 55' 35.50 feet;
15. 85° 50' 71.80 feet;
16. 88° 50' 84.20 feet;
17. 74° 50' 30.00 feet;
18. 143° 20' 31.00 feet;
19. 132° 00' 146.10 feet;
20. 135° 30' 62.20 feet;
21. 174° 30' 139.60 feet;

22.	183° 05'	94.50	feet;
23.	201° 25'	186.80	feet;
24.	278° 09'	32.88	feet;
25.	339° 45'	212.00	feet;
26.	357° 02'	67.00	feet;
27.	326° 20'	64.50	feet;
28.	287° 50'	116.35	feet;
29.	258° 15'	131.55	feet;
30.	248° 50'	165.30	feet;
31.	261° 40'	343.00	feet;
32.	272° 23'	91.58	feet;
33.	287° 28'	135.18	feet;
34.	354° 57'	1,472.92	feet along Lot 4 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 31.384 acres, more or less.

Together with the following Easements for access and utility purposes:

Easement C affecting Lot 4 of Turtle Bay Bulk Lot Subdivision;
 Easement F affecting Lot 5 of Turtle Bay Bulk Lot Subdivision;
 Easement G affecting Lot 7 of Turtle Bay Bulk Lot Subdivision;
 Easement Q affecting Lot 6 of Turtle Bay Bulk Lot Subdivision;
 Easement R affecting Lot 9 of Turtle Bay Bulk Lot Subdivision;
 Easement S affecting Lot 10 of Turtle Bay Bulk Lot Subdivision;
 Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
 Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map

approved by City and County of Honolulu on July 17, 2015,
File No. 2014/SUB-145, as particularly described in
Affidavit recorded as Document No. _____.

SECOND:-

All of that certain parcel of land (being the land(s)
described in and covered by a portion of Lot 1125, Map
129 of Land Court Application No. 1095 of the Trustees
under the Will and of the Estate of James Campbell,
deceased, having been deregistered and recorded in the
Bureau of Conveyances of the State of Hawaii as Document
Nos. A-46920560) situate at Kahuku, District of
Koolau, City and County of Honolulu State of Hawaii,
being LOT R-6 of "TURTLE BAY BULK LOT SUBDIVISION",
containing an area of 0.047 acres, more or less, as shown
on Subdivision map prepared by Ryan M. Suzuki, with R.M.
Towill Corporation, approved by Department of Planning
and Permitting, City and County of Honolulu, on July 17,
2015, File No. 2014/SUB-145, and thus bounded and
described as follows:

Beginning at the east corner of this parcel of land, same
being along the north side of Kamehameha Highway, the
coordinates of said point of beginning referred to
Government Survey Triangulation Station "PUUKI" being
9,048.54 feet north and 8,500.46 feet west and thence
running by azimuths measured clockwise from true South:

1. Along the north side of Kamehameha Highway, on a
curve to the left with
a radius of 2889.93
feet, the chord azimuth
and distance being:

78° 00' 04"	157.07	feet;
-------------	--------	-------
2. 166° 26' 38" 21.49 feet along Lot R-2 of
Turtle Bay Bulk Lot
Subdivision;
3. 260° 00' 80.55 feet along Lot 3 of
Turtle Bay Bulk Lot
Subdivision;
4. 277° 30' 39.79 feet along Lot 3 of
Turtle Bay Bulk Lot
Subdivision;
5. 265° 45' 40.00 feet along Lot 3 of
Turtle Bay Bulk Lot

Subdivision to the
point of beginning and
containing an area of
0.047 acre, more or
less.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-006-(por.) 002

Oahu TMK: 5-7-006-(por.) 023

ITEM II:

LOT 4

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 509, Land Commission Award Number 2835, Apana 3 to Kuheleloa, being Exclusion 16 of Land Court Application No. 1095, portion(s) of Lots 3, 4, 5, 6 and 7 of File Plan 2018, a portion of Lot 15 of File Plan 1406, and portion(s) of Lots 1122, 1123, 1125, 1126, 1127, 1128, 1129, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920560 and portion(s) of Lots 470, 474 and 475, Map 68 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46920556) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT 4 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 21.104 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded

1. 79° 33' 30" 508.35 feet along the north side of Kamehameha Highway;
2. 174° 57' 1,472.92 feet along Lot 3 of Turtle Bay Bulk Lot Subdivision;

3.	301°	25'	60.40	feet;
4.	271°	30'	186.70	feet;
5.	187°	28'	34.15	feet;
6.	214°	45'	25.45	feet;
7.	288°	50'	115.00	feet;
8.	253°	55'	31.25	feet;
9.	242°	45'	44.05	feet;
10.	309°	15'	64.05	feet;
11.	304°	55'	59.25	feet;
12.	256°	00'	149.30	feet;
13.	258°	15'	32.20	feet;
14.	303°	15'	12.20	feet;
15.	350°	55'	196.20	feet;

16. 28° 15' 27.55 feet;
17. 358° 00' 36.58 feet;
18. Thence along Lot 6 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 629.71 feet,
the chord azimuth and
distance being:
- 349° 50' 57.5" 543.23 feet;
19. 41° 19' 01" 50.38 feet along Lot 7 of
Turtle Bay Bulk Lot
Subdivision;
20. Thence along Lots 7 and 5 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the left with a
radius of 535.00 feet,
the chord azimuth and
distance being:
- 15° 24' 15" 466.47 feet;
21. Thence along Lot 5 of Turtle Bay Bulk Lot
Subdivision, on a curve
to the right with a
radius of 60.00 feet,
the chord azimuth and
distance being:
- 34° 33' 30" 84.85 feet to the point of
beginning and
containing an area of
21.104 acres, more or
less.

Together with the following Easements for access and
utility purposes:

Easement F affecting Lot 5 of Turtle Bay Bulk Lot
Subdivision;
Easement G affecting Lot 7 of Turtle Bay Bulk Lot
Subdivision;
Easement Q affecting Lot 6 of Turtle Bay Bulk Lot
Subdivision;
Easement R affecting Lot 9 of Turtle Bay Bulk Lot
Subdivision;
Easement S affecting Lot 10 of Turtle Bay Bulk Lot

Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk
Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot
Subdivision, which were designated in the Subdivision map
approved by City and County of Honolulu on July 17, 2015,
File No. 2014/SUB-145, as particularly described in
Affidavit recorded as Document No. _____.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

Oahu TMK: 5-7-001-(por.) 020

Oahu TMK: 5-7-001-(por.) 022

Oahu TMK: 5-7-006-(por.) 001

Oahu TMK: 5-7-006-(por.) 002

Oahu TMK: 5-7-006-(por.) 023

Exhibit C-1

STATE FEE SIMPLE PROPERTY DIAGRAM

[to be added]



0 1000 2000
1 INCH = 1000 FT.

LOTS 3, 4 AND R-6
TAX MAP KEYS: 5-6-003, 5-7-001, 5-7-006 (VARIOUS)
TURTLE BAY RESORT
SEPTEMBER 2015

Exhibit D

CITY FEE SIMPLE PROPERTY

[to be added]

EXHIBIT D (CITY FEE SIMPLE PROPERTY) :

LOTS 2 AND R-1 & R-2

-FIRST:-

All of that certain parcel of land (being the land(s) described in and covered by a portion of Lot 2 of File Plan 2018, and portions of Lots 1121 and 1125, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920560) situate at Kahuku, District of Koolau, City and County of Honolulu State of Hawaii, being LOT 2 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 7.041 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 8,876.13 feet north and 9,173.69 feet west and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|--------|--|
| 1. | 74° 49' 20" | 58.00 | feet along the north side of Kamehameha Highway; |
| 2. | 164° 49' 20" | 17.53 | feet along Lot R-1 of Turtle Bay Bulk Lot Subdivision; |
| 3. | 74° 49' 20" | 380.80 | feet along Lot R-1 of Turtle Bay Bulk Lot Subdivision; |
| 4. | 73° 30' | 164.11 | feet along Lot R-1 of Turtle Bay Bulk Lot Subdivision; |
| 5. | 152° 40' | 131.42 | feet along Lot 1 of Turtle Bay Bulk Lot Subdivision; |
| 6. | 157° 54' | 294.10 | feet along Lot 1 of |

Turtle Bay Bulk Lot
Subdivision;

7. Thence boundary follows along highest wash of the waves, the direct chord azimuth and distance along said highest wash of the waves being:

232° 10' 165.75 feet;

8. 279° 15' 1155.11 feet along Lot 3 of Turtle Bay Bulk Lot Subdivision;

9. 80° 00' 96.80 feet along Lot R-2 of Turtle Bay Bulk Lot Subdivision;

10. 74° 49' 20" 456.00 feet along Lot R-2 of Turtle Bay Bulk Lot Subdivision;

11. 345° 00' 10.00 feet along Lot R-2 of Turtle Bay Bulk Lot Subdivision;

12. Thence along Lot R-2 of Turtle Bay Bulk Lot Subdivision, on a curve toe the left with a radius of 20.00 feet, the chord azimuth and distance being:

309° 00' 30" 23.51 feet to the point of beginning and containing an area of 7.041 acres, more or less.

Together with the following Easements for access and utility purposes:

Easement B affecting Lot 3 of Turtle Bay Bulk Lot Subdivision

Easement C affecting Lot 4 of Turtle Bay Bulk Lot Subdivision;

Easement F affecting Lot 5 of Turtle Bay Bulk Lot Subdivision;

Easement G affecting Lot 7 of Turtle Bay Bulk Lot Subdivision;

Easement Q affecting Lot 6 of Turtle Bay Bulk Lot

4.	254°	49'	20"	380.80	feet along Lot 2 of Turtle Bay Bulk Lot Subdivision;
5.	344°	49'	20"	17.53	feet along Lot 2 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 0.235 acre, more or less.

All of that certain parcel of land (being the land(s) described in and covered by portion of Lot 1125, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920560) situate at Kahuku, District of Koolaupoko, City and County of Honolulu State of Hawaii, being LOT R-2 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 0.358 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the northeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,015.88 feet north and 8,654.09 feet west and thence running by azimuths measured clockwise from true South:

- 329108.2

Subdivision, on a curve
to the right with a
radius of 20.00 feet,
the azimuth and
distance being:

- | | | | | | |
|----|------|-----|-----|--------|---|
| | 129° | 00' | 30" | 23.51 | feet; |
| 4. | 165° | 00' | | 10.00 | feet along Lot 2 of
Turtle Bay Bulk Lot
Subdivision; |
| 5. | 254° | 49' | 20" | 456.00 | feet along Lot 2 of
Turtle Bay Bulk Lot
Subdivision; |
| 6. | 260° | 00' | | 96.80 | feet along Lot 2 of
Turtle Bay Bulk Lot
Subdivision; |
| 7. | 346° | 26' | 38" | 21.49 | feet along Lot R-6 of
Turtle Bay Bulk Lot
Subdivision to the
point of beginning and
containing an area of
0.358 acre, more or
less. |

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii
general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware
limited liability company

DATED : February 23, 2010

FILED : Land Court Document No. 3942089

RECORDED : Document No. 2010-024406

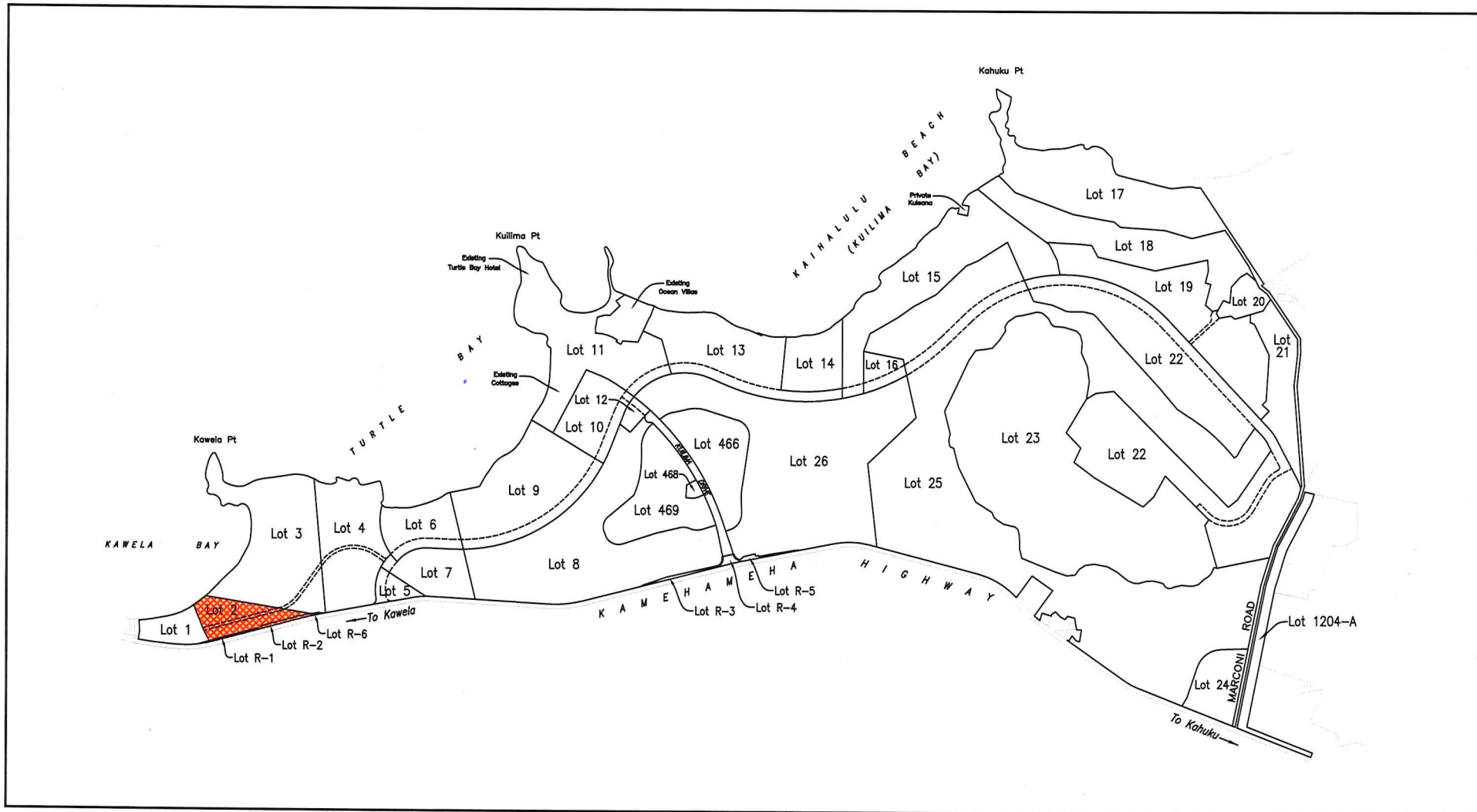
Oahu TMK: 5-7-006-(por.) 023

Oahu TMK: 5-7-006-(por.) 022

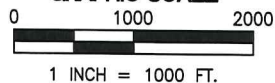
Exhibit D-1

CITY FEE SIMPLE PROPERTY DIAGRAM

[to be added]



TRUE NORTH
GRAPHIC SCALE



CITY FEE SIMPLE

LOTS 2, R-1 AND R-2
TAX MAP KEYS: 5-6-003, 5-7-001, 5-7-006 (VARIOUS)
TURTLE BAY RESORT
SEPTEMBER 2015

Exhibit E

ACUB LANGUAGE

If the Owner or Holder (i) uses, (ii) attempts to transfer, or (iii) otherwise encumbers the title to the Easement Area, for an incompatible purpose without approval of the U.S. Army, the Secretary of the U.S. Army, at their discretion, through an authorized agency official shall, in accordance with 10 U.S.C. § 2684a(d)(5), be entitled to demand from Owner or Holder and receive the transfer of a conservation easement necessary to maintain the Easement Area in a use and condition for which it was purchased.

Exhibit D

Draft Warranty Deed

Total Number of Pages:	
LOD No.	Tax Map Key No. ()

containing, in the aggregate, an area of 52.535 acres, more particularly described in Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof, said exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ and dated _____ (hereafter, the "Property").

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

EXCEPTING AND RESERVING unto the Grantor, its successors and assigns, the following rights:

The Grantor hereby reserves the right and ability to fulfill certain obligations imposed under the terms and conditions of certain land use permits and approvals, which obligations are more particularly described in Exhibit "C" attached hereto and made a part hereof, and further reserving unto the Grantor the right to request from Grantee, who shall not unreasonably withhold or delay approval of any such request, any easement and access rights over, under, and upon the Property which may be necessary to fulfill such obligations.

The Grantee hereby agrees to dedicate Lot R-6 (described in Exhibit A) to the State of Hawaii's Department of Transportation, if and when requested by the Grantor, or its successors and assigns.

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

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

whomsoever.

AND, the Grantor warrants that if any governmental agency having investigatory and/or enforcement jurisdiction over hazardous materials laws, in accordance with established policies and/or procedures, shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

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

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

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

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

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

[Signatures appear on following page]

IN WITNESS WHEREOF, TURTLE BAY RESORT, LLC, the Grantor herein, has caused these presents to be executed this _____ day of _____, 2015, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 2015, both effective as of the day, month, and year first above written.

TURTLE BAY RESORT, LLC
a Delaware limited liability
company

By: TURTLE BAY HOLDINGS, LLC,
a Delaware limited liability
company
Title: Sole Member

By _____
Name: Drew Stotesbury
Title: Authorized Signatory

GRANTOR

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

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

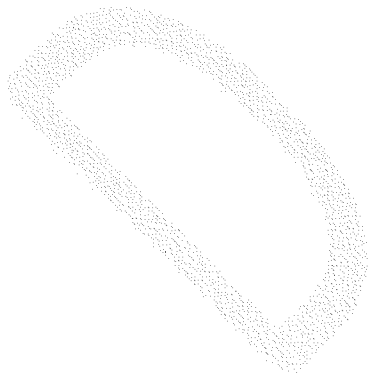
STATE OF HAWAII

Julie H. China
Deputy Attorney General

Dated: _____

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

GRANTEE



STATE OF HAWAII)
) SS.
COUNTY OF)

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

Notary Public, State of Hawaii

My commission expires: _____

Date of	#Pages:
Doc:	
Name of Notary:	Notes:
Doc.	
Description:	
	(stamp or seal)
Notary Signature	Date
First	Circuit, State of
	Hawaii
NOTARY CERTIFICATION	

EXHIBIT "A"
Legal Description

EXHIBIT "A"

LOT 3

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 513, Land Commission Award Number 2770, Apana 2 to Makaino, being Exclusion 49, Royal Patent Number 512, Land Commission Award Number 2784, Apana 2 to Moo, being Exclusion 12, Royal Patent Number 507, Land Commission Award Number 2837, Apana 2 to Kamakai, being Exclusion 13, Royal Patent Number 516, Land Commission Award Number 2878, Apana 2 to Kekua, being Exclusion 14 and Royal Patent Number 510, Land Commission Award Number 2838, Apana 2 to Kauwahi, being Exclusion 15 of Land Court Application No. 1095, portion(s) of Lots 2, 3 and 4 of File Plan 2018, and portion(s) of Lots 1121, 1122, 1125, 1128, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-[46920560](#)) situate at Kahuku, District of Koolaulopoko, City and County of Honolulu State of Hawaii, being LOT 3 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 31.384 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being the southwest corner of Lot 4 of Turtle Bay Bulk Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,048.54 feet north and 8,500.46 feet west and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|---------|----------|--|
| 1. | 85° 45' | 40.00 | feet along Lot R-6 of Turtle Bay Bulk Lot Subdivision; |
| 2. | 97° 30' | 39.79 | feet along Lot R-6 of Turtle Bay Bulk Lot Subdivision; |
| 3. | 80° 00' | 80.55 | feet along Lot R-6 of Turtle Bay Bulk Lot Subdivision; |
| 4. | 99° 15' | 1,155.11 | feet along Lot 2 of Turtle Bay Bulk Lot Subdivision; |

Thence boundary follows along the highest wash of the waves for the next twenty nine (29) courses, the direct chord azimuths and distances along said highest wash of the waves being:

- | | | | |
|----|----------|--------|-------|
| 5. | 224° 11' | 215.00 | feet; |
|----|----------|--------|-------|

6.	226° 00'	190.15	feet;
7.	220° 55'	115.60	feet;
8.	206° 50'	239.00	feet;
9.	187° 30'	158.00	feet;
10.	178° 25'	119.00	feet;
11.	168° 05'	85.70	feet;
12.	150° 15'	45.00	feet;
13.	119° 50'	55.15	feet;
14.	71° 55'	35.50	feet;
15.	85° 50'	71.80	feet;
16.	88° 50'	84.20	feet;
17.	74° 50'	30.00	feet;
18.	143° 20'	31.00	feet;
19.	132° 00'	146.10	feet;
20.	135° 30'	62.20	feet;
21.	174° 30'	139.60	feet;
22.	183° 05'	94.50	feet;
23.	201° 25'	186.80	feet;
24.	278° 09'	32.88	feet;
25.	339° 45'	212.00	feet;
26.	357° 02'	67.00	feet;
27.	326° 20'	64.50	feet;
28.	287° 50'	116.35	feet;
29.	258° 15'	131.55	feet;
30.	248° 50'	165.30	feet;
31.	261° 40'	343.00	feet;
32.	272° 23'	91.58	feet;
33.	287° 28'	135.18	feet;

34. 354° 57' 1,472.92 feet along Lot 4 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 31.384 acres, more or less.

Together with the following Easements for access and utility purposes:

Easement C affecting Lot 4 of Turtle Bay Bulk Lot Subdivision;
Easement F affecting Lot 5 of Turtle Bay Bulk Lot Subdivision;
Easement G affecting Lot 7 of Turtle Bay Bulk Lot Subdivision;
Easement Q affecting Lot 6 of Turtle Bay Bulk Lot Subdivision;
Easement R affecting Lot 9 of Turtle Bay Bulk Lot Subdivision;
Easement S affecting Lot 10 of Turtle Bay Bulk Lot Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No. _____.

-Note:- As of July 21, 2015, the access given in the above "Together with" paragraph has not been granted or made appurtenant to said LOT 3. It is shown for the convenience of the reader. No insurance will be given with respect to the access given in the "Together with" paragraph unless it is granted or conveyed by the appropriate parties to the insured.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii general partnership
GRANTEE : TURTLE BAY RESORT, LLC, a Delaware limited liability company
DATED : February 23, 2010
FILED : Land Court Document No. [3942089](#)
RECORDED : Document No. [2010-024406](#)

SUBJECT TO:

1. Real Property Taxes, if any, that may be due and owing.
LOT 3 is(are) covered by Tax Key: (1) 5-7-006-POR. 002
AND (1) 5-7-006-POR. 023.

2. Mineral and water rights of any nature in favor of the State of Hawaii.

3. -AS TO PARCEL FIRST (LOT 3):-

(A) Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.

(B) DESIGNATION OF EASEMENT "256"

PURPOSE : shoreline
SHOWN : on Map [129](#), as set forth by Land Court Order No. [107255](#), filed June 3, 1992

(C) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : August 8, 1990
FILED : Land Court Document No. [1767661](#)
RECORDED : Document No. [90-149978](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

(D) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : August 8, 1990
FILED : Land Court Document No. [1767765](#)
RECORDED : Document No. [90-149997](#)

(E) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : March 18, 1991
FILED : Land Court Document No. [1819832](#)

(F) DESIGNATION OF EASEMENT "B"

PURPOSE : access and utility
SHOWN : on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 15, 2015, File No. 2014/SUB-145

(G) A 100-feet shoreline setback line as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 15, 2015, File No. 2014/SUB-145.

5. The terms and provisions contained in the following:

INSTRUMENT : UNILATERAL AGREEMENT AND DECLARATION FOR
CONDITIONAL ZONING

DATED : September 23, 1986
FILED : Land Court Document No. [1402662](#)
DATED : August 12, 1986
RECORDED : Liber [19756](#) Page [709](#)
PARTIES : KUILIMA DEVELOPMENT COMPANY, the
"Declarant", and the TRUSTEES UNDER THE
WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED, acting in their
fiduciary and not in their individual
corporate capacities

AMENDMENT TO UNILATERAL AGREEMENT dated December --, 1988, filed as Land Court Document No. [1603989](#), recorded in Liber [22730](#) at Page [23](#), and as shown in DEED dated June 5, 1991, filed as Land Court Document No. [1855495](#).

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

6. The terms and provisions contained in the following:

INSTRUMENT : Unrecorded KUILIMA ACQUISITION AGREEMENT

DATED : June 3, 1988, but effective as of
January 1, 1988
PARTIES : F. E. TROTTER, INC., W. H. McVAY, INC.,
P. R. CASSIDAY, INC. and H. C.
CORNUELLE, INC., all Hawaii professional

corporations, the duly appointed qualified and acting Trustees under the Will and of the Estate of James Campbell, deceased, and KUILIMA DEVELOPMENT COMPANY, a Hawaii registered general partnership

Said Kuilima Acquisition Agreement was assigned to and assumed by KUILIMA RESORT COMPANY, a Hawaii general partnership, by unrecorded ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of June 3, 1988.

A SHORT FORM KUILIMA ACQUISITION AGREEMENT incorporating all of the foregoing is dated as of June 3, 1988, filed as Land Court Document No. [1555263](#).

Said Short Form Kuilima Acquisition Agreement was corrected by CORRECTION TO SHORT FORM KUILIMA ACQUISITION AGREEMENT dated December 30, 1988, filed as Land Court Document No 1603988.

Agreements contained in DEED dated June 5, 1991, filed as Land Court Document No. [1855495](#).

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

7. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : December 30, 1988

FILED : Land Court Document No. [1603990](#)

RECORDED : Liber [22730](#) Page [33](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

8. The terms and provisions contained in GRANT OF NON-EXCLUSIVE EASEMENT (ACCESS) dated December 30, 1988, filed as Land Court Document No. [1603996](#), recorded in Liber [22730](#) at Page [170](#).
9. The terms and provisions contained in GRANT OF NON-EXCLUSIVE EASEMENT (NON-POTABLE WATER) dated December --, 1988 (acknowledged December 29, 1988 and December 28, 1988), filed as Land Court Document No. [1603997](#), recorded in Liber [22730](#) at Page [212](#).

10. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION CONCERNING LOCATION OF PARKS
AND EASEMENTS

DATED : October 11, 1989
FILED : Land Court Document No. [1675414](#)
RECORDED : Liber [23764](#) Page [692](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

11. Claims arising out of customary and traditional rights
and practices, including without limitation those
exercised for subsistence, cultural, religious, access or
gathering purposes, as provided for in the Hawaii
Constitution or the Hawaii Revised Statutes.

12. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT FOR ISSUANCE OF CONDITIONAL USE
PERMIT UNDER SECTION 21-5.380 OF THE LAND
USE ORDINANCE (LUO)

DATED : --- (acknowledged November 10, 2005)
FILED : Land Court Document No. [3366116](#)
RECORDED : Document No. [2005-253259](#)
PARTIES : KUILIMA RESORT COMPANY, a Hawaii general
partnership, and OCEAN VILLAS
DEVELOPMENT, L.L.C.

This agreement supersedes and replaces that certain
Agreement filed as Land Court Document No. [1961378](#),
recorded as Document No. [92-166782](#), however, said release
is not noted on Transfer Certificates of Title referred
to herein.

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

21. The land described in Schedule C should be conveyed
and/or mortgaged with appropriate and applicable access.

22. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

DRAFT

LOT 4

All of that certain parcel of land (being all of the land(s) described in and covered by Royal Patent Number 509, Land Commission Award Number 2835, Apana 3 to Kuheleloa, being Exclusion 16 of Land Court Application No. 1095, portion(s) of Lots 3, 4, 5, 6 and 7 of File Plan 2018, a portion of Lot 15 of File Plan 1406, and portion(s) of Lots 1122, 1123, 1125, 1126, 1127, 1128, 1129, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920560 and portion(s) of Lots 470, 474 and 475, Map 68 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46920556) situate at Kahuku, District of Koolau, City and County of Honolulu State of Hawaii, being LOT 4 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 21.104 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the southeast corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,140.67 feet north and 8,000.53 feet west and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|-------------|----------|--|
| 1. | 79° 33' 30" | 508.35 | feet along the north side of Kamehameha Highway; |
| 2. | 174° 57' | 1,472.92 | feet along Lot 3 of Turtle Bay Bulk Lot Subdivision; |

Thence boundary follows along the highest wash of the waves for the next fifteen (15) courses, the direct chord azimuths and distances along said highest wash of the waves being:

- | | | | |
|----|----------|--------|-------|
| 3. | 301° 25' | 60.40 | feet; |
| 4. | 271° 30' | 186.70 | feet; |
| 5. | 187° 28' | 34.15 | feet; |
| 6. | 214° 45' | 25.45 | feet; |

7. 288° 50' 115.00 feet;
8. 253° 55' 31.25 feet;
9. 242° 45' 44.05 feet;
10. 309° 15' 64.05 feet;
11. 304° 55' 59.25 feet;
12. 256° 00' 149.30 feet;
13. 258° 15' 32.20 feet;
14. 303° 15' 12.20 feet;
15. 350° 55' 196.20 feet;
16. 28° 15' 27.55 feet;
17. 358° 00' 36.58 feet;
18. Thence along Lot 6 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 629.71 feet, the chord azimuth and distance being:
349° 50' 57.5" 543.23 feet;
19. 41° 19' 01" 50.38 feet along Lot 7 of Turtle Bay Bulk Lot Subdivision;
20. Thence along Lots 7 and 5 of Turtle Bay Bulk Lot Subdivision, on a curve to the left with a radius of 535.00 feet, the chord azimuth and distance being:
15° 24' 15" 466.47 feet;
21. Thence along Lot 5 of Turtle Bay Bulk Lot Subdivision, on a curve to the right with a radius of 60.00 feet, the chord azimuth and distance being:
34° 33' 30" 84.85 feet to the point of beginning and containing an area of 21.104 acres, more or less.

Together with the following Easements for access and utility purposes:

Easement F affecting Lot 5 of Turtle Bay Bulk Lot Subdivision;
Easement G affecting Lot 7 of Turtle Bay Bulk Lot Subdivision;
Easement Q affecting Lot 6 of Turtle Bay Bulk Lot Subdivision;
Easement R affecting Lot 9 of Turtle Bay Bulk Lot Subdivision;
Easement S affecting Lot 10 of Turtle Bay Bulk Lot Subdivision;
Easement T affecting Lots 10 and 12 of Turtle Bay Bulk Lot Subdivision;
Roadway Lots 27 and R-4 of Turtle Bay Bulk Lot Subdivision, which were designated in the Subdivision map approved by City and County of Honolulu on July 17, 2015, File No. 2014/SUB-145, as particularly described in Affidavit recorded as Document No. _____.

-Note:- As of the date of this report, the access given in the above "Together with" paragraph has not been granted or made appurtenant to said LOT 4. It is shown for the convenience of the reader. No insurance will be given with respect to the access given in the "Together with" paragraph unless it is granted or conveyed by the appropriate parties to the insured.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii general partnership
GRANTEE : TURTLE BAY RESORT, LLC, a Delaware limited liability company
DATED : February 23, 2010
FILED : Land Court Document No. [3942089](#)
RECORDED : Document No. [2010-024406](#)

SUBJECT TO:

1. Real Property Taxes, if any, that may be due and owing.
LOT 4 is(are) covered by Tax Key: (1) 5-7-006-POR. 001, (1) 5-7-006-POR. 002, (1) 5-7-006-POR. 023, (1) 5-7-001-POR. 022 AND (1) 5-7-001-POR. 020.
2. Mineral and water rights of any nature in favor of the State of Hawaii.

3. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.
4. An easement for drainage purposes, as set forth in that certain Exchange Deed dated September 25, 1974, effective as of October 2, 1974, filed as Land Court Document No. [697736](#), recorded in Liber 10168 at Page 434; said easement being more particularly described therein.
5. Easement "69" (50 feet wide) for drainage purposes as shown on Map [68](#), as set forth by Land Court Order No. [35003](#), filed April 28, 1972.
6. Easement "70" (50 feet wide) for drainage purposes as shown on Map [68](#), as set forth by Land Court Order No. [35003](#), filed April 28, 1972.
7. Easement "71" (50 feet wide) for drainage purposes as shown on Map [68](#), as set forth by Land Court Order No. [35003](#), filed April 28, 1972.
8. Easement "72" (50 feet wide) for drainage purposes as shown on Map [68](#), as set forth by Land Court Order No. [35003](#), filed April 28, 1972.
9. Easement "73" (50 feet wide) for drainage purposes as shown on Map [68](#), as set forth by Land Court Order No. [35003](#), filed April 28, 1972.
10. DESIGNATION OF EASEMENT "256"

PURPOSE : shoreline
SHOWN : on Map [129](#), as set forth by Land Court Order No. [107255](#), filed June 3, 1992
11. DESIGNATION OF EASEMENT "260"

PURPOSE : access
SHOWN : on Map [129](#), as set forth by Land Court Order No. [107255](#), filed June 3, 1992

-Note:- A portion of Easement "260" has been cancelled in Subdivision map prepared by Ryan M. Suzuki, with

R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145.

12. The terms and provisions contained in the following:

INSTRUMENT : UNILATERAL AGREEMENT AND DECLARATION FOR
CONDITIONAL ZONING

DATED : September 23, 1986
FILED : Land Court Document No. [1402662](#)
DATED : August 12, 1986
RECORDED : Liber [19756](#) Page [709](#)
PARTIES : KUILIMA DEVELOPMENT COMPANY, the
"Declarant", and the TRUSTEES UNDER THE
WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED, acting in their
fiduciary and not in their individual
corporate capacities

AMENDMENT TO UNILATERAL AGREEMENT dated December --,
1988, filed as Land Court Document No. [1603989](#), recorded
in Liber [22730](#) at Page [23](#), and as shown in DEED dated
June 5, 1991, filed as Land Court Document No. [1855495](#).

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

13. The terms and provisions contained in the following:

INSTRUMENT : Unrecorded KUILIMA ACQUISITION AGREEMENT

DATED : June 3, 1988, but effective as of
January 1, 1988

PARTIES : F. E. TROTTER, INC., W. H. McVAY, INC.,
P. R. CASSIDAY, INC. and H. C.
CORNUELLE, INC., all Hawaii professional
corporations, the duly appointed
qualified and acting Trustees under the
Will and of the Estate of James
Campbell, deceased, and KUILIMA
DEVELOPMENT COMPANY, a Hawaii registered
general partnership

Said Kuilima Acquisition Agreement was assigned to and
assumed by KUILIMA RESORT COMPANY, a Hawaii general
partnership, by unrecorded ASSIGNMENT AND ASSUMPTION
AGREEMENT dated as of June 3, 1988.

A SHORT FORM KUILIMA ACQUISITION AGREEMENT incorporating
all of the foregoing is dated as of June 3, 1988, filed

as Land Court Document No. [1555263](#).

Said Short Form Kuilima Acquisition Agreement was corrected by CORRECTION TO SHORT FORM KUILIMA ACQUISITION AGREEMENT dated December 30, 1988, filed as Land Court Document No 1603988.

Agreements contained in DEED dated June 5, 1991, filed as Land Court Document No. [1855495](#).

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

14. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : December 30, 1988

FILED : Land Court Document No. [1603990](#)

RECORDED : Liber [22730](#) Page [33](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

15. The terms and provisions contained in the following:

INSTRUMENT : DEED

DATED : December 30, 1988

FILED : Land Court Document No. [1603995](#)

RECORDED : LIBER [22730](#) PAGE [142](#)

16. The terms and provisions contained in GRANT OF NON-EXCLUSIVE EASEMENT (ACCESS) dated December 30, 1988, filed as Land Court Document No. [1603996](#), recorded in Liber [22730](#) at Page [170](#).

17. The terms and provisions contained in GRANT OF NON-EXCLUSIVE EASEMENT (NON-POTABLE WATER) dated December --, 1988 (acknowledged December 29, 1988 and December 28, 1988), filed as Land Court Document No. [1603997](#), recorded in Liber [22730](#) at Page [212](#).

18. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION CONCERNING LOCATION OF PARKS
AND EASEMENTS

DATED : October 11, 1989
FILED : Land Court Document No. [1675414](#)
RECORDED : Liber [23764](#) Page [692](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

19. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : August 8, 1990
FILED : Land Court Document No. [1767661](#)
RECORDED : Document No. [90-149978](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

20. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : August 8, 1990
FILED : Land Court Document No. [1767765](#)
RECORDED : Document No. [90-149997](#)

21. Claims arising out of customary and traditional rights
and practices, including without limitation those
exercised for subsistence, cultural, religious, access or
gathering purposes, as provided for in the Hawaii
Constitution or the Hawaii Revised Statutes.

22. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT FOR ISSUANCE OF CONDITIONAL USE
PERMIT UNDER SECTION 21-5.380 OF THE LAND
USE ORDINANCE (LUO)

DATED : --- (acknowledged November 10, 2005)
FILED : Land Court Document No. [3366116](#)
RECORDED : Document No. [2005-253259](#)
PARTIES : KUILIMA RESORT COMPANY, a Hawaii general
partnership, and OCEAN VILLAS
DEVELOPMENT, L.L.C.

This agreement supersedes and replaces that certain
Agreement filed as Land Court Document No. [1961378](#),

recorded as Document No. [92-166782](#), however, said release is not noted on Transfer Certificates of Title referred to herein.

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

34. DESIGNATION OF EASEMENT "C"

PURPOSE : access and utility
SHOWN : on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, more particularly described in Affidavit recorded as Document No. _____.

35. RESTRICTION OF VEHICLE ACCESS RIGHTS into and from Kamehameha Highway, except where access is permitted, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145.

36. A 100-foot shoreline setback line as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145.

37. The land described in Schedule C should be conveyed and/or mortgaged with appropriate and applicable access.

38. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

39. Any unrecorded leases and matters arising from or affecting the same.

STAT

Lot R-6

All of that certain parcel of land (being the land(s) described in and covered by a portion of Lot 1125, Map 129 of Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, deceased, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. A-46920560) situate at Kahuku, District of Koolau, City and County of Honolulu State of Hawaii, being LOT R-6 of "TURTLE BAY BULK LOT SUBDIVISION", containing an area of 0.047 acres, more or less, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and thus bounded and described as follows:

Beginning at the east corner of this parcel of land, same being along the north side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUKI" being 9,048.54 feet north and 8,500.46 feet west and thence running by azimuths measured clockwise from true South:

1. Along the north side of Kamehameha Highway, on a curve to the left with a radius of 2889.93 feet, the chord azimuth and distance being:

	78° 00' 04"	157.07	feet;
2.	166° 26' 38"	21.49	feet along Lot R-2 of Turtle Bay Bulk Lot Subdivision;
3.	260° 00'	80.55	feet along Lot 3 of Turtle Bay Bulk Lot Subdivision;
4.	277° 30'	39.79	feet along Lot 3 of Turtle Bay Bulk Lot Subdivision;
5.	265° 45'	40.00	feet along Lot 3 of Turtle Bay Bulk Lot Subdivision to the point of beginning and containing an area of 0.047 acre, more or less.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KUILIMA RESORT COMPANY, a Hawaii general partnership

GRANTEE : TURTLE BAY RESORT, LLC, a Delaware

limited liability company

DATED : February 23, 2010
FILED : Land Court Document No. [3942089](#)
RECORDED : Document No. [2010-024406](#)

SUBJECT TO:

1. Real Property Taxes, if any, that may be due and owing.
LOT R-6 is(are) covered by Tax Key: (1) 5-7-006-POR. 023.
2. Mineral and water rights of any nature in favor of the State of Hawaii.
4. -AS TO PARCEL SECOND (LOT R-6):-

RESTRICTION OF VEHICLE ACCESS RIGHTS into and from Kamehameha Highway, as shown on Subdivision map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145.

5. The terms and provisions contained in the following:

INSTRUMENT : UNILATERAL AGREEMENT AND DECLARATION FOR
CONDITIONAL ZONING

DATED : September 23, 1986
FILED : Land Court Document No. [1402662](#)
DATED : August 12, 1986
RECORDED : Liber [19756](#) Page [709](#)
PARTIES : KUILIMA DEVELOPMENT COMPANY, the
"Declarant", and the TRUSTEES UNDER THE
WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED, acting in their
fiduciary and not in their individual
corporate capacities

AMENDMENT TO UNILATERAL AGREEMENT dated December --, 1988, filed as Land Court Document No. [1603989](#), recorded in Liber [22730](#) at Page [23](#), and as shown in DEED dated June 5, 1991, filed as Land Court Document No. [1855495](#).

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

6. The terms and provisions contained in the following:

INSTRUMENT : Unrecorded KUILIMA ACQUISITION AGREEMENT

DATED : June 3, 1988, but effective as of
January 1, 1988

PARTIES : F. E. TROTTER, INC., W. H. McVAY, INC.,
P. R. CASSIDAY, INC. and H. C.
CORNUELLE, INC., all Hawaii professional
corporations, the duly appointed
qualified and acting Trustees under the
Will and of the Estate of James
Campbell, deceased, and KUILIMA
DEVELOPMENT COMPANY, a Hawaii registered
general partnership

Said Kuilima Acquisition Agreement was assigned to and
assumed by KUILIMA RESORT COMPANY, a Hawaii general
partnership, by unrecorded ASSIGNMENT AND ASSUMPTION
AGREEMENT dated as of June 3, 1988.

A SHORT FORM KUILIMA ACQUISITION AGREEMENT incorporating
all of the foregoing is dated as of June 3, 1988, filed
as Land Court Document No. [1555263](#).

Said Short Form Kuilima Acquisition Agreement was
corrected by CORRECTION TO SHORT FORM KUILIMA ACQUISITION
AGREEMENT dated December 30, 1988, filed as Land Court
Document No 1603988.

Agreements contained in DEED dated June 5, 1991, filed as
Land Court Document No. [1855495](#).

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

7. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF RESTRICTIVE COVENANTS

DATED : December 30, 1988

FILED : Land Court Document No. [1603990](#)

RECORDED : Liber [22730](#) Page [33](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the
"Effective Date"), filed as Land Court Document No.
[3942088](#), recorded as Document No. [2010-024405](#).

8. The terms and provisions contained in GRANT OF NON-
EXCLUSIVE EASEMENT (ACCESS) dated December 30, 1988,
filed as Land Court Document No. [1603996](#), recorded in
Liber [22730](#) at Page [170](#).

9. The terms and provisions contained in GRANT OF NON-EXCLUSIVE EASEMENT (NON-POTABLE WATER) dated December --, 1988 (acknowledged December 29, 1988 and December 28, 1988), filed as Land Court Document No. [1603997](#), recorded in Liber [22730](#) at Page [212](#).

10. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION CONCERNING LOCATION OF PARKS
AND EASEMENTS

DATED : October 11, 1989
FILED : Land Court Document No. [1675414](#)
RECORDED : Liber [23764](#) Page [692](#)

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

11. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

12. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT FOR ISSUANCE OF CONDITIONAL USE
PERMIT UNDER SECTION 21-5.380 OF THE LAND
USE ORDINANCE (LUO)

DATED : --- (acknowledged November 10, 2005)
FILED : Land Court Document No. [3366116](#)
RECORDED : Document No. [2005-253259](#)
PARTIES : KUILIMA RESORT COMPANY, a Hawaii general
partnership, and OCEAN VILLAS
DEVELOPMENT, L.L.C.

This agreement supersedes and replaces that certain Agreement filed as Land Court Document No. [1961378](#), recorded as Document No. [92-166782](#), however, said release is not noted on Transfer Certificates of Title referred to herein.

ASSIGNMENT OF RIGHTS dated as of February 23, 2010 (the "Effective Date"), filed as Land Court Document No. [3942088](#), recorded as Document No. [2010-024405](#).

21. The land described in Schedule C should be conveyed and/or mortgaged with appropriate and applicable access.
22. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
23. Any unrecorded leases and matters arising from or affecting the same.

EXHIBIT "B"
Maps

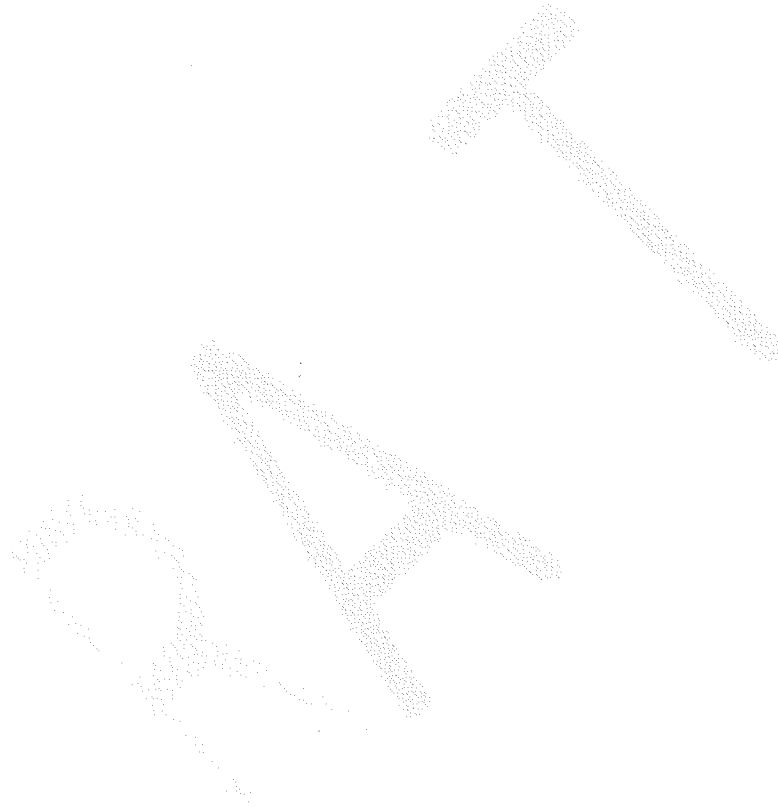


EXHIBIT "C"
Obligations

Unilateral Agreement and Declaration for Conditional Zoning,
dated September 23, 1968, and approved by the Honolulu City
Council pursuant to Ordinance 86-99

*All capitalized terms used, but not specifically defined, shall have the meanings ascribed thereto in the Unilateral Agreement. All references to Declarant under this Unilateral Agreement shall mean Grantor.

Section 5. Declarant shall provide the following public amenities:

(a) [...] The shoreline park areas shall be linked, with the exception of the shoreline by the existing Turtle Bay Hilton, by a continuous shoreline easement, which will be linked to the five pedestrian easements and the easement to Kalokoiki beach (Kuilima Cove), as set forth herein[.]

[...]

(e) A series of publicly-owned and privately-maintained easements encompassing a minimum of twenty-six (26) acres of land shall be provided along and to the shoreline and shall be open to use by the general public. These easements shall be established in the public's favor, in perpetuity, in the following manner:

(1) Upon Declarant's receipt of its first building permit for development of the first hotel to be built at the resort, Declarant shall record a document with the Bureau of Conveyances of the State of Hawaii which establishes easements in the public's favor, running with the land, covering: the land area extending one hundred (100) feet inland from the certified shoreline (hereinafter "shoreline easement area"), in the general areas designated on the map identified as Exhibit IV, attached [to the Unilateral Agreement and incorporated therein]; the right of way connecting a parking lot that will be located adjacent to the existing parking lot at the Turtle Bay Hilton to Kalokoiki beach (hereinafter "Kalokoiki easement"); and the right of way connecting Turtle Bay and Kaihalulu beach through the existing Turtle Bay Hilton site (hereinafter "Turtle Bay Hilton easement");

(2) Upon Declarant's receipt of its first building permit for major building development on a parcel that is adjacent to or that contains the following easements, Declarant shall record a document with the Bureau of Conveyances of the State of Hawai'i which establishes easements in the public's favor, running with the land, covering the five rights of way that extend from adjacent parking areas to the shoreline easement area, in the general locations designated on Exhibit IV, attached [to the Unilateral Agreement], providing one pedestrianway to Kawela Bay, two pedestrianways to Turtle Bay, and two pedestrianways to Kaihalulu beach (Kuilima Bay) (hereinafter "pedestrianway easements")

(3) The document establishing the the [sic] shoreline easement area shall contain the following provision - "The one hundred (100) foot wide shoreline easement area is to maintain open space along the shoreline for the use and enjoyment of the general public, guests at the resort and resort condominium owners. Management of the use of this area will make no distinctions between

resort guests and resort condominium owners, and the general public, and shall at a minimum, allow sunbathing, picnicking, swimming and walking in this area, except where not permitted for safety purposes";

(4) The documents establishing the shoreline easement area and the pedestrianway easements shall provide that public use of each easement shall become effective, and improvement of each easement area shall be completed, upon the issuance of a certificate of occupancy by the Building Department of the City and County of Honolulu for a parcel that is adjacent to or that contains one of these easements

[...]

(6) The documents establishing the easements referred to herein, shall also establish a means for Declarant, its successors and assigns, and subsequent grantees to maintain the easement areas encumbered therein, with said maintenance to be required at the time that public use of each of the easement areas becomes effective;

(7) The five pedestrianway easements shall be fifteen feet wide, and shall contain restroom and shower facilities. Each pedestrianway easement shall be located adjacent to a public parking area containing eighteen (18) parking stalls, which shall provide parking free of charge to the public;

(8) Improvements in the easement areas shall accommodate public access and signage shall be installed to facilitate such access.

Section 9. General architectural and design goals that the resort will strive to achieve include the following:

[...]

(b) The resort will strive to implement extensive, lush landscaping to enhance the estate-like quality of the low density buildings, and to provide a sense of visual continuity throughout the resort. Existing ironwood trees, and other existing vegetation will be preserved and incorporated into the landscaping scheme where possible.

(c) The public walkway that provides access throughout the shoreline easement area will be configured in an undulating line throughout the easement area.

(d) Each of the public pedestrianways to the shoreline, with the exception of the pedestrianway to Kalokoiki beach, will be approximately fifteen (15) feet wide, and will contain a slightly undulating walkway to allow for plantings of coconut trees.

Section 14. Declarant shall use its best efforts to promote the creation of a Marine Life Conservation District at Kawela Bay.

State Land Use Commission Findings of Fact, Conclusions of Law,
and Decision and Order, dated March 27, 1986

*All capitalized terms used, but not specifically defined, shall have the meanings ascribed thereto in the Findings of Fact, Conclusions of Law, and Decision and Order. All references to Petitioner under this Findings of Fact, Conclusions of Law, and Decision and Order shall mean Grantor.

Condition No. 3. [...] Petitioner shall also assist the State Department of Transportation in its attempt to acquire, a 50-foot right-of-way for widening Kamehameha Highway parallel to the boundary of the Kuilima Resort Expansion.

Condition No. 7. The Petitioner shall insure free public access and parking for parks and rights-of-way to the shoreline. Continuous pedestrian access along the shoreline of the proposed Kuilima Resort Expansion shall also be assured by the Petitioner. [...]

Condition No. 9. The Petitioner shall establish a monitoring program of the coastal resource conditions at the East and West drains and their effects upon offshore waters and marine ecosystems in conjunction with and under the direction of the Department of Land And Natural Resources.

Special Management Area Use Permit and Shoreline Setback Variance
granted by the Honolulu City Council pursuant to Resolution No.
86-308

*All capitalized terms used, but not specifically defined, shall have the meanings ascribed thereto in the Special Management Area Use Permit and Shoreline Setback Variance. All references to Applicant under this Special Management Area Use Permit and Shoreline Setback Variance shall mean Grantor.

Section A. [...] The shoreline park areas shall be linked, with the exception of the shoreline by the existing Turtle Bay Hilton, by a continuous shoreline easement, which will be linked to the five pedestrianway easements and the easement to Kalokoiki Beach (Kuilima Cove), referred to in Condition E [of the Special Management Area Use Permit and Shoreline Setback Variance]. A continuous shoreline pathway, set back at least forty feet from the shoreline, shall be provided.

Section E. A series of publicly-owned and privately-maintained easements encompassing a minimum of twenty-six (26) acres of land shall be provided along and to the shoreline and shall be open to use by the general public. These easements shall be established in the public's favor, in perpetuity, in the following manner:

(1) Upon Applicant's receipt of its first building permit for development of the first hotel to be built at the resort, Applicant shall record a document with the Bureau of Conveyances of the State of Hawai'i which establishes easements in the public's favor, running with the land, covering: the land area extending one hundred (100) feet inland from the certified shoreline (hereinafter "shoreline easement area"), in the general areas designed on the map identified as Exhibit I attached [to the Special Management Area Use Permit and Shoreline Setback Variance and incorporated therein]; the right-of-way connecting a parking lot that will be located adjacent to the existing parking lot at the Turtle Bay Hilton to Kalokoiki Beach (hereinafter "Kalokoiki easement"); and the right-of-way connecting Turtle Bay and Kaihalulu beach through the existing Turtle Bay Hilton site (hereinafter "Turtle Bay Hilton easement");

(2) Upon applicant's receipt of its first building permit for major building development on a parcel that is adjacent to or contains the following easements, Applicant shall record a document with the Bureau of Conveyances of the State of Hawai'i which establishes easements in the public's favor, running with the land, covering: the five rights-of-way that extend from adjacent parking areas to the shoreline easement area, in the general locations designated on Exhibit I attached [to the Special Management Area Use Permit and Shoreline Setback Variance], providing one pedestrianway to Kawela Bay, two pedestrianways to Turtle Bay, and two pedestrianways to Kaihalulu beach (Kuilima Bay) (hereinafter "pedestrianway easements");

(3) The document establishing the shoreline easement area shall contain the following provision—"The one hundred (100) foot wide shoreline easement area is to maintain open space along the shoreline for the use and enjoyment of the general public, guests at the resort and resort condominium owners. Management of the use of this area will make no distinctions between resort guests and resort condominium owners, and the general public, and shall at a minimum, allow sunbathing, picnicking, swimming and walking in this area, except where not permitted for safety purposes";

(4) The documents establishing the shoreline easement area and the pedestrianway easements shall provide that public use of each easement shall become effective, and improvement of each easement area shall be completed, upon the issuance of a certificate of occupancy by the Building Department of the City and County of Honolulu for a parcel that is adjacent to or that contains one of these easements;

[...]

(6) The documents establishing the easements referred to herein shall also establish a means for Applicant, its successors and assigns, and subsequent grantees to maintain the easement areas encumbered therein, with said maintenance to be required at the time that public use of each of the easement areas becomes effective;

(7) The five pedestrianway easements shall be at least fifteen feet wide, and shall contain restroom and shower facilities. Each pedestrianway easement shall be located adjacent to a public parking area containing eighteen (18) parking stalls, which shall provide parking free of charge to the public;

(8) Improvements in the easement areas shall accommodate public access, and signage shall be installed to facilitate such access.

Section G. The primary sand dunes, in their approximate locations as shown in Exhibit II attached [to the Special Management Area Use Permit and Shoreline Setback Variance and incorporated therein], shall be retained as natural areas, limited to passive uses. Upon the approval of the Director of the Department of Land Utilization, encroachment of structures on these dune areas may be allowed if there is a finding by the Director that such encroachment is necessary and that the denial of the encroachment would cause undue hardship to Applicant. Where allowed, said encroachment shall be as minimal as is practicable and structures shall be designed to prevent destabilization of the dunes. Vehicular traffic in the primary sand dune areas shall be confined to pathways and shall be limited to necessary maintenance activities.

Section K. General architectural and design goals that the resort will strive to achieve include the following:

[...]

(2) The resort will strive to implement extensive, lush landscaping to enhance the estate-like equality of the low density buildings, and to provide a sense of visual continuity throughout the resort. Existing ironwood trees, and other existing vegetation will be preserved and incorporated into the landscaping scheme where possible.

(3) The public walkway that provides access throughout the shoreline easement area will be configured in an undulating line throughout the easement area.

(4) Each of the public pedestrianways to the shoreline, with the exception of the pedestrianway to Kalokoiki Beach, will be approximately fifteen (15) feet wide, and will contain a slightly undulating walkway to allow for plantings of coconut trees.

Section M. Outdoor illumination fixtures at sites fronting Kawela Bay shall be directed in such a manner as to minimize disturbances to Green Sea Turtles which utilize the bay and to minimize interference to residences across the bay. Illumination of beach and ocean areas shall be regulated by the Building Department of the City and County of Honolulu.

Section P. Turbidity and water quality measurements shall be made at least annually as prescribed by the Department of Health and the Army Corps of Engineers before, during development, and for a period of at least three years after completion of the resort. Reports shall be submitted to the Department of Health, the Army Corps of Engineers, the Department of Land Utilization and shall be made available to the public for examination and inspection.

Exhibit E

Draft Lease

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICKUP ()

TITLE OF DOCUMENT:

**DEED OF CONSERVATION EASEMENT AND
RESTRICTION OF DEVELOPMENT RIGHTS**

PARTIES TO DOCUMENT:

Owner:	Turtle Bay Resort, LLC, a Delaware limited liability company, 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731
Holder:	The State of Hawai'i, through its Board of Land and Natural Resources, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813

TAX MAP KEY(S):

EXHIBIT "E"

DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS

This Deed of Grant of Conservation Easement and Restriction of Development Rights (this "Easement") is entered into as of this _____ day of _____, 2015 (the "Effective Date"), by and between **Turtle Bay Resort, LLC**, a Delaware limited liability company, whose principal place of business and mailing address is 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731 ("Owner"), and the **State of Hawai'i, through its Board of Land and Natural Resources**, whose principal place of business and mailing address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("Holder") (each, a "Party", and together the "Parties").

RECITALS

I. Structure of this Conservation Easement and Initial Definitions

A. Owner is the fee owner of certain parcels of land located in the City and County of Honolulu (the "City"), Ko'olaupia District, Island of Oahu, Hawai'i, as described more specifically in **Exhibit A** attached hereto, and depicted on the map attached as **Exhibit B** hereto (the "Easement Area").

B. Holder desires to obtain from Owner, and Owner desires to grant to Holder, a conservation easement over the Easement Area upon and subject to the terms and conditions of this Easement.

C. This Easement includes three main parts: (1) the *Recitals*, which provide a general description of the Easement Area and its important Conservation Values, the surrounding area, and the existing zoning and other land use rights and restrictions affecting the Easement Area; (2) the *Covenants and Restrictions*, which describe the respective rights and obligations of Owner and Holder; and (3) the *Exhibits*, which identify the Easement Area.

D. Other capitalized terms used in this Easement are either defined when they first appear in this Easement or may be found in the Glossary, located in Section L of the Covenants and Restrictions.

II. Identification of the Easement Area

A. *General Easement Area Location and Description.* The Easement Area consists of approximately 568.417 acres of land located on the north shore/windward coast of the island of Oahu, with an elevation range ranging between 0 and 24 feet above sea level. The Easement Area contains three (3) distinct zones: the Preservation

Zone, the Recreation Zone, and the Open Space Zone, described in greater detail in Section A of the Covenants and Restrictions.

B. *Baseline Documentation.* The Conservation Values of the Easement Area are documented in an inventory of relevant features called the “Baseline Documentation.” The Baseline Documentation consists of a descriptive report of resources found in the Easement Area, title reports for the subject parcels, maps, photographs and other documentation, and is maintained by Holder. Owner and Holder have agreed that the Baseline Documentation provides a comprehensive and accurate representation of the Easement Area and its resources as of the Effective Date. The Baseline Documentation is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement.

C. *Importance of Easement Area for Conservation Values.* The Easement Area contains important natural habitat, coastal and inland ecosystems, recreational, research, and educational values, and open space (collectively, the “Conservation Values”). These specific Conservation Values are of interest for protection through this Easement, and are listed in order of priority:

1. *Natural Habitat, Coastal and Inland Ecosystems.* The Easement Area contains ecologically significant ecosystems including, but not limited to, the native sand dunes located along the shoreline, and the Punaho’olapa Marsh wetland area. These ecosystems contain and contribute to Hawaii’s overall biodiversity, and are natural habitat for some threatened and endangered plant and animal species. Continued management focusing on preservation is essential to the overall health of these ecosystems.

2. *Recreational, Research, and Educational Values.* The Easement Area’s recreational, research, and educational values contribute to the overall access to recreational opportunities in the State and to the availability of locations and land types needed to expand the knowledge base on Hawaiian ecosystems, geologic features, and historic land use practices. The Easement Area’s geological, archeological and culturally important features, and unique research opportunities, including, but not limited to flora, fauna, and ecosystem perspectives, are an important public benefit for the State. The parties recognize that access to the Easement Area for these values is best achieved through facilitated and controlled means, in order to protect the other Conservation Values.

3. *Open Space.* Preservation of the Easement Area’s open space values contributes to the scenic and greenbelt qualities of the Ko’olauloa region. Preservation of these scenic qualities provides a significant public benefit and will preserve the Easement Area’s scenic value and existing natural resources including, but not limited to, native species populations, ecosystem habitat for various plant and

animal species, and important geological features found on the Easement Area. Removal of development rights from the Easement Area preserves the open space values including reducing potential congestion on local roads and highways that would result from residential and resort development of the Easement Area.

D. *Importance of Easement Area for Military Buffer.* The Easement Area is located in close proximity to and north of the United States Army's ("U.S. Army") Kahuku Training Area ("KTA") and serves as an important military buffer. KTA is a joint-use facility with the capability to train approximately 3,000 to 5,000 soldiers, or one full brigade. At more than 9,000 acres, it is one of the largest training areas on O'ahu. The landscape at KTA is an evolving one, as the training area has been in a state of transformation for nearly the past 10-years. The area includes a new Combined Arms Collective Training Facility, a cargo drop zone and tactical vehicle wash. Currently, KTA is the site of several projects necessary for the transformation of the 25th Infantry Division's 2nd Brigade to a Stryker Brigade Combat Team. Protection of the Easement Area's Conservation Values through this Easement provides the U.S. Army with a buffer compatible to its training activities at KTA.

III. History of Land Uses in the Easement Area and Surrounding Areas

Portions of the Easement Area are part of a larger property known and operated as the "Turtle Bay Resort." The existing hotel at the Turtle Bay Resort was originally constructed in 1972, and the Turtle Bay Resort development received entitlements and approvals to construct a 3,500-unit expansion in the mid-1980's. The Turtle Bay Resort currently includes the recently renovated 410-unit main hotel, 42 beach cottages, a free standing restaurant, a large surface parking lot, two golf courses, an equestrian center with riding stables, tennis courts, and other accessory resort uses and minor improvements.

The existing Turtle Bay Resort structures are not located within the Easement Area, but the two golf courses are included in the Easement Area. Also located within Easement Area, and adjacent to the Palmer Golf Course, is the Punaho'olapa Marsh, a spring fed wetland of approximately 100 acres.

The following structures and improvements, described in greater detail in the Baseline Documentation, are also located in the Easement Area: four (4) bathrooms, two (2) irrigation pump stations, seven (7) maintenance/support structures at the Palmer Maintenance Yard, four (4) maintenance/support structures at the Fazio Maintenance Yard, and one (1) historic pillbox bunker.

Immediately adjacent to the Easement Area are the 57-unit Ocean Villas and the 368-unit Kuilima Estates, both of which are privately owned condominium projects. Located across the street from the Turtle Bay Resort, on the mauka side of

Kamehameha Highway, are the lands commonly referred to as the “Turtle Bay Mauka Lands,” which consist of approximately 468 acres of agricultural land.

IV. Land Use, Environmental and Planning Policies, Laws and Designations

A. *Hawaii State Land Use District.* Approximately 496 acres of the Easement Area are located in the “Urban” State Land Use District, and approximately 72 acres of the Easement Area are located in the “Agricultural” State Land Use District, as such quoted terms are defined by Hawaii Revised Statutes (“HRS”) Chapter 205. Permitted uses within the Urban State Land Use District are stated in HRS § 205-2(b), and permitted uses within the Agricultural State Land Use District are stated in HRS § 205-4.5.

B. *Hawaii Coastal Zone Management Act.* The Easement Area is located within the Special Management Area, as defined by the Hawaii Coastal Zone Management Act, codified as HRS Chapter 205A.

C. *General Plan for the City and County of Honolulu.* The General Plan for the City and County of Honolulu (the “General Plan”) establishes the objectives of protecting and preserving the natural environment, and preserving and enhancing the natural monuments and scenic views of Oahu for the benefit of both residents and visitors. As of the Effective Date, the City is currently updating the General Plan.

D. *Koʻolau Loa Sustainable Communities Plan.* The Easement Area lies within the Koʻolau Loa Sustainable Communities Plan (the “Koʻolau Loa Plan”). The Koʻolau Loa Plan provides that “[o]pen space preservation is a key element of the vision for Koʻolau Loa’s future. Long-term protection and preservation of scenic resources, agricultural areas, natural areas, and recreational areas are important to maintaining the rural character of Koʻolau Loa for both residents and visitors.” See Koʻolau Loa Plan at § 3.1. The Koʻolau Loa Plan identifies the Easement Area (referred to therein as “Kuilima”) as being located within the Rural Community Boundary and characterizes it as a “Major Resort Destination” planned for a total of 4,000 visitor units. As of the Effective Date, the City is currently updating the Koʻolau Loa Plan.

E. *City Zoning.* The zoning districts within the Easement Area include “P-2” General Preservation, “AG-2” General Agriculture, and “Resort” under the Honolulu Land Use Ordinance (“LUO”). Permitted uses within the P-2, AG-2, and Resort districts are identified in the Master Use Table of the LUO (Table 21-3). The Master Use Table also identifies other uses that are permitted within the P-2, AG-2, and Resort districts, subject to meeting specific use development standards.

V. Funding Sources for Purchase of this Easement

Funding for the purchase of this Easement comes from Act 121, Session Laws of Hawai'i 2015 ("Act 121"). Pursuant to Act 121, reimbursable general obligation bond proceeds will be used by the Department of Land and Natural Resources to pay the purchase price for this Easement.

Funding for the Purchase of this Easement also comes from Army Compatible Use Buffer ("ACUB") funds.

VI. Intent to Protect Conservation Values of Easement Area

A. The Easement Area possesses significant Conservation Values.

B. The land use, environmental and planning policies, laws and designations referenced above in Section IV are not sufficiently restrictive to protect the Conservation Values of the Easement Area.

C. Owner desires that the Conservation Values of the Easement Area be preserved and maintained in perpetuity by permitting only those uses of the Easement Area that do not significantly impair or interfere with the Conservation Values. And Holder desires to accept this Easement to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation, and the generations to come.

D. Owner intends to convey to Holder an easement interest over the Easement Area to preserve and protect the Conservation Values of the Easement Area in perpetuity, free and clear of all encumbrances except those identified in **Exhibit A** attached hereto.

E. HRS § 198-3 provides that any "public body and any organization which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of [HRS Chapter 198], may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest, but not by eminent domain." Holder is a public body qualified to hold a conservation easement under HRS § 198-3.

F. In consideration of the foregoing, Holder desires to purchase from Owner, and Owner desires to sell to Holder, an easement over, upon and across the Easement Area to preserve and protect Conservation Values of the Easement Area, together with a right to enforce this Easement and the covenants and restrictions herein, subject, however, to the terms and conditions herein.

NOW, THEREFORE, for good and valuable consideration paid by Holder, the receipt and sufficiency of which is acknowledged by Owner, and the foregoing Recitals and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Hawaii, including HRS Chapter 198, Owner hereby grants, bargains, sells, and conveys to Holder a conservation easement in perpetuity over, upon and across the Easement Area subject only to the mutual covenants, terms, conditions and restrictions contained in this Easement and encumbrances identified in **Exhibit A**.

Owner declares that the Easement Area shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements set forth below, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity and to burden the Easement Area in perpetuity.

COVENANTS AND RESTRICTIONS

A. **Purpose**

The Purpose of this Easement is to preserve and maintain the Conservation Values, as set forth in Section II.C above, by preventing any use of the Easement Area that will significantly impair or interfere with the Conservation Values (the "Purpose"). The Easement Area consists of three resource zones, each with specific restrictions or allowed uses that support the Conservation Values, which zones include the "Preservation Zone", the "Recreation Zone", and the "Open Space Zone", all as identified and designated on the map attached hereto as **Exhibit C** hereto.

1. **The Preservation Zone.** The restrictions in the Preservation Zone of the Easement Area (as identified and designated on the map attached hereto as **Exhibit C**) are established to preserve and protect the relatively natural habitat of the Preservation Zone, including any significant, native natural wildlife or plant resources and their associated habitat, as well as cultural, archeological or historically significant features. The coastal and wetland habitat in the Preservation Zone is important for the protection of native birds, marine animals, near-shore and wetland-dependent vegetation, and other threatened, endangered, and at-risk species. Approximately 105.21 acres or 18.51% of the Easement Area is within the Preservation Zone.

2. **The Recreation Zone.** The restrictions in the Recreation Zone of the Easement Area (as identified and designated on the map attached hereto as **Exhibit C**) are established to provide substantial, but reasonably limited, recreational and educational access to the Recreation Zone for the general public while also providing for the protection of the relatively natural habitat and coastal and inland ecosystems.

The coastal areas of the Recreation Zone are important in providing multi-use trails for walking, running, and biking, as well as parking and pedestrian access to the shoreline for coastal activities including, but not limited to, surfing, fishing, snorkeling, diving, paddling, swimming, wildlife watching, beachcombing, and sunbathing. Approximately 1.5 acres or 0.26% of the Easement Area is within the Recreation Zone.

3. The Open Space Zone. The restrictions in the Open Space Zone of the Easement Area (as identified and designated on the map attached hereto as **Exhibit C**) are established to eliminate residential development, maintain the region's rural character, provide passive drainage ways, offer view amenities for public rights-of-way, and continue commercial and non-commercial recreational and educational open-space opportunities for the Turtle Bay Resort while also providing for the protection of the relatively natural habitat and coastal and inland ecosystems and for providing recreational and education access for the people of Hawai'i. The commercial recreation, education and support lands in the Open Space Zone are important in maintaining the Ko'olauloa region's rural and scenic character provided by the Easement Area. Approximately 461.707 acres or 81.23% of the Easement Area is within the Open Space Zone.

4. No activity which shall significantly impair or interfere with the Purpose of this Easement or the Conservation Values shall be permitted except for any Existing Uses (as such term is herein defined in Section B.1), or as may be otherwise provided in this Easement.

5. Subject to the terms of this Easement, including confirming consistency with the Purpose and no diminishment of the Conservation Values, the Parties may modify the zone boundaries by mutual written agreement, as such modification may be necessary to protect or promote Conservation Values between the three resource zones. In such case, the modification shall be documented by Holder and revised map(s) or site plan(s) shall be maintained with the Baseline Documentation.

B. Rights of Owner

Except as prohibited or restricted by the provisions in Sections C, D and E, Owner reserves all customary rights and privileges of ownership, so long as they are not expressly prohibited by this Easement or inconsistent with the Purpose of this Easement. Owner expressly and specifically reserves the following rights:

1. Existing Uses and Activities. The right to engage in any use or activity being conducted on the Easement Area as of the Effective Date or as documented in the Baseline Documentation (collectively, the "Existing Uses") in substantially the same manner with substantially the same practices that are being employed as of the Effective Date, provided that the practice does not impair the Conservation Values. In

addition to the existing uses documented in the Baseline Documentation, the Existing Uses include the following: golf course and related activities; multi-use trails for walking, running, and biking; maintenance of all trails and facilities in the Easement Area; weddings and other events; meeting receptions; camping in non-permanent structures with Owner's permission only for special events; filming; guided and unguided tours; and access to shoreline for coastal activities to the extent permitted by Law, including, but not limited to, surfing, fishing, snorkeling, diving, stand-up paddle boarding, paddling, swimming, wildlife watching, beachcombing, cultural tours, exploring and sunbathing by the guests, vendors, residents and employees of the Turtle Bay Resort. Similar and related uses and activities to the Existing Uses shall also be permitted, provided that such uses and activities do not impair the Purpose of the Easement or the Conservation Values.

2. Entitlement Compliance. The right to make improvements and to enter into legal arrangements as necessary to comply with the terms of that certain Unilateral Agreement and Declaration for Conditional Zoning, dated September 23, 1968, and approved by the Honolulu City Council pursuant to Ordinance 86-99 (including any amendments thereto), the State Land Use Commission Findings of Fact, Conclusions of Law, and Decision and Order, dated March 27, 1986 (including any amendments thereto), and the Special Management Area Use Permit and Shoreline Setback Variance granted by the Honolulu City Council pursuant to Resolution No. 86-308 (including any amendments thereto) (collectively, the "Entitlements"), which improvements are more specifically described in Exhibit D attached hereto (the "Entitlement Improvements"). Any permit or approval (including amendments or modifications thereof) issued or granted by any Governmental Authority after the Effective Date in connection with the Easement Area or the development of the Turtle Bay Resort properties that do not constitute a part of the Easement Area are expressly not Entitlements. Construction of the Entitlement Improvements shall not be subject to the Impervious Surface limitations set forth in Section E.1.

3. Easements and Dedications. After providing Notice to Holder pursuant to Section G.1, Owner may grant or convey easements, or make dedications of land, as set forth below, together with the right to improve, repair and maintain such easements, including the right to harden or permit the hardening of surface areas subject to the Impervious Surfaces limitations set forth in Section E.1:

- (a) The right to grant easements over, under, upon, across and through the Easement Area to construct, install, repair, maintain and replace roads, wires, lines, pipes, cables or other facilities providing or delivering electrical, gas, water, sewer, communications, lighting or other utility services to the improvements permitted herein; provided, however, that any new outdoor lighting shall be shielded to avoid disorienting seabirds and marine animals; and further provided that the interests granted are subject to the terms of this

Easement and provided it does not impair the Conservation Values. Septic or other underground sanitary systems serving the improvements permitted by this Easement may be installed, maintained, repaired or improved only as allowed by Law;

- (b) The right to dedicate portions of the Easement Area to the State or City as may be required by the Entitlements or by Law, including but not limited to dedicating certain portions of the Easement Area to the City for park use, and dedicating certain portions of the Easement Area to the State for the widening of the Kamehameha Highway;
- (c) The right to grant easements for the benefit of adjoining lands for drainage, runoff, or similar purposes; provided, however, that the interests granted are subject to the terms of this Easement and do not impair the Conservation Values.

4. Alienation. After providing Notice to Holder pursuant to Section G.1, the right to sell, lease, license and devise portions of the Easement Area in the Open Space Zone and Recreation Zone, including, but not limited to, the following: the right to grant a license over a portion of the Easement Area to a provider of education or agro/eco/volunteer/cultural-tourism tours or recreational programs; and the right to convey a fee simple interest in, or to grant an easement, license or other possessory interest in all or a portion of the Easement Area to any Governmental Authority, entity, or individual; provided, however, that the interests granted are subject to the terms of this Easement. Owner may sell, lease, license and devise portions of the Easement Area in the Preservation Zone only with Approval by Holder; provided, however, that after providing Notice to Holder pursuant to Section G.1, the Owner may grant a license over a portion of the Preservation Zone to a provider of education or agro/eco/volunteer/cultural-tourism tours or recreational programs, and the Owner may alienate the Preservation Zone in connection with a conveyance of the Easement Area in its entirety to a third party, which shall only require Notice to Holder as provided in Section I.1.

5. Maintenance, Expansion and Use of Existing Structures. After providing Notice to Holder pursuant to Section G.1, the right to maintain, renovate, and enlarge up to (but not more than) ten percent (10%) of the area of any structure which exists as of the Effective Date, and to use structures located on the Easement Area as of the Effective Date.

6. Other Improvements. Subject to the Impervious Surfaces limitations in Section E.1 and after providing Notice to Holder pursuant to Section G.1, the right to construct, maintain, repair, enlarge and replace nonstructural, unenclosed (does not have four sides and a roof) or nonpermanent enclosed (is not fixed to the ground and

can be reasonably removed by two people in less than a day) improvements in the Open Space Zone including, but not limited to, fences, trails, campgrounds (provided, however, that no permanent dwelling and no semi-permanent dwelling (e.g. a yurt) will be permitted), monitoring stations or other research improvements, ball fields, challenge courses, sporting clays courses, and roads.

Subject to the Impervious Surfaces limitations in Section E.1 and after providing Notice to Holder pursuant to Section G.1, the right to construct, maintain, repair, enlarge and replace trails, fences, and roads in the Recreation Zone and the Preservation Zone.

All road and trails shall be constructed in compliance with applicable Law, and shall not increase soil erosion.

7. Privacy and Quiet Enjoyment. The right of privacy and the right to exclude all persons from the Easement Area, except for public access expressly provided for in Section B.19 and access by Holder as stated in Section F.3, as well as the right to all manner of access to, and personal use and enjoyment of, the Easement Area, including without limitation the right to undertake activities reasonably necessary to carry out and enjoy the rights reserved to Owner under this Easement; provided such actions are not specifically and expressly prohibited by the terms and conditions of this Easement or that impair the Conservation Values.

8. Guests and Invitees. The right to permit or invite others on to the Easement Area to engage in any use or activity permitted by this Easement.

9. Use and Maintenance of Water Sources. The right to exercise Water Rights, including the use and maintenance of water sources, water courses and water bodies within the Easement Area to the extent permitted by Law.

10. Commercial Activities Allowed. The right to conduct commercial activities existing in the Easement Area as of the Effective Date or documented in the Baseline Documentation, to the extent permitted by Law. Restoration of significant acts of destruction (defined as more than three (3) acres total) to vegetation on the Easement Area that are incurred by commercial activities will be an obligation of Owner, which Owner shall restore to the satisfaction of Holder.

11. Educational and Recreational Activities. The right to undertake commercial and non-commercial recreational and/or educational activities. An illustrative list of permissible recreational activities includes, but is not limited to, horseback riding, picnicking, banquets, cultural practices, camping (provided, however, that no permanent dwelling, and no semi-permanent dwelling (e.g. a yurt) will be permitted), sport training, sport competition, festivals, events, hiking, mountain biking, challenge courses, walking, tennis, golf, jogging, swimming, stand-up paddling, boating, sailing, canoeing, kayaking,

surfing, kite surfing, snorkeling, diving, fishing, outdoor climbing and farmers' markets. No activity which is inconsistent with the Purpose of this Easement or which impairs the Conservation Values will be permitted. For purposes of this Easement, a dwelling or other structure will not be considered semi-permanent if it can be taken down by two people within a period of twenty-four hours.

12. Motorized Vehicles and Equipment. The right to use motorized vehicles and equipment for land management, enhancement, maintenance (including golf course maintenance), and restoration activities, including but not limited to, tractors, mowers, ATVs, trucks, excavators, bulldozers, loaders, graders, harvesting equipment, chainsaws, chippers and "weed eaters". The commercial and non-commercial use of segways, golf carts and other similar small motorized or electric vehicles is expressly permitted in Open Space and Recreation Zones, and is expressly permitted in the Preservation Zone for the limited purposes of maintenance, providing security, promoting life safety, or in case of emergency, natural disaster, or the threat of a natural disaster (e.g., earthquake, hurricane, tsunami warnings); use of motorized vehicles in the Preservation Zone for any other purpose shall require Approval by Holder.

13. Chemical Applications. Subject to all applicable labeling requirements and Laws, landscaping chemicals may be applied to the Easement Area for *bona fide* landscape purposes, provided that the application of such chemicals is not inconsistent with the Purpose of this Easement and shall not impair the Conservation Values.

Owner expressly agrees to indemnify, defend, and hold Holder harmless, from any damages and claims resulting from the release of chemical applications or any other Hazardous Material on or about the Easement Area occurring while Owner was in possession of the Easement Area, or elsewhere if caused by Owner or persons acting through or under Owner.

14. Waste. To the extent permitted by Law, the right to compost, burn, or store vegetative waste generated by permitted activities and uses, and the right to store for removal at reasonable intervals normal and customary waste generated on the Easement Area by permitted activities and uses; provided, however, that any new garbage cans introduced to the Easement Area (either in replacement of decommissioned garbage cans or in addition to the garbage cans currently in use) shall be animal proof so as to limit the food source of predators. Owner shall also have the right to remove, in accordance with existing Law, pilings, trash, other obstructions, and non-native plants (provided, such non-native plants are not identified in the Baseline Documentation as requiring Approval by Holder under Section G prior to removal).

15. Signs. The right to post signs on the Easement Area for informational, interpretive, identification, and way-finding purposes, to warn against trespassing

(where public access is not required under Section B.18), hunting, and other prohibited or unlawful activities.

16. Surface Water Flows. To the extent permitted by Law, the right to manage the flow of water over the Easement Area including, but not limited to the construction of retention or detention basins, the direction of overflow from nearby well sites, and the channeling or rechanneling of riparian corridors in the Open Space and Recreation Zones.

17. Emergencies. Notwithstanding the general requirement to take no action that would be inconsistent with the Purpose of this Easement, Owner shall have the right to take any emergency action that Owner reasonably believes necessary to protect human life or native natural wildlife that Owner reasonably believes is imminently threatened on the Easement Area or off the Easement Area, but in danger from circumstances or events originating on or crossing over the Easement Area, or to prevent damage to any improvements permitted by this Easement on the Easement Area, or to prevent damage to the Conservation Values protected by this Easement. Nothing within this Section B.17 shall be interpreted as creating an affirmative obligation of Owner to take any such protective action.

18. Access. No right of access to any portion of the Easement Area is conveyed by this Easement, except:

- (a) Holder's Access. Access to Holder as expressly set forth in Section F of this Easement.
- (b) Public Access. Public access shall be provided in the Recreation Zone, Preservation Zone, and the Open Space Zone of the Easement Area in the areas indicated as "Public Access Trails" on Exhibit C. "Public Access Trails" include (1) existing public accesses, (2) future public accesses, (3) permanent trails (public access), and (4) future trails (public access). Public access to the Easement Area outside of the Public Access Trails is expressly prohibited, unless specifically authorized by Owner.
 - i. Hours of Public Access. Public access along the Public Access Trails in the Recreation Zone shall be provided from at least one hour before sunrise to at least one hour after sunset, provided, however, that public access at Kuilima Bay via the existing parking area and access right-of-way shall be provided at all times (e.g., 24 hours per day/7 days per week). Public access along the Public Access Trails in the Preservation Zone and the Open Space Zone shall be provided only during the hours of operation of the Turtle Bay Resort golf courses, which may be designated from time to time by Owner. In the event Owner ceases golf course

operations, then the hours of public access along the Public Access Trails in the Preservation Zone and the Open Space Zone shall be provided from at least one hour before sunrise to at least one hour after sunset.

- ii. Temporary Limitations on Public Access. Notwithstanding the foregoing, public access may be temporarily limited in all or designated areas in the case of emergency, natural disaster, or the threat of a natural disaster (e.g., earthquake, hurricane, tsunami warnings), tree trimming or cutting, repairs, maintenance or other activities permitted by this Easement that may temporarily create safety or health hazards.
 - iii. Limitations on Public Access for Protective Purposes. Notwithstanding the foregoing, public access may be limited to comply with any Laws, regulations, or agreements with Governmental Authorities for the protection of people, property, or ecologically-sensitive areas (e.g., restrictions for life-safety risks, species protection, or establishment of marine life conservation “no take” rules). Public Access Trails through the Recreation Zone located along the coast (which includes Kahuku Point and the coastal area to the north of Kahuku Point) shall be managed to protect the integrity of the native dune ecosystem. Owner shall not allow the public to introduce domesticated dogs or cats in the Preservation Zone. Public access through the Preservation Zone and the Open Space Zone shall not be allowed to interfere with the operation of the Turtle Bay Resort golf courses.
 - iv. Maintenance of Public Access Trails. Owner shall be responsible for the operation, upkeep, and maintenance of the Public Access Trails.
 - v. Public Parking. Owner shall provide 40 parking stalls to the public at no charge, which shall be available at all times. If the 40 parking stalls become insufficient to accommodate the public, then an aggregate of 40 additional unpaved “country-style” parking stalls on either side of the present location of the Turtle Bay Resort Hotel shall be made available to the public, which shall be available at no charge and during the hours of public access described in Section B.18.b.i.
- (c) *Cultural Access*. Nothing in this Easement shall be construed as preventing the exercise of any rights of native Hawaiians for traditional and customary practices as may be permitted by Hawai‘i Law (including, but not limited to, those rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, as consistent with Article XII, Section 7 of the Hawai‘i State

Constitution). Access shall also be provided to cultural sites for traditional and customary practices at no charge.

19. *Affirmative Obligations.* Unless otherwise specified below, nothing in this Easement shall require Owner to take any action to restore the condition of the Easement Area after causes beyond Owner's control, including, without limitation, fire, flood, storm, earth movement, tsunami, any other act of God, war, strike, labor dispute, vandalism, embargo, and terrorism, or for acts of trespassers, that Owner could not reasonably have anticipated or prevented.

20. *Owner's Remedies; Damages.* Owner shall have the right to enforce this Easement and the covenants and restrictions herein. Owner's rights and remedies identified in this Section B.20 apply equally in the event of either actual or a reasonable belief of a threatened breach by Holder of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at Law or in equity.

- a. *Injunctive Relief.* Owner may bring an action at Law or in equity to enforce the terms of this Easement.
- b. *No Bond Required.* Any action for injunctive relief or damages may be taken without Owner being required to post bond or provide other security.

C. Activities and Uses on Easement Area Requiring Approval by Holder

The following activities and uses are permitted on the Easement Area only upon receiving prior written approval by Holder pursuant to the procedures set forth in Section G.2 ("Approval by Holder"):

1. *New Structures.* The right to construct new enclosed, permanent structures in the Open Space Zone subject to the Impervious Surfaces limitations in Section E.1, and subject to the following terms and conditions:

- a. No more than three (3) structures with a footprint of 1,000 square feet shall be allowed within the Easement Area;
- b. No building shall be more than 25 feet in height; and
- c. No building shall be constructed within 15 feet of the boundary of the Preservation Zone.

No new structures shall be permitted in the Preservation Zone, in the Recreational Zone located along the coast (which includes Kahuku Point and the coastal area to the north of Kahuku Point), or within 300 feet of the shoreline.

2. Public Access Trail Development. The right to construct, repair, replace, maintain and use new Public Access Trails. Prior to the construction of any new Public Access Trail, or the replacement of any previously existing Public Access Trails, Owner shall consult with Holder, and receive Approval by Holder, to ensure that all Conservation Values are protected. All Public Access Trails shall be constructed in compliance with applicable Law, and shall not increase soil erosion. No new Public Access Trails shall be permitted in the Recreation Zone located along the coast (which includes Kahuku Point and the coastal area to the north of Kahuku Point).

3. Natural Area Establishment, Restoration or Improvement. The right to engage in activities designed to restore, preserve, protect or improve natural or physical features of the Easement Area including, but not limited to, actions intended to restore a natural ecosystem, establish natural preserves, stream-bank stabilization efforts, and the restoration of riparian corridors. Prior to any action taken under this Section C.3 in the Recreation or Preservation Zones, Owner shall prepare a natural area management plan (a "NAMP") that details the activities designed to restore, preserve, protect or improve naturally significant features of the Recreation or Preservation Zones including, but not limited to, actions intended to restore the natural ecosystem, turtle nesting habitat, monk seal habitat, establishment of natural or cultural preserves, coastline and stream bank stabilization efforts, and the restoration of riparian corridors, in consultation with the Division of Forestry and Wildlife ("DOFAW") (or appropriate successor agency) and seek Approval by Holder. Owner may update, amend or revise the NAMP at any time, and shall be required to update the NAMP prior to any natural area establishment, restoration or improvement that will be more than ten (10) years from the date of Approval by Holder of the then-effective NAMP. Any update, amendment or revision of the NAMP shall be done in consultation with DOFAW (or appropriate successor agency) and with Approval by Holder.

4. Cultural and Historical Sites. The rights to restore, preserve, protect and maintain cultural and historic sites located in the Easement Area, including the establishment of appropriate buffers around any such sites. Prior to any action taken under this Section C.4, Owner shall prepare a cultural and historic sites plan (the "CHSP") that details the activities designed to restore, preserve, protect or maintain cultural and historic sites located on the Easement Area, in consultation with the Department of Land and Natural Resources, State Historic Preservation Division ("SHPD") (or appropriate successor agency) and shall submit such plan for Approval by Holder. Owner may update, amend or revise the CHSP at any time, and shall be required to update the CHSP prior to any cultural or historic site restoration, preservation, protection or maintenance that will be engaged in more than ten (10) years from the date of Approval by Holder of the then-effective CHSP. Any update, amendment or revision of the CHSP shall be done in consultation with SHPD (or appropriate successor agency) and with Approval by Holder.

5. Supplemental Uses & Activities. The right to engage in any use or activity permitted by Law but not otherwise identified or contemplated by the terms of this Easement, provided that such use or activity is consistent with the Purpose and does not impair any Conservation Values.

D. Infrastructure Facilities and the Allowable Facilities Area

Owner shall be entitled to construct, develop, improve, undertake, maintain, repair, replace, and use on, under and/or across the Easement Area utility facilities and lines, slope stabilization and other grading activities, and any other similar improvements (collectively, "Infrastructure Facilities"), as needed in order to support the development of the Turtle Bay Resort and adjacent properties not encumbered by this Easement, subject to the following provisions:

1. The Infrastructure Facilities shall be permitted within the Open Space Zone, provided that there is no other practical alternative outside the Easement Area. In exercising its rights under this Section D, Owner shall not impair the Conservation Values. Infrastructure Facilities shall be subject to a 50-foot height limitation;

2. The Infrastructure Facilities permitted under this Section D, and their installation, use, maintenance, repair and replacement, shall be subject to the Impervious Surfaces limit set forth in Section E.1 (the "Allowable Facilities Area"), provided, however, that temporary disruptions under and/or across the Easement Area in order to construct, develop, improve, undertake, maintain, repair, replace, and use such Infrastructure Facilities shall not be considered part of the Allowable Facilities Area if the Easement Area is immediately restored to a previous condition;

3. Notwithstanding any other provision of this Easement to the contrary, either before or after the time that any Infrastructure Facilities permitted under this Section D are commenced or completed, Owner shall have the right to transfer such Infrastructure Facilities, including those portions of the Easement Area upon which such Infrastructure Facilities are located, to any appropriate agency, entity or individual in the form or manner required by the recipient (including without limitation conveyance of a fee interest, easement, license or other possessory interest), and without compensation to Owner or Holder and without requiring the recipient to resort to any powers of eminent domain or other similar legal process in such endeavor. Owner shall have the right to subdivide the Easement Area and to take all other actions necessary or appropriate to create separate lots or easement areas in order to facilitate any transfer contemplated by this Section. Holder shall cooperate in good faith with Owner, as reasonably requested and at no out-of pocket cost to Holder, to ensure Owner may exercise said right to transfer the Infrastructure Facilities. To that end, if requested, Holder shall execute and record a partial release of this Easement releasing the Infrastructure Facilities, and those portions of the Easement Area upon which such facilities are

located, from this Easement. In transferring title to the Infrastructure Facilities as permitted under this Section D, Owner shall include in the conveyance instrument a provision restricting use of such Infrastructure Facilities and lands to the purpose for which such Infrastructure Facilities were constructed;

4. Prior to submitting an application for a permit for the Infrastructure Facilities (or if no permit whatsoever is required for the Infrastructure Facilities, then prior to commencement of the construction of the Infrastructure Facilities), Owner shall receive Approval by Holder concerning its plans for the Infrastructure Facilities; provided, however, that Approval by Holder is not required for the construction of Infrastructure Facilities within the lots identified as Lots 5, 7, 8, 20, 21, 24, 25, and 26 of the "Turtle Bay Bulk Lot Subdivision," as shown on the Subdivision Map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, subject to the following terms and conditions:

- a. Notice is provided to Holder in the manner set forth in Section G.1;
- b. The Infrastructure Facility is no more than 25 feet in height; and
- c. The Infrastructure Facility is not within 15 feet of the boundary of the Preservation Zone.

5. Owner shall provide to Holder copies of all applications for permits filed by Owner for the Infrastructure Facilities under this Section D.

6. For all purposes, in deriving the fair market value of the Easement Area (the "Easement FMV") as encumbered by this Easement, Owner shall be deemed to have retained the total value of all Allowable Facilities Areas permitted to be used for Infrastructure Facilities under this Section D, along with any and all potential uses or activities thereon, without regard to the terms of this Easement or the restrictions imposed by this Easement, and without regard to whether or not the total Allowable Facilities Areas will actually be so used.

7. Should Owner be required by any Governmental Authority to construct any Infrastructure Facilities on the Easement Area and there is no other practical alternative outside the Easement Area, and construction of such Infrastructure Facilities would exceed the Allowable Facilities Area, Owner shall have the right to comply with the requirement by removing the needed land from both the Open Space Zone and the terms of this Easement, provided that such land shall not exceed ten (10) acres. Holder, at no out-of-pocket cost to Holder, shall provide a partial release of this Easement releasing the needed land, provided that Owner shall pay Holder the Easement FMV associated with the released portion of land as set forth in Section I.4.

E. Prohibitions and Other Restrictions on the Easement Area

The following activities and uses are prohibited or restricted unless an exception is expressly provided below or elsewhere in this Easement:

1. Impervious Surfaces. The aggregate unnatural Impervious Surfaces on the Easement Area shall be 45 acres of the Easement Area. It is expressly understood that the Entitlement Improvements shall not be subject to the restrictions of this Section E.1;

2. Subdivision. The legal division, subdivision or partitioning of any of the Easement Area (including condominium regime); provided, however, that Owner may (i) subdivide in order to lease portions of the Easement Area if the lease constitutes an activity or use not otherwise inconsistent with the terms and objectives of this Easement, its Purpose, or impair the Conservation Values; (ii) grant a license or lease to a provider of education or agro/eco/volunteer/cultural-tourism tours or programs; and (iii) subdivide or designate an easement in order to convey a fee simple interest or grant an easement, license or other possessory interest to any agency or entity as contemplated under the Entitlements, including, but not limited to, dedication of certain portions of the Easement Area to the City for park use, and dedication of certain portions of the Easement Area to the State for the widening of the Kamehameha Highway;

3. Dwellings. The construction of any type of dwelling or use of a structure as a dwelling or habitable structure (e.g., timeshare units, resort units, fractional interest units). This restriction, however, does not prevent the use of some portions of the Easement Area for transient accommodation in non-permanent structures (e.g., tents, however, semi-permanent structures (e.g. a yurt) are not allowed);

4. Uses and Activities Inconsistent with the Purpose of this Easement. Any use of, or activity on, the Easement Area which is inconsistent with the Purpose of this Easement or which impairs the Conservation Values is prohibited, and Owner acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Easement Area, though not an exhaustive list of prohibited uses or activities, shall be prohibited, except where this Easement sets forth expressly reserved as unconditional or conditional rights of Owner:

(a) Alteration of Land. The material alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as necessary to carry out the construction or maintenance of permitted structures or improvements (such as improvements made in connection with the management or control of surface water flows as

set forth in Section B.16), or other uses and activities permitted by this Easement. Maintenance and landscaping activities, as well as activities relating to the operation of a golf course, are expressly excluded from this provision. Any excess fill from permitted excavations on the Easement Area may be exported off of the Easement Area;

- (b) *Erosion or Water Pollution.* Any use or activity that causes or is likely to cause significant, verifiable soil degradation or erosion, or significant, verifiable pollution of any surface or subsurface waters.
- (c) *Waste Disposal.* The long-term disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials on the Easement Area;
- (d) *Mining.* The exploration for, or development and extraction of, minerals, hydrocarbons and geothermal resources on, below or through the surface of the Easement Area;
- (e) *Maintaining Predators.* The intentional feeding or maintaining of predator colonies (i.e., mongooses, rats, dogs, or cats) on the Easement Area;
- (f) *Clearing and Trimming Trees Greater than 15 Feet Tall from June 1st to September 15th.* The clearing or trimming of trees greater than 15 feet tall from June 1st to September 15th during the pupping season of the endangered Hawaiian hoary bat; and
- (g) *Introduced Species.* The introduction or release of nonnative invasive species (defined as any plant listed in the Hawaii-Pacific Weed Risk Assessment, or otherwise designated by the Hawaii Invasive Species Council, as high risk or potentially high risk, as it may be amended from time to time) or non-naturalized plant or animal species, with the exception of species as described in the NAMP or as needed to maintain Conservation Values, and approved by Holder. Desirable nonnative plant species needed to improve and stabilize soils or improve habitat for native animals may be introduced, but should comply with recommendations in the NAMP.

5. *Rights of the U.S. Army.* If Owner or Holder (i) uses, (ii) attempts to transfer, or (iii) otherwise encumbers the title to the Easement Area, for an incompatible purpose without approval of the U.S. Army, the Secretary of the U.S. Army, at their discretion, through an authorized agency official shall, in accordance with 10 U.S.C. § 2684a(d)(5), be entitled to demand from Owner or Holder and receive the transfer of a conservation easement necessary to maintain the Easement Area in a use and condition for which it was purchased.

6. Height Limitation. No structure constructed or installed within the Easement Area after the Effective Date shall be more than 50 feet in height.

F. Rights Conveyed to Holder

To accomplish the Purpose of this Easement, the following rights are conveyed to Holder:

1. Monitoring Easement. Holder shall have the right to monitor the Easement Area to determine if a violation of this Easement has occurred.

Any and all rights granted to Holder under this Easement may be fulfilled directly by Holder, its agent, or through an appointed third party (the "Third Party Manager"). Any Third Party Manager must be qualified to manage a conservation easement of the size and nature of this Easement. Holder must seek the prior written approval of Owner prior to appointing any Third Party Manager, which consent shall not be unreasonably withheld by Owner.

2. Protection. Holder shall have the right to enforce the provisions of this Easement so as to: (i) preserve and protect the Easement Area in perpetuity; (ii) prevent any use of, or activity on, the Easement Area that will significantly impair or interfere with the Conservation Values or the Purpose of the Easement; and (iii) enhance the Conservation Values.

3. Access. Holder shall have the right to enter the Easement Area for the purpose of making inspections to monitor compliance with this Easement and for enforcement purposes as follows:

(a) Annual Monitoring. Upon seven (7) calendar days prior Notice to Owner in the manner set forth in Section G.5, and without unreasonably interfering with Owner's use of the Easement Area, Holder shall have the right to enter the Easement Area, but not including building interiors, at reasonable times and in a reasonable manner in order to monitor Owner's compliance with, and otherwise enforce the terms of, this Easement.

(b) Emergency Entry. Where Holder shall have a reasonable belief that there is a threat of imminent violation of this Easement or a significant and imminent threat to any of the Conservation Values or the Purpose of this Easement, Holder has the right to enter the Easement Area, but not including building interiors, without Notice. However, where time permits, Holder shall make good faith efforts to provide prior Notice to Owner in the manner set forth in Section G.5.b.

- (c) *Other Entry.* To enter the Easement Area, but not including building interiors, at such other times as are necessary if Holder, in its sole discretion, has reason, based upon its possession of credible information, to believe a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Holder shall provide Notice to Owner in the manner set forth in Section G.5.b.

4. *Enforcement and Remedies.* Holder shall have the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Easement Area that is inconsistent with the Purpose of this Easement, an impairment to the Conservation Values, or which is prohibited by this Easement, and to require the restoration of such areas or features of the Easement Area as may be damaged by uses or activities in violation of the provisions of this Easement.

- (a) *Notice of Violation, Corrective Action, Opportunity to Cure.* If Holder determines that Owner is in violation of the terms of this Easement or that a violation is threatened, Holder shall give written Notice to Owner (in the manner set forth in Section G.5) of such violation and demand that Owner take corrective action sufficient to cure the violation (within the permitted time periods set forth in Section F.4.b) and, where the violation involves injury to the Easement Area or Conservation Values resulting from any use or activity prohibited under this Easement, to demand that Owner restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by Holder.

- (b) *Owner's Failure to Cure.* Holder may bring an action as provided in this Section F.4 if Owner:

- i. Fails to cure the violation within 30 days after receipt of Notice thereof; or,
- ii. Under circumstances where the violation cannot reasonably be cured within the 30 day period, fails to begin curing such violation within the 30 day period and fails to continue diligently to cure such violation until finally cured.

- (c) *Damages.* Holder's rights and remedies identified in this Easement shall apply equally in the event of either actual or threatened violations of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at Law or in equity.

- (d) *Injunctive Relief.* Holder shall be entitled to pursue and enforce any and all remedies as may be available at law or pursuant to this Easement, including damages pursuant to HRS § 198-5 or any successor provisions then applicable. Holder's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Owner agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate and that Holder shall be entitled to injunctive and other relief to which Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- (e) *Money Damages.* Holder shall be entitled to recover money damages for any injury to the Conservation Values protected by this Easement or for the violation of the terms of this Easement. In assessing such damages, there may be taken into account, in addition to the cost of restoration, the loss of recreational, open space, cultural, scenic, aesthetic, or environmental value to the Easement Area, and other damages.
- (f) *No Bond Required.* Any action for injunctive relief or damages may be taken without Holder being required to post bond or provide other security. Owner is barred from using this provision regarding damages as an affirmative defense against Holder's rights to injunctive relief.
- (g) *Emergency Enforcement.* If Holder, in its sole discretion, determines that a violation of this Easement has created circumstances requiring immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Holder may pursue its remedies under this section without prior Notice to Owner or without waiting for the period provided for cure to expire; provided, that Holder shall first make a reasonable attempt under the circumstances to give verbal/telephone Notice to Owner of the violation and proposed action.
- (h) *Costs of Enforcement.* In the event Holder must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Owner or anyone under Owner's control or authority or anyone in contractual privity with Owner, in violation of the terms of this Easement, and Holder's reasonable enforcement expenses, including attorney's fees, shall be borne by Owner. In the event that Holder secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Holder's reasonable expenses shall be borne by Owner. If Owner ultimately prevails in any judicial proceeding initiated by Holder to

enforce the terms of this Easement, each Party shall bear its own attorneys' fees and costs.

- (i) *Holder's Forbearance.* Forbearance by Holder to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Owner, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Holder of such term or any of Holder's rights under this Easement. No delay or omission by Holder in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.
- (j) *Waiver of Certain Defenses.* Owner acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Owner hereby waives any claim or defense it may have against Holder under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.
- (k) *Acts Beyond Owner's Control; Emergency Conditions.* Nothing contained in this Easement shall be construed to entitle Holder to bring any action against Owner to abate, correct, or restore any condition on the Easement Area or to recover damages for any injury to or change in the Easement Area resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, earth movement, tsunami, any other act of God, war, strike, labor dispute, vandalism, embargo, and terrorism, or for acts of trespassers, that Owner could not reasonably have anticipated or prevented, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes or to protect *bona fide* public health or safety in an emergency situation.

G. Notice; Approval; Breach; Compliance Certificates

1. *Notice to Holder.* To afford Holder an opportunity to ensure that any use or activity proposed by Owner is designed and carried out in a manner consistent with the terms and Purpose of this Easement, Owner shall notify Holder in writing not less than 30 days prior to undertaking certain activities permitted only after prior Notice to Holder as identified in this Easement. The Notice to Holder may be transmitted electronically by e-mail or facsimile, and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Holder to understand the nature of the proposed use or activity.

2. Approval by Holder. Whenever this Easement requires Owner to obtain Approval by Holder, Owner shall follow the procedures set forth in this Section G.2.

(a) *Approval by Holder*. Owner shall request Approval by Holder in writing. The request for Approval by Holder shall describe the nature, scope, location, timetable, identify its conformity with this Easement, and, when applicable, evidence conformity with existing land use regulations, and any other material aspect of the proposed activity. Delivery of the request shall conform to the service methods set forth in Section G.5. Holder shall have 60 days from receipt of the request in which to approve, disapprove, or approve subject to modification, the request for Approval by Holder.

a. *Further Information*. If Holder reasonably determines that it requires additional information regarding the requested use or activity to process any request for Approval by Holder, Holder must request in writing such information within 30 days of receipt of Owner's request for Approval by Holder, and shall specifically identify, to the extent possible, the information requested. Holder shall have 60 days from receipt of all information requested in which to approve, disapprove, or approve subject to modification, the request for Approval by Holder. If no request for additional information is timely made, the request for Approval shall have been deemed received upon delivery to Holder.

b. *Extension Request*. If Holder reasonably requires more than 60 days to respond to the request for Approval by Holder, Holder must provide Notice to Owner in writing within 30 days after receiving the request, which Notice shall provide the reason for such extension request. Holder may then, without need for approval by Owner, have an additional 30 days to process Owner's request for Approval by Holder.

c. *Withholding Approval by Holder*. In the case of withholding of Approval by Holder, Holder shall notify Owner in writing with reasonable specificity of the reasons for withholding of Approval by Holder, and the conditions, if any, on which Approval by Holder might otherwise be given.

d. *Failure to Respond*. If Holder fails to timely respond to Owner's request, the proposed enterprise, use or activity shall automatically be deemed approved, subject to the condition that the enterprise, use or activity be carried out in a manner that does not significantly impair or degrade the Conservation Values of the Easement Area or unreasonably interfere with activities permitted under this Easement.

- (b) *Standard of Approval by Holder.* Holder shall not unreasonably withhold Approval by Holder of a proposed use or activity requiring Approval by Holder under this Easement where the proposed activity or use will not be inconsistent with the Purpose of this Easement or impair the Conservation Values.

3. *Breach of Approval by Holder Provisions.* If Owner undertakes any action for which Approval by Holder is required under this Easement, but without first obtaining such Approval by Holder, Owner shall be deemed to be in material breach of this Easement and Holder shall be entitled to such rights or remedies as may be available under Section F.4 of this Easement. Notwithstanding the foregoing, Holder may, at its sole option, permit Owner to cure the breach by submitting after-the-fact communications and documents showing the conformity of such activity with this Easement and with any relevant Law, or by showing, despite a lack of conformity with this Easement or the Law, that the action was justified because of an emergency.

4. *Compliance Certificates.* Holder, or its successor, as the primary steward and enforcer of this Easement shall, within 30 days of a request by Owner, execute and deliver to Owner, or to any party designated by Owner, any document, including an estoppel certificate, that certifies Owner's compliance or lack thereof with any obligation of Owner contained in this Easement and otherwise evidences the status of this Easement. Such certificate shall be binding upon Holder. Such certification shall be limited to the condition of the Easement Area as of the most recent inspection carried out by Holder. If Owner requests more current documentation, Holder shall conduct an inspection, at Owner's expense, within 45 of receipt of Owner's written request.

5. *Notices and Responses.* Any notice, demand, request, consent, approval, or communication (collectively, a "Notice") that either Party desires or is required to give to the other shall be in accordance with the following procedures.

- (a) In ordinary circumstances, the Notice shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the appropriate address set forth below in this Section. Where Notice is served by certified mail, the receipt of Notice shall be considered to have occurred on the sixth day after mailing. The serving Party may also attempt to, in addition, serve Notice pursuant to the "emergency circumstances" provisions set forth immediately below.
- (b) In emergency circumstances (where Notice needs to occur in 48 hours or less), the party shall make best efforts to deliver the Notice in writing and either serve it personally, or by email or by facsimile transmission. Where Notice is served by email or fax, the party serving the Notice shall, in addition, make concurrent attempts to notify the other Party by telephone of the Notice,

and attempt to receive oral or written confirmation from the Party or the Party's attorney that the Notice has been received.

- (c) Notices may also be served by any other method mutually agreed to between the Parties.
- (d) Notices shall be served at the following addresses or to such other address as any of the Parties from time to time shall designate by written Notice to the other:

To Owner:
TURTLE BAY RESORT, LLC
c/o Scott McCormack
57-091 Kamehameha Highway
Kahuku, Hawaii 96731
SMcCormack@replayresorts.com
Fax: (808) 232-2396

With a copy to:
MCCORRISTON MILLER MUKAI MACKINNON LLP
c/o Randall Sakumoto
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813
sakumoto@m4law.com
Fax: (808) 535-8025

To Holder:
Department of Land and Natural Resources
Division of Forestry and Wildlife
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813
E-Mail: Irene.M.Sprecher@hawaii.gov
Fax: (808) 587-0166

With a copy to:
Department of the Attorney General
State of Hawaii
Land/Transportation Division
465 South King Street, Room 300
Honolulu, Hawaii 96813

E-Mail: Julie.H.China@hawaii.gov
Fax: (808) 587-2999

or to such other address as either Party from time to time shall designate by written Notices to the other Party.

H. Costs, Liabilities and Insurance, Taxes, Environmental Compliance and Indemnification.

1. Costs, Legal Requirements, Liabilities and Insurance. Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area, including the maintenance of any insurance coverage desired by Owner. Owner and Holder release and relieve the other, and waive their entire right to recover for loss or damage to the extent that the loss or damage is covered by proceeds of the injured Party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Owner or Holder. Owner remains solely responsible for obtaining any applicable Governmental Authority permits and approval for any activity or use permitted by this Easement, and any such activity or use shall be undertaken in accordance with all Laws.

2. Taxes. Owner shall timely pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement. If Owner fails to pay any Taxes when due, Holder is authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written Notice to Owner, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Owner at the maximum rate allowed by Law.

3. Environmental Warranty and Remediation.

(a) Owner warrants that, to the best of Owner's knowledge, Owner is in compliance with all applicable Environmental Laws as of the Effective Date. Owner covenants to operate and maintain the Easement Area from and after the Effective Date in compliance with all applicable Environmental Laws. Owner warrants that, to the best of Owner's knowledge, Owner has received no notices from any Governmental Authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Easement Area as of the Effective Date. Owner warrants that, as of the

Effective Date, Owner has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Easement Area exceeding regulatory limits.

- (b) Owner promises to indemnify and hold harmless Holder against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Easement Area, or arising from or connected with a violation of any Environmental Laws by Owner or any other prior Owner of the Easement Area; provided, however, that Owner's indemnification obligation shall not apply to any release of Hazardous Materials or violation of any Environmental Laws caused by Holder. Owner's indemnification obligation shall not be affected by any authorizations provided by Holder to Owner with respect to the Easement Area; provided, however, that Holder shall be responsible for any Hazardous Materials contributed after the Effective Date to the Easement Area by Holder.
- (c) If at any time, there occurs, or has occurred, a release in or on the Easement Area of a Hazardous Material, Owner shall, at its own expense, promptly take all actions as shall be required under applicable Environmental Law for the clean-up of any and all portions of the Easement Area, as the case may be, so that a No Further Action (NFA)/No Further Remediation (NFR) Letter can be issued by the State of Hawaii Department of Health, or its successor agency, acknowledging the Hazardous Substance has been abated to the satisfaction of the State of Hawaii Department of Health, unless the release was caused by Holder.

4. Control. Nothing in this Easement shall be construed as giving rise to any right or ability in Holder to exercise physical or managerial control over the day-to-day operations of the Easement Area, of any of Owner's activities on the Easement Area, or otherwise to become an "operator" with respect to the Easement Area within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any other applicable Environmental Law.

5. General Indemnifications. Owner shall indemnify and hold harmless Holder, its departments, divisions, members, directors, officers, employees, agents, invitees, and contractors, and each of the personal representatives, heirs, successors, and assigns of such parties (collectively "Holder's Parties"), for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, costs, suits, proceedings, actions and causes of action, judgments or sanctions asserted by or on behalf of any person or Governmental Authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and

attorneys' fees on appeal) to which Holder or Holder's Parties may be subject or incur relating to the Easement Area, which may arise from Owner's or Owner's Parties negligent acts or omissions or Owner's breach of any representation, warranty, covenant, agreements contained in this Easement, or violations of any Law, including all Environmental Laws.

I. Transfer; Amendment; Extinguishment

1. Transfer of Easement Area. Owner agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Easement Area, including, without limitation, a leasehold interest. Owner further agrees to give written Notice to Holder of the proposed transfer of any such interest at least 15 days prior to the date of such transfer in the manner provided in Section G.5.(a). The Notice to Holder shall include the name, address, and telephone number of the transferee or the transferee's representative. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

2. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Owner and Holder may by written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Holder under any applicable Laws, including HRS Chapter 198. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit any dwellings on the Easement Area other than those expressly reserved in this Easement, and shall not permit any impairment of the Conservation Values. Any such amendment shall be signed and executed by Owner and Holder and filed in the State of Hawaii Bureau of Conveyances. Owner and Holder shall not agree to any amendment that would affect the enforceability of this Easement. Nothing in this paragraph shall require Owner or Holder to agree to any amendment or to consult or negotiate regarding any amendment of this Easement. Notwithstanding anything contained herein to the contrary, Owner and Holder acknowledge that Owner's obligations under the Entitlements may require that Owner, from time to time, dedicate portions of the land which comprise the Easement Area to a Governmental Authority, and Holder hereby agrees to cooperate in good faith with Owner to take such steps as may be reasonably necessary to release such lands from this Grant of Easement so that the dedication process may be completed. Without limitation to the foregoing, Holder acknowledges Owner's conditional obligation under the UA to dedicate to the City and County of Honolulu Lot 17 of the "TURTLE BAY BULK LOT SUBDIVISION," as shown on Subdivision Map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145. In order to facilitate the dedication of said Lot 17, Holder shall, simultaneous with the execution and delivery of this Grant of

Easement, deposit with a licensed escrow company mutually acceptable to Owner and Holder, an instrument which releases said Lot 17 from this Grant of Easement. Holder shall deposit said instrument with the escrow company subject to an instruction to release the same to Owner upon receipt by the escrow company of written confirmation from the City and County of Honolulu that the obligation to dedicate said Lot 17 has been triggered under the terms of the UA.

3. Limitations on Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Easement Area, by judicial proceedings in a court of competent jurisdiction. If the Easement is extinguished by judicial proceeding, Owner shall pay to Holder the value of the Easement calculated in accordance with Section I.4 below.

4. Percentage Interests. This Easement constitutes a real property interest immediately vested in Holder, which, for purposes of this Section I.4, the parties stipulate to have a value determined by multiplying (a) the fair market value of the Easement Area unencumbered by the Easement, as determined by Holder's appraiser as of the date of extinguishment of the Easement by (b) the ratio of the value of the Easement at the Effective Date to the value of the Easement Area unencumbered by this Easement at the Effective Date (the "Easement/FMV Ratio"). The Easement/FMV Ratio has been determined by Holder's 2015 appraisal of the Easement Area. The parties agree that the Easement/FMV Ratio at the time of this Easement is _____ (%). For the purpose of this Section I.4, the Easement/FMV Ratio shall remain constant at all times in the future, regardless of the change in Easement FMV or other factors.

5. Condemnation. If all or any part of the Easement Area is proposed to be taken under the power of eminent domain, Owner and Holder shall join in appropriate proceedings at the time of such proposed taking to recover the full value of the interests in the Easement Area subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Owner and Holder shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Sections I.3 and I.4 (with respect to the allocation of proceeds). The rights of Owner and Holder set forth in this Section I.5 shall be in addition to, and not in limitation of, any rights they may have at common law.

J. Assignment and Succession

1. Assignment. This Easement is transferable. Subject to the following conditions, Holder may assign its rights and obligations under this Easement as described below:

- (a) Holder may assign this Easement only to an organization that is at the time of the assignment a “qualified organization” within the meaning of Section 170(h) of the Internal Revenue Code (the “Code”), and is, in addition, authorized to acquire and hold conservation easements under HRS Chapter 198;
- (b) The assignment shall be subject to the terms of succession referenced in Section J.2 below;
- (c) Holder shall require the assignee to exercise its rights under the assignment consistent with the Purpose of this Easement; and
- (d) Holder agrees to give written Notice in the manner provided in Section G.5.(a) to Owner of the proposed transfer of any such interest at least 15 days prior to the date of such transfer. The Notice to Owner shall include the name, address, and telephone number of the transferee or the transferee’s representative.

2. Succession. If at any time it becomes impossible for Holder to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Holder has not named a successor organization, or if Holder shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under HRS Chapter 198, then Holder’s rights and obligations under this Easement shall be transferred to a Governmental Authority approved by Owner and Holder, or, failing such joint approval, shall vest in such Governmental Authority or organization as a court having jurisdiction shall direct, pursuant to the applicable Law and the Code, and with due regard to the terms and purposes of this Easement. Transfer of the Easement Area does not extinguish or alter any of the provisions of this Easement, which runs with the land. The failure of Owner to perform any act required by Section J.1 shall not impair the validity of this Easement or of the transfer, or limit their enforceability in any way.

K. General Provisions

1. Reasonableness Standard. Owner and Holder shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.

2. Controlling Law. The interpretation and performance of this Easement shall be governed by and construed in accordance with the laws of the State of Hawaii.

3. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to fulfill the Purpose of this Easement and the policy and purpose of HRS Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

4. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

5. Entire Agreement. This Easement sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings, or agreements between Owner and Holder relating to the Easement Area, all of which are merged into this Easement. No alteration or variation of this Easement shall be valid or binding unless contained in an amendment that complies with Section I.2.

6. No Forfeiture. Nothing contained in this Easement shall result in a forfeiture or reversion of Owner's title in any respect.

7. Successors and Assigns; Runs with Land. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Easement Area.

8. Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Easement Area, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

9. Counterparts. The Parties may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

10. Effective Date. Owner and Holder intend that the restrictions arising hereunder shall take effect on the date of this Easement being recorded in the State of Hawaii Bureau of Conveyances after all required signatures have been affixed hereto, and after closing of the transaction contemplated in this Easement whereby Owner

agrees to the perpetual covenants and restrictions set forth in this Easement in exchange for the funds in the amount agreed to between Owner and Holder.

11. No Merger. Holder agrees to take whatever steps are necessary to ensure that merger of the fee and Easement estates does not occur in order to ensure the continued viability of this Easement.

12. Exhibits. The following exhibits are attached hereto and made a part of this Easement:

Exhibit A: Legal Description of the Easement Area

Exhibit B: Map of the Easement Area

Exhibit C: Map Showing the Preservation Zone, the Recreation Zone, the Open Space Zone, and the Public Access Trails

Exhibit D: Entitlement Improvements

13. Calendar Days. Unless otherwise expressly stated herein, all references to a specific number of days shall mean and refer to that specific number of calendar days.

L. Glossary

The definitions below shall have the same meaning as the reference source, where provided, and in all other cases, shall be given their natural, commonly accepted definitions. Some definitions for other terms used in this Easement are set forth in other parts of the Easement, and not included here.

1. “*Act 121*” means Act 121, Session Laws of Hawaii 2015.
2. “*Allowable Facilities Area*” has the meaning set forth in Section D.2.
3. “*Approval by Holder*” means an approval by Holder required prior to certain Owner actions, as identified throughout this Easement, subject to the procedures set forth in Section G.2.
4. “*Baseline Documents*” has the meaning set forth in Section II.B.
5. “*CHSP*” has the meaning set forth in Section C.4.
6. “*City*” means the City and County of Honolulu.
7. “*Code*” means the Internal Revenue Code of 1986, as now enacted or hereinafter amended, and the regulations thereunder.
8. “*Conservation Values*” has the meaning set forth in Section II.C.
9. “*DOFAW*” has the meaning set forth in Section C.2.
10. “*Easement Area*” has the meaning set forth in Section I.A.

11. “*Easement FMV*” has the meaning set forth in Section D.6.

12. “*Easement/FMV Ratio*” has the meaning set forth in Section I.4.

13. “*Easement*” has the meaning set forth in the Preamble.

14. “*Effective Date*” has the meaning set forth in the Preamble.

15. “*Entitlements*” has the meaning set forth in Section B.2.

16. “*Environmental Law*” or “*Environmental Laws*” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any Governmental Authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

17. “*Existing Uses*” has the meaning set forth in Section B.1.

18. “*Floor Area*” means the same as the definition set forth in Section 21-10.1 of the LUO on the Effective Date, namely as follows: the area of all floors of a structure excluding unroofed areas, measured from the exterior faces of the exterior walls or from the center line of party walls dividing a structure. The floor area of a structure, or portion thereof, which is not enclosed by exterior walls shall be the area under the covering, roof or floor above which is supported by posts, columns, partial walls, or similar structural members which define the wall line. Excluded from the Floor Area are: parking structures, including covered driveways and accessways, porte cocheres, and parking attendant booths; attic areas with head room less than seven feet; basements; lanais; projections such as sunshade devices and architectural embellishments which are decorative only; areas covered by roofing treatment to screen roof top machinery only; and areas underneath unsupported building overhangs, provided the area is not otherwise enclosed.

19. “*FMV*” has the meaning set forth in Section I.4.

20. “*General Plan*” has the meaning set forth in Section IV.C.

21. “*Governmental Authority*” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

22. “*Hazardous Materials*” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials,

hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which now or hereafter defined, listed, or otherwise classified, pursuant to any federal, state, or local law, regulation, or requirement as, toxic or dangerous to the air, water, or soil, or in any other way harmful or threatening to human health or the environment.

23. "*Holder's Parties*" has the meaning set forth in Section H.5.a.

24. "*Holder*" means the State of Hawai'i, though its Board of Land and Natural Resources, and its representatives, successors and assigns, subject to the assignment and succession limitations set forth in Section J.

25. "*HRS Chapter 198*" means the law governing conservation easements in Hawai'i, currently codified at Chapter 198 of the HRS, or as hereinafter amended, or any successor provision(s) hereinafter applicable.

26. "*HRS*" means the Hawai'i Revised Statutes.

27. "*Impervious Surfaces*" means permanent, non-seasonal roof tops, concrete or asphalt surfaces, including commercial buildings, residential buildings, agricultural buildings (with and without flooring), and paved areas.

28. "*Infrastructure Facilities*" has the meaning set forth in Section D.

29. "*Ko'olau Loa Plan*" means the Ko'olau Loa Sustainable Communities Plan.

30. "*KTA*" has the meaning given in Section II.C.

31. "*Law*" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

32. "*LUO*" means the Land Use Ordinance for the City and County of Honolulu, currently codified as Chapter 21 of the Revised Ordinances of Honolulu, or as hereinafter amended, or any successor provision(s) hereinafter applicable.

33. "*NAMP*" has the meaning set forth in Section C.2.

34. "*Notice*" has the meaning set forth in Section G.5.

35. "*Open Space Zone*" has the meaning set forth in Section A.

36. "*Owner's Parties*" has the meaning set forth in Section H.5.a.

37. "*Owner*" has the meaning set forth in the Preamble.

38. "*Party*" has the meaning set forth in the Preamble.

39. "*Parties*" has the meaning set forth in the Preamble.

40. "*Preservation Zone*" has the meaning set forth in Section A.

41. "*Public Access Trails*" has the meaning set forth in Section B.19.b.

42. “*Purpose*” has the meaning set forth in Section A.
43. “*Recreation Zone*” has the meaning set forth in Section A.
44. “*State*” means the State of Hawai‘i.
45. “*Taxes*” has the meaning set forth in Section H.2.
46. “*Third Party Manager*” has the meaning set forth in Section F.1.
47. “*Turtle Bay Resort*” has the meaning set forth in Section III.
48. “*U.S. Army*” has the meaning set forth in Section II.C.
49. “*Water Rights*” means and includes any and all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Owner and Holder shall have entered into this Easement as of the Effective Date.

OWNER:

TURTLE BAY RESORT, LLC,
a Delaware limited liability company

By Turtle Bay Holdings, LLC,
a Delaware limited liability company
Its Sole Member

By _____
Name: _____
Title: _____

HOLDER:

THE STATE OF HAWAII

By _____
Suzanne D. Case
Chairperson
Board of Land and Natural Resources

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

_____.

APPROVED AS TO FORM:

Julie H. China
Deputy Attorney General

EXHIBIT A

[Insert legal descriptions of Lots 5, 7, 8, 14, 17, 18, 20, 21, 22, 23, 24, 25, and 26 of the "TURTLE BAY BULK LOT SUBDIVISION," as shown on the Subdivision Map prepared by Ryan M. Suzuki, with R. M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and of Lot 1204-A as shown on Map 187, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application No. 1095 of the Trustees of the Estate of James Campbell, deceased.]

[EXHIBIT B – MAP OF THE EASEMENT AREA]

[EXHIBIT C – MAP SHOWING THE PRESERVATION ZONE, THE RECREATION
ZONE, THE OPEN SPACE ZONE, AND THE PUBLIC ACCESS TRAILS]

[EXHIBIT D – ENTITLEMENT IMPROVEMENTS]

Exhibit F

Draft Deed of Conservation Easement

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICKUP ()

TITLE OF DOCUMENT:

**DEED OF CONSERVATION EASEMENT AND
RESTRICTION OF DEVELOPMENT RIGHTS**

PARTIES TO DOCUMENT:

Owner:	Turtle Bay Resort, LLC, a Delaware limited liability company, 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731
Holder:	The State of Hawai'i, through its Board of Land and Natural Resources, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813

TAX MAP KEY(S):

DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS

This Deed of Grant of Conservation Easement and Restriction of Development Rights (this "Easement") is entered into as of this _____ day of _____, 2015 (the "Effective Date"), by and between **Turtle Bay Resort, LLC**, a Delaware limited liability company, whose principal place of business and mailing address is 57-091 Kamehameha Highway, Kahuku, Hawai'i 96731 ("Owner"), and the **State of Hawai'i, through its Board of Land and Natural Resources**, whose principal place of business and mailing address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813 ("Holder") (each, a "Party", and together the "Parties").

RECITALS

I. Structure of this Conservation Easement and Initial Definitions

A. Owner is the fee owner of certain parcels of land located in the City and County of Honolulu (the "City"), Ko'olaupia District, Island of Oahu, Hawai'i, as described more specifically in **Exhibit A** attached hereto, and depicted on the map attached as **Exhibit B** hereto (the "Easement Area").

B. Holder desires to obtain from Owner, and Owner desires to grant to Holder, a conservation easement over the Easement Area upon and subject to the terms and conditions of this Easement.

C. This Easement includes three main parts: (1) the *Recitals*, which provide a general description of the Easement Area and its important Conservation Values, the surrounding area, and the existing zoning and other land use rights and restrictions affecting the Easement Area; (2) the *Covenants and Restrictions*, which describe the respective rights and obligations of Owner and Holder; and (3) the *Exhibits*, which identify the Easement Area.

D. Other capitalized terms used in this Easement are either defined when they first appear in this Easement or may be found in the Glossary, located in Section L of the Covenants and Restrictions.

II. Identification of the Easement Area

A. *General Easement Area Location and Description.* The Easement Area consists of approximately 568.417 acres of land located on the north shore/windward coast of the island of Oahu, with an elevation range ranging between 0 and 24 feet above sea level. The Easement Area contains three (3) distinct zones: the Preservation

Zone, the Recreation Zone, and the Open Space Zone, described in greater detail in Section A of the Covenants and Restrictions.

B. *Baseline Documentation.* The Conservation Values of the Easement Area are documented in an inventory of relevant features called the "Baseline Documentation." The Baseline Documentation consists of a descriptive report of resources found in the Easement Area, title reports for the subject parcels, maps, photographs and other documentation, and is maintained by Holder. Owner and Holder have agreed that the Baseline Documentation provides a comprehensive and accurate representation of the Easement Area and its resources as of the Effective Date. The Baseline Documentation is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement.

C. *Importance of Easement Area for Conservation Values.* The Easement Area contains important natural habitat, coastal and inland ecosystems, recreational, research, and educational values, and open space (collectively, the "Conservation Values"). These specific Conservation Values are of interest for protection through this Easement, and are listed in order of priority:

1. *Natural Habitat, Coastal and Inland Ecosystems.* The Easement Area contains ecologically significant ecosystems including, but not limited to, the native sand dunes located along the shoreline, and the Punaho'olapa Marsh wetland area. These ecosystems contain and contribute to Hawaii's overall biodiversity, and are natural habitat for some threatened and endangered plant and animal species. Continued management focusing on preservation is essential to the overall health of these ecosystems.

2. *Recreational, Research, and Educational Values.* The Easement Area's recreational, research, and educational values contribute to the overall access to recreational opportunities in the State and to the availability of locations and land types needed to expand the knowledge base on Hawaiian ecosystems, geologic features, and historic land use practices. The Easement Area's geological, archeological and culturally important features, and unique research opportunities, including, but not limited to flora, fauna, and ecosystem perspectives, are an important public benefit for the State. The parties recognize that access to the Easement Area for these values is best achieved through facilitated and controlled means, in order to protect the other Conservation Values.

3. *Open Space.* Preservation of the Easement Area's open space values contributes to the scenic and greenbelt qualities of the Ko'olaupua region. Preservation of these scenic qualities provides a significant public benefit and will preserve the Easement Area's scenic value and existing natural resources including, but not limited to, native species populations, ecosystem habitat for various plant and

animal species, and important geological features found on the Easement Area. Removal of development rights from the Easement Area preserves the open space values including reducing potential congestion on local roads and highways that would result from residential and resort development of the Easement Area.

D. *Importance of Easement Area for Military Buffer.* The Easement Area is located in close proximity to and north of the United States Army's ("U.S. Army") Kahuku Training Area ("KTA") and serves as an important military buffer. KTA is a joint-use facility with the capability to train approximately 3,000 to 5,000 soldiers, or one full brigade. At more than 9,000 acres, it is one of the largest training areas on O'ahu. The landscape at KTA is an evolving one, as the training area has been in a state of transformation for nearly the past 10-years. The area includes a new Combined Arms Collective Training Facility, a cargo drop zone and tactical vehicle wash. Currently, KTA is the site of several projects necessary for the transformation of the 25th Infantry Division's 2nd Brigade to a Stryker Brigade Combat Team. Protection of the Easement Area's Conservation Values through this Easement provides the U.S. Army with a buffer compatible to its training activities at KTA.

III. History of Land Uses in the Easement Area and Surrounding Areas

Portions of the Easement Area are part of a larger property known and operated as the "Turtle Bay Resort." The existing hotel at the Turtle Bay Resort was originally constructed in 1972, and the Turtle Bay Resort development received entitlements and approvals to construct a 3,500-unit expansion in the mid-1980's. The Turtle Bay Resort currently includes the recently renovated 410-unit main hotel, 42 beach cottages, a free standing restaurant, a large surface parking lot, two golf courses, an equestrian center with riding stables, tennis courts, and other accessory resort uses and minor improvements.

The existing Turtle Bay Resort structures are not located within the Easement Area, but the two golf courses are included in the Easement Area. Also located within Easement Area, and adjacent to the Palmer Golf Course, is the Punaho'olapa Marsh, a spring fed wetland of approximately 100 acres.

The following structures and improvements, described in greater detail in the Baseline Documentation, are also located in the Easement Area: four (4) bathrooms, two (2) irrigation pump stations, seven (7) maintenance/support structures at the Palmer Maintenance Yard, four (4) maintenance/support structures at the Fazio Maintenance Yard, and one (1) historic pillbox bunker.

Immediately adjacent to the Easement Area are the 57-unit Ocean Villas and the 368-unit Kuilima Estates, both of which are privately owned condominium projects. Located across the street from the Turtle Bay Resort, on the mauka side of

Kamehameha Highway, are the lands commonly referred to as the "Turtle Bay Mauka Lands," which consist of approximately 468 acres of agricultural land.

IV. Land Use, Environmental and Planning Policies, Laws and Designations

A. *Hawaii State Land Use District.* Approximately 496 acres of the Easement Area are located in the "Urban" State Land Use District, and approximately 72 acres of the Easement Area are located in the "Agricultural" State Land Use District, as such quoted terms are defined by Hawaii Revised Statutes ("HRS") Chapter 205. Permitted uses within the Urban State Land Use District are stated in HRS § 205-2(b), and permitted uses within the Agricultural State Land Use District are stated in HRS § 205-4.5.

B. *Hawaii Coastal Zone Management Act.* The Easement Area is located within the Special Management Area, as defined by the Hawaii Coastal Zone Management Act, codified as HRS Chapter 205A.

C. *General Plan for the City and County of Honolulu.* The General Plan for the City and County of Honolulu (the "General Plan") establishes the objectives of protecting and preserving the natural environment, and preserving and enhancing the natural monuments and scenic views of Oahu for the benefit of both residents and visitors. As of the Effective Date, the City is currently updating the General Plan.

D. *Ko'olau Loa Sustainable Communities Plan.* The Easement Area lies within the Ko'olau Loa Sustainable Communities Plan (the "Ko'olau Loa Plan"). The Ko'olau Loa Plan provides that "[o]pen space preservation is a key element of the vision for Ko'olau Loa's future. Long-term protection and preservation of scenic resources, agricultural areas, natural areas, and recreational areas are important to maintaining the rural character of Ko'olau Loa for both residents and visitors." See Ko'olau Loa Plan at § 3.1. The Ko'olau Loa Plan identifies the Easement Area (referred to therein as "Kuilima") as being located within the Rural Community Boundary and characterizes it as a "Major Resort Destination" planned for a total of 4,000 visitor units. As of the Effective Date, the City is currently updating the Ko'olau Loa Plan.

E. *City Zoning.* The zoning districts within the Easement Area include "P-2" General Preservation, "AG-2" General Agriculture, and "Resort" under the Honolulu Land Use Ordinance ("LUO"). Permitted uses within the P-2, AG-2, and Resort districts are identified in the Master Use Table of the LUO (Table 21-3). The Master Use Table also identifies other uses that are permitted within the P-2, AG-2, and Resort districts, subject to meeting specific use development standards.

V. Funding Sources for Purchase of this Easement

Funding for the purchase of this Easement comes from Act 121, Session Laws of Hawai'i 2015 ("Act 121"). Pursuant to Act 121, reimbursable general obligation bond proceeds will be used by the Department of Land and Natural Resources to pay the purchase price for this Easement.

Funding for the Purchase of this Easement also comes from Army Compatible Use Buffer ("ACUB") funds.

VI. Intent to Protect Conservation Values of Easement Area

A. The Easement Area possesses significant Conservation Values.

B. The land use, environmental and planning policies, laws and designations referenced above in Section IV are not sufficiently restrictive to protect the Conservation Values of the Easement Area.

C. Owner desires that the Conservation Values of the Easement Area be preserved and maintained in perpetuity by permitting only those uses of the Easement Area that do not significantly impair or interfere with the Conservation Values. And Holder desires to accept this Easement to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation, and the generations to come.

D. Owner intends to convey to Holder an easement interest over the Easement Area to preserve and protect the Conservation Values of the Easement Area in perpetuity, free and clear of all encumbrances except those identified in **Exhibit A** attached hereto.

E. HRS § 198-3 provides that any "public body and any organization which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of [HRS Chapter 198], may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest, but not by eminent domain." Holder is a public body qualified to hold a conservation easement under HRS § 198-3.

F. In consideration of the foregoing, Holder desires to purchase from Owner, and Owner desires to sell to Holder, an easement over, upon and across the Easement Area to preserve and protect Conservation Values of the Easement Area, together with a right to enforce this Easement and the covenants and restrictions herein, subject, however, to the terms and conditions herein.

NOW, THEREFORE, for good and valuable consideration paid by Holder, the receipt and sufficiency of which is acknowledged by Owner, and the foregoing Recitals and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Hawaii, including HRS Chapter 198, Owner hereby grants, bargains, sells, and conveys to Holder a conservation easement in perpetuity over, upon and across the Easement Area subject only to the mutual covenants, terms, conditions and restrictions contained in this Easement and encumbrances identified in **Exhibit A**.

Owner declares that the Easement Area shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements set forth below, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity and to burden the Easement Area in perpetuity.

COVENANTS AND RESTRICTIONS

A. Purpose

The Purpose of this Easement is to preserve and maintain the Conservation Values, as set forth in Section II.C above, by preventing any use of the Easement Area that will significantly impair or interfere with the Conservation Values (the "Purpose"). The Easement Area consists of three resource zones, each with specific restrictions or allowed uses that support the Conservation Values, which zones include the "Preservation Zone", the "Recreation Zone", and the "Open Space Zone", all as identified and designated on the map attached hereto as **Exhibit C** hereto.

1. The Preservation Zone. The restrictions in the Preservation Zone of the Easement Area (as identified and designated on the map attached hereto as **Exhibit C**) are established to preserve and protect the relatively natural habitat of the Preservation Zone, including any significant, native natural wildlife or plant resources and their associated habitat, as well as cultural, archeological or historically significant features. The coastal and wetland habitat in the Preservation Zone is important for the protection of native birds, marine animals, near-shore and wetland-dependent vegetation, and other threatened, endangered, and at-risk species. Approximately 105.21 acres or 18.51% of the Easement Area is within the Preservation Zone.

2. The Recreation Zone. The restrictions in the Recreation Zone of the Easement Area (as identified and designated on the map attached hereto as **Exhibit C**) are established to provide substantial, but reasonably limited, recreational and educational access to the Recreation Zone for the general public while also providing for the protection of the relatively natural habitat and coastal and inland ecosystems.

The coastal areas of the Recreation Zone are important in providing multi-use trails for walking, running, and biking, as well as parking and pedestrian access to the shoreline for coastal activities including, but not limited to, surfing, fishing, snorkeling, diving, paddling, swimming, wildlife watching, beachcombing, and sunbathing. Approximately 1.5 acres or 0.26% of the Easement Area is within the Recreation Zone.

3. The Open Space Zone. The restrictions in the Open Space Zone of the Easement Area (as identified and designated on the map attached hereto as **Exhibit C**) are established to eliminate residential development, maintain the region's rural character, provide passive drainage ways, offer view amenities for public rights-of-way, and continue commercial and non-commercial recreational and educational open-space opportunities for the Turtle Bay Resort while also providing for the protection of the relatively natural habitat and coastal and inland ecosystems and for providing recreational and education access for the people of Hawai'i. The commercial recreation, education and support lands in the Open Space Zone are important in maintaining the Ko'olaupua region's rural and scenic character provided by the Easement Area. Approximately 461.707 acres or 81.23% of the Easement Area is within the Open Space Zone.

4. No activity which shall significantly impair or interfere with the Purpose of this Easement or the Conservation Values shall be permitted except for any Existing Uses (as such term is herein defined in Section B.1), or as may be otherwise provided in this Easement.

5. Subject to the terms of this Easement, including confirming consistency with the Purpose and no diminishment of the Conservation Values, the Parties may modify the zone boundaries by mutual written agreement, as such modification may be necessary to protect or promote Conservation Values between the three resource zones. In such case, the modification shall be documented by Holder and revised map(s) or site plan(s) shall be maintained with the Baseline Documentation.

B. Rights of Owner

Except as prohibited or restricted by the provisions in Sections C, D and E, Owner reserves all customary rights and privileges of ownership, so long as they are not expressly prohibited by this Easement or inconsistent with the Purpose of this Easement. Owner expressly and specifically reserves the following rights:

1. Existing Uses and Activities. The right to engage in any use or activity being conducted on the Easement Area as of the Effective Date or as documented in the Baseline Documentation (collectively, the "Existing Uses") in substantially the same manner with substantially the same practices that are being employed as of the Effective Date, provided that the practice does not impair the Conservation Values. In

addition to the existing uses documented in the Baseline Documentation, the Existing Uses include the following: golf course and related activities; multi-use trails for walking, running, and biking; maintenance of all trails and facilities in the Easement Area; weddings and other events; meeting receptions; camping in non-permanent structures with Owner's permission only for special events; filming; guided and unguided tours; and access to shoreline for coastal activities to the extent permitted by Law, including, but not limited to, surfing, fishing, snorkeling, diving, stand-up paddle boarding, paddling, swimming, wildlife watching, beachcombing, cultural tours, exploring and sunbathing by the guests, vendors, residents and employees of the Turtle Bay Resort. Similar and related uses and activities to the Existing Uses shall also be permitted, provided that such uses and activities do not impair the Purpose of the Easement or the Conservation Values.

2. Entitlement Compliance. The right to make improvements and to enter into legal arrangements as necessary to comply with the terms of that certain Unilateral Agreement and Declaration for Conditional Zoning, dated September 23, 1968, and approved by the Honolulu City Council pursuant to Ordinance 86-99 (including any amendments thereto), the State Land Use Commission Findings of Fact, Conclusions of Law, and Decision and Order, dated March 27, 1986 (including any amendments thereto), and the Special Management Area Use Permit and Shoreline Setback Variance granted by the Honolulu City Council pursuant to Resolution No. 86-308 (including any amendments thereto) (collectively, the "Entitlements"), which improvements are more specifically described in **Exhibit D** attached hereto (the "Entitlement Improvements"). Any permit or approval (including amendments or modifications thereof) issued or granted by any Governmental Authority after the Effective Date in connection with the Easement Area or the development of the Turtle Bay Resort properties that do not constitute a part of the Easement Area are expressly not Entitlements. Construction of the Entitlement Improvements shall not be subject to the Impervious Surface limitations set forth in Section E.1.

3. Easements and Dedications. After providing Notice to Holder pursuant to Section G.1, Owner may grant or convey easements, or make dedications of land, as set forth below, together with the right to improve, repair and maintain such easements, including the right to harden or permit the hardening of surface areas subject to the Impervious Surfaces limitations set forth in Section E.1:

- (a) The right to grant easements over, under, upon, across and through the Easement Area to construct, install, repair, maintain and replace roads, wires, lines, pipes, cables or other facilities providing or delivering electrical, gas, water, sewer, communications, lighting or other utility services to the improvements permitted herein; provided, however, that any new outdoor lighting shall be shielded to avoid disorienting seabirds and marine animals; and further provided that the interests granted are subject to the terms of this

Easement and provided it does not impair the Conservation Values. Septic or other underground sanitary systems serving the improvements permitted by this Easement may be installed, maintained, repaired or improved only as allowed by Law;

- (b) The right to dedicate portions of the Easement Area to the State or City as may be required by the Entitlements or by Law, including but not limited to dedicating certain portions of the Easement Area to the City for park use, and dedicating certain portions of the Easement Area to the State for the widening of the Kamehameha Highway;
- (c) The right to grant easements for the benefit of adjoining lands for drainage, runoff, or similar purposes; provided, however, that the interests granted are subject to the terms of this Easement and do not impair the Conservation Values.

4. Alienation. After providing Notice to Holder pursuant to Section G.1, the right to sell, lease, license and devise portions of the Easement Area in the Open Space Zone and Recreation Zone, including, but not limited to, the following: the right to grant a license over a portion of the Easement Area to a provider of education or agro/eco/volunteer/cultural-tourism tours or recreational programs; and the right to convey a fee simple interest in, or to grant an easement, license or other possessory interest in all or a portion of the Easement Area to any Governmental Authority, entity, or individual; provided, however, that the interests granted are subject to the terms of this Easement. Owner may sell, lease, license and devise portions of the Easement Area in the Preservation Zone only with Approval by Holder; provided, however, that after providing Notice to Holder pursuant to Section G.1, the Owner may grant a license over a portion of the Preservation Zone to a provider of education or agro/eco/volunteer/cultural-tourism tours or recreational programs, and the Owner may alienate the Preservation Zone in connection with a conveyance of the Easement Area in its entirety to a third party, which shall only require Notice to Holder as provided in Section I.1.

5. Maintenance, Expansion and Use of Existing Structures. After providing Notice to Holder pursuant to Section G.1, the right to maintain, renovate, and enlarge up to (but not more than) ten percent (10%) of the area of any structure which exists as of the Effective Date, and to use structures located on the Easement Area as of the Effective Date.

6. Other Improvements. Subject to the Impervious Surfaces limitations in Section E.1 and after providing Notice to Holder pursuant to Section G.1, the right to construct, maintain, repair, enlarge and replace nonstructural, unenclosed (does not have four sides and a roof) or nonpermanent enclosed (is not fixed to the ground and

can be reasonably removed by two people in less than a day) improvements in the Open Space Zone including, but not limited to, fences, trails, campgrounds (provided, however, that no permanent dwelling and no semi-permanent dwelling (e.g. a yurt) will be permitted), monitoring stations or other research improvements, ball fields, challenge courses, sporting clays courses, and roads.

Subject to the Impervious Surfaces limitations in Section E.1 and after providing Notice to Holder pursuant to Section G.1, the right to construct, maintain, repair, enlarge and replace trails, fences, and roads in the Recreation Zone and the Preservation Zone.

All road and trails shall be constructed in compliance with applicable Law, and shall not increase soil erosion.

7. Privacy and Quiet Enjoyment. The right of privacy and the right to exclude all persons from the Easement Area, except for public access expressly provided for in Section B.19 and access by Holder as stated in Section F.3, as well as the right to all manner of access to, and personal use and enjoyment of, the Easement Area, including without limitation the right to undertake activities reasonably necessary to carry out and enjoy the rights reserved to Owner under this Easement; provided such actions are not specifically and expressly prohibited by the terms and conditions of this Easement or that impair the Conservation Values.

8. Guests and Invitees. The right to permit or invite others on to the Easement Area to engage in any use or activity permitted by this Easement.

9. Use and Maintenance of Water Sources. The right to exercise Water Rights, including the use and maintenance of water sources, water courses and water bodies within the Easement Area to the extent permitted by Law.

10. Commercial Activities Allowed. The right to conduct commercial activities existing in the Easement Area as of the Effective Date or documented in the Baseline Documentation, to the extent permitted by Law. Restoration of significant acts of destruction (defined as more than three (3) acres total) to vegetation on the Easement Area that are incurred by commercial activities will be an obligation of Owner, which Owner shall restore to the satisfaction of Holder.

11. Educational and Recreational Activities. The right to undertake commercial and non-commercial recreational and/or educational activities. An illustrative list of permissible recreational activities includes, but is not limited to, horseback riding, picnicking, banquets, cultural practices, camping (provided, however, that no permanent dwelling, and no semi-permanent dwelling (e.g. a yurt) will be permitted), sport training, sport competition, festivals, events, hiking, mountain biking, challenge courses, walking, tennis, golf, jogging, swimming, stand-up paddling, boating, sailing, canoeing, kayaking,

surfing, kite surfing, snorkeling, diving, fishing, outdoor climbing and farmers' markets. No activity which is inconsistent with the Purpose of this Easement or which impairs the Conservation Values will be permitted. For purposes of this Easement, a dwelling or other structure will not be considered semi-permanent if it can be taken down by two people within a period of twenty-four hours.

12. Motorized Vehicles and Equipment. The right to use motorized vehicles and equipment for land management, enhancement, maintenance (including golf course maintenance), and restoration activities, including but not limited to, tractors, mowers, ATVs, trucks, excavators, bulldozers, loaders, graders, harvesting equipment, chainsaws, chippers and "weed eaters". The commercial and non-commercial use of segways, golf carts and other similar small motorized or electric vehicles is expressly permitted in Open Space and Recreation Zones, and is expressly permitted in the Preservation Zone for the limited purposes of maintenance, providing security, promoting life safety, or in case of emergency, natural disaster, or the threat of a natural disaster (e.g., earthquake, hurricane, tsunami warnings); use of motorized vehicles in the Preservation Zone for any other purpose shall require Approval by Holder.

13. Chemical Applications. Subject to all applicable labeling requirements and Laws, landscaping chemicals may be applied to the Easement Area for *bona fide* landscape purposes, provided that the application of such chemicals is not inconsistent with the Purpose of this Easement and shall not impair the Conservation Values.

Owner expressly agrees to indemnify, defend, and hold Holder harmless, from any damages and claims resulting from the release of chemical applications or any other Hazardous Material on or about the Easement Area occurring while Owner was in possession of the Easement Area, or elsewhere if caused by Owner or persons acting through or under Owner.

14. Waste. To the extent permitted by Law, the right to compost, burn, or store vegetative waste generated by permitted activities and uses, and the right to store for removal at reasonable intervals normal and customary waste generated on the Easement Area by permitted activities and uses; provided, however, that any new garbage cans introduced to the Easement Area (either in replacement of decommissioned garbage cans or in addition to the garbage cans currently in use) shall be animal proof so as to limit the food source of predators. Owner shall also have the right to remove, in accordance with existing Law, pilings, trash, other obstructions, and non-native plants (provided, such non-native plants are not identified in the Baseline Documentation as requiring Approval by Holder under Section G prior to removal).

15. Signs. The right to post signs on the Easement Area for informational, interpretive, identification, and way-finding purposes, to warn against trespassing

(where public access is not required under Section B.18), hunting, and other prohibited or unlawful activities.

16. Surface Water Flows. To the extent permitted by Law, the right to manage the flow of water over the Easement Area including, but not limited to the construction of retention or detention basins, the direction of overflow from nearby well sites, and the channeling or rechanneling of riparian corridors in the Open Space and Recreation Zones.

17. Emergencies. Notwithstanding the general requirement to take no action that would be inconsistent with the Purpose of this Easement, Owner shall have the right to take any emergency action that Owner reasonably believes necessary to protect human life or native natural wildlife that Owner reasonably believes is imminently threatened on the Easement Area or off the Easement Area, but in danger from circumstances or events originating on or crossing over the Easement Area, or to prevent damage to any improvements permitted by this Easement on the Easement Area, or to prevent damage to the Conservation Values protected by this Easement. Nothing within this Section B.17 shall be interpreted as creating an affirmative obligation of Owner to take any such protective action.

18. Access. No right of access to any portion of the Easement Area is conveyed by this Easement, except:

(a) Holder's Access. Access to Holder as expressly set forth in Section F of this Easement.

(b) Public Access. Public access shall be provided in the Recreation Zone, Preservation Zone, and the Open Space Zone of the Easement Area in the areas indicated as "Public Access Trails" on Exhibit C. "Public Access Trails" include (1) existing public accesses, (2) future public accesses, (3) permanent trails (public access), and (4) future trails (public access). Public access to the Easement Area outside of the Public Access Trails is expressly prohibited, unless specifically authorized by Owner.

i. Hours of Public Access. Public access along the Public Access Trails in the Recreation Zone shall be provided from at least one hour before sunrise to at least one hour after sunset, provided, however, that public access at Kuilima Bay via the existing parking area and access right-of-way shall be provided at all times (e.g., 24 hours per day/7 days per week). Public access along the Public Access Trails in the Preservation Zone and the Open Space Zone shall be provided only during the hours of operation of the Turtle Bay Resort golf courses, which may be designated from time to time by Owner. In the event Owner ceases golf course

operations, then the hours of public access along the Public Access Trails in the Preservation Zone and the Open Space Zone shall be provided from at least one hour before sunrise to at least one hour after sunset.

- ii. Temporary Limitations on Public Access. Notwithstanding the foregoing, public access may be temporarily limited in all or designated areas in the case of emergency, natural disaster, or the threat of a natural disaster (e.g., earthquake, hurricane, tsunami warnings), tree trimming or cutting, repairs, maintenance or other activities permitted by this Easement that may temporarily create safety or health hazards.
 - iii. Limitations on Public Access for Protective Purposes. Notwithstanding the foregoing, public access may be limited to comply with any Laws, regulations, or agreements with Governmental Authorities for the protection of people, property, or ecologically-sensitive areas (e.g., restrictions for life-safety risks, species protection, or establishment of marine life conservation "no take" rules). Public Access Trails through the Recreation Zone located along the coast (which includes Kahuku Point and the coastal area to the north of Kahuku Point) shall be managed to protect the integrity of the native dune ecosystem. Owner shall not allow the public to introduce domesticated dogs or cats in the Preservation Zone. Public access through the Preservation Zone and the Open Space Zone shall not be allowed to interfere with the operation of the Turtle Bay Resort golf courses.
 - iv. Maintenance of Public Access Trails. Owner shall be responsible for the operation, upkeep, and maintenance of the Public Access Trails.
 - v. Public Parking. Owner shall provide 40 parking stalls to the public at no charge, which shall be available at all times. If the 40 parking stalls become insufficient to accommodate the public, then an aggregate of 40 additional unpaved "country-style" parking stalls on either side of the present location of the Turtle Bay Resort Hotel shall be made available to the public, which shall be available at no charge and during the hours of public access described in Section B.18.b.i.
- (c) *Cultural Access.* Nothing in this Easement shall be construed as preventing the exercise of any rights of native Hawaiians for traditional and customary practices as may be permitted by Hawai'i Law (including, but not limited to, those rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, as consistent with Article XII, Section 7 of the Hawai'i State

Constitution). Access shall also be provided to cultural sites for traditional and customary practices at no charge.

19. *Affirmative Obligations.* Unless otherwise specified below, nothing in this Easement shall require Owner to take any action to restore the condition of the Easement Area after causes beyond Owner's control, including, without limitation, fire, flood, storm, earth movement, tsunami, any other act of God, war, strike, labor dispute, vandalism, embargo, and terrorism, or for acts of trespassers, that Owner could not reasonably have anticipated or prevented.

20. *Owner's Remedies; Damages.* Owner shall have the right to enforce this Easement and the covenants and restrictions herein. Owner's rights and remedies identified in this Section B.20 apply equally in the event of either actual or a reasonable belief of a threatened breach by Holder of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at Law or in equity.

- a. *Injunctive Relief.* Owner may bring an action at Law or in equity to enforce the terms of this Easement.
- b. *No Bond Required.* Any action for injunctive relief or damages may be taken without Owner being required to post bond or provide other security.

C. Activities and Uses on Easement Area Requiring Approval by Holder

The following activities and uses are permitted on the Easement Area only upon receiving prior written approval by Holder pursuant to the procedures set forth in Section G.2 ("Approval by Holder"):

1. *New Structures.* The right to construct new enclosed, permanent structures in the Open Space Zone subject to the Impervious Surfaces limitations in Section E.1, and subject to the following terms and conditions:

- a. No more than three (3) structures with a footprint of 1,000 square feet shall be allowed within the Easement Area;
- b. No building shall be more than 25 feet in height; and
- c. No building shall be constructed within 15 feet of the boundary of the Preservation Zone.

No new structures shall be permitted in the Preservation Zone, in the Recreational Zone located along the coast (which includes Kahuku Point and the coastal area to the north of Kahuku Point), or within 300 feet of the shoreline.

2. Public Access Trail Development. The right to construct, repair, replace, maintain and use new Public Access Trails. Prior to the construction of any new Public Access Trail, or the replacement of any previously existing Public Access Trails, Owner shall consult with Holder, and receive Approval by Holder, to ensure that all Conservation Values are protected. All Public Access Trails shall be constructed in compliance with applicable Law, and shall not increase soil erosion. No new Public Access Trails shall be permitted in the Recreation Zone located along the coast (which includes Kahuku Point and the coastal area to the north of Kahuku Point).

3. Natural Area Establishment, Restoration or Improvement. The right to engage in activities designed to restore, preserve, protect or improve natural or physical features of the Easement Area including, but not limited to, actions intended to restore a natural ecosystem, establish natural preserves, stream-bank stabilization efforts, and the restoration of riparian corridors. Prior to any action taken under this Section C.3 in the Recreation or Preservation Zones, Owner shall prepare a natural area management plan (a "NAMP") that details the activities designed to restore, preserve, protect or improve naturally significant features of the Recreation or Preservation Zones including, but not limited to, actions intended to restore the natural ecosystem, turtle nesting habitat, monk seal habitat, establishment of natural or cultural preserves, coastline and stream bank stabilization efforts, and the restoration of riparian corridors, in consultation with the Division of Forestry and Wildlife ("DOFAW") (or appropriate successor agency) and seek Approval by Holder. Owner may update, amend or revise the NAMP at any time, and shall be required to update the NAMP prior to any natural area establishment, restoration or improvement that will be more than ten (10) years from the date of Approval by Holder of the then-effective NAMP. Any update, amendment or revision of the NAMP shall be done in consultation with DOFAW (or appropriate successor agency) and with Approval by Holder.

4. Cultural and Historical Sites. The rights to restore, preserve, protect and maintain cultural and historic sites located in the Easement Area, including the establishment of appropriate buffers around any such sites. Prior to any action taken under this Section C.4, Owner shall prepare a cultural and historic sites plan (the "CHSP") that details the activities designed to restore, preserve, protect or maintain cultural and historic sites located on the Easement Area, in consultation with the Department of Land and Natural Resources, State Historic Preservation Division ("SHPD") (or appropriate successor agency) and shall submit such plan for Approval by Holder. Owner may update, amend or revise the CHSP at any time, and shall be required to update the CHSP prior to any cultural or historic site restoration, preservation, protection or maintenance that will be engaged in more than ten (10) years from the date of Approval by Holder of the then-effective CHSP. Any update, amendment or revision of the CHSP shall be done in consultation with SHPD (or appropriate successor agency) and with Approval by Holder.

5. Supplemental Uses & Activities. The right to engage in any use or activity permitted by Law but not otherwise identified or contemplated by the terms of this Easement, provided that such use or activity is consistent with the Purpose and does not impair any Conservation Values.

D. Infrastructure Facilities and the Allowable Facilities Area

Owner shall be entitled to construct, develop, improve, undertake, maintain, repair, replace, and use on, under and/or across the Easement Area utility facilities and lines, slope stabilization and other grading activities, and any other similar improvements (collectively, "Infrastructure Facilities"), as needed in order to support the development of the Turtle Bay Resort and adjacent properties not encumbered by this Easement, subject to the following provisions:

1. The Infrastructure Facilities shall be permitted within the Open Space Zone, provided that there is no other practical alternative outside the Easement Area. In exercising its rights under this Section D, Owner shall not impair the Conservation Values. Infrastructure Facilities shall be subject to a 50-foot height limitation;

2. The Infrastructure Facilities permitted under this Section D, and their installation, use, maintenance, repair and replacement, shall be subject to the Impervious Surfaces limit set forth in Section E.1 (the "Allowable Facilities Area"), provided, however, that temporary disruptions under and/or across the Easement Area in order to construct, develop, improve, undertake, maintain, repair, replace, and use such Infrastructure Facilities shall not be considered part of the Allowable Facilities Area if the Easement Area is immediately restored to a previous condition;

3. Notwithstanding any other provision of this Easement to the contrary, either before or after the time that any Infrastructure Facilities permitted under this Section D are commenced or completed, Owner shall have the right to transfer such Infrastructure Facilities, including those portions of the Easement Area upon which such Infrastructure Facilities are located, to any appropriate agency, entity or individual in the form or manner required by the recipient (including without limitation conveyance of a fee interest, easement, license or other possessory interest), and without compensation to Owner or Holder and without requiring the recipient to resort to any powers of eminent domain or other similar legal process in such endeavor. Owner shall have the right to subdivide the Easement Area and to take all other actions necessary or appropriate to create separate lots or easement areas in order to facilitate any transfer contemplated by this Section. Holder shall cooperate in good faith with Owner, as reasonably requested and at no out-of pocket cost to Holder, to ensure Owner may exercise said right to transfer the Infrastructure Facilities. To that end, if requested, Holder shall execute and record a partial release of this Easement releasing the Infrastructure Facilities, and those portions of the Easement Area upon which such facilities are

located, from this Easement. In transferring title to the Infrastructure Facilities as permitted under this Section D, Owner shall include in the conveyance instrument a provision restricting use of such Infrastructure Facilities and lands to the purpose for which such Infrastructure Facilities were constructed;

4. Prior to submitting an application for a permit for the Infrastructure Facilities (or if no permit whatsoever is required for the Infrastructure Facilities, then prior to commencement of the construction of the Infrastructure Facilities), Owner shall receive Approval by Holder concerning its plans for the Infrastructure Facilities; provided, however, that Approval by Holder is not required for the construction of Infrastructure Facilities within the lots identified as Lots 5, 7, 8, 20, 21, 24, 25, and 26 of the "Turtle Bay Bulk Lot Subdivision," as shown on the Subdivision Map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, subject to the following terms and conditions:

- a. Notice is provided to Holder in the manner set forth in Section G.1;
- b. The Infrastructure Facility is no more than 25 feet in height; and
- c. The Infrastructure Facility is not within 15 feet of the boundary of the Preservation Zone.

5. Owner shall provide to Holder copies of all applications for permits filed by Owner for the Infrastructure Facilities under this Section D.

6. For all purposes, in deriving the fair market value of the Easement Area (the "Easement FMV") as encumbered by this Easement, Owner shall be deemed to have retained the total value of all Allowable Facilities Areas permitted to be used for Infrastructure Facilities under this Section D, along with any and all potential uses or activities thereon, without regard to the terms of this Easement or the restrictions imposed by this Easement, and without regard to whether or not the total Allowable Facilities Areas will actually be so used.

7. Should Owner be required by any Governmental Authority to construct any Infrastructure Facilities on the Easement Area and there is no other practical alternative outside the Easement Area, and construction of such Infrastructure Facilities would exceed the Allowable Facilities Area, Owner shall have the right to comply with the requirement by removing the needed land from both the Open Space Zone and the terms of this Easement, provided that such land shall not exceed ten (10) acres. Holder, at no out-of-pocket cost to Holder, shall provide a partial release of this Easement releasing the needed land, provided that Owner shall pay Holder the Easement FMV associated with the released portion of land as set forth in Section I.4.

E. Prohibitions and Other Restrictions on the Easement Area

The following activities and uses are prohibited or restricted unless an exception is expressly provided below or elsewhere in this Easement:

1. *Impervious Surfaces.* The aggregate unnatural Impervious Surfaces on the Easement Area shall be 45 acres of the Easement Area. It is expressly understood that the Entitlement Improvements shall not be subject to the restrictions of this Section E.1;

2. *Subdivision.* The legal division, subdivision or partitioning of any of the Easement Area (including condominium regime); provided, however, that Owner may (i) subdivide in order to lease portions of the Easement Area if the lease constitutes an activity or use not otherwise inconsistent with the terms and objectives of this Easement, its Purpose, or impair the Conservation Values; (ii) grant a license or lease to a provider of education or agro/eco/volunteer/cultural-tourism tours or programs; and (iii) subdivide or designate an easement in order to convey a fee simple interest or grant an easement, license or other possessory interest to any agency or entity as contemplated under the Entitlements, including, but not limited to, dedication of certain portions of the Easement Area to the City for park use, and dedication of certain portions of the Easement Area to the State for the widening of the Kamehameha Highway;

3. *Dwellings.* The construction of any type of dwelling or use of a structure as a dwelling or habitable structure (e.g., timeshare units, resort units, fractional interest units). This restriction, however, does not prevent the use of some portions of the Easement Area for transient accommodation in non-permanent structures (e.g., tents, however, semi-permanent structures (e.g. a yurt) are not allowed);

4. *Uses and Activities Inconsistent with the Purpose of this Easement.* Any use of, or activity on, the Easement Area which is inconsistent with the Purpose of this Easement or which impairs the Conservation Values is prohibited, and Owner acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Easement Area, though not an exhaustive list of prohibited uses or activities, shall be prohibited, except where this Easement sets forth expressly reserved as unconditional or conditional rights of Owner:

- (a) *Alteration of Land.* The material alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as necessary to carry out the construction or maintenance of permitted structures or improvements (such as improvements made in connection with the management or control of surface water flows as

set forth in Section B.16), or other uses and activities permitted by this Easement. Maintenance and landscaping activities, as well as activities relating to the operation of a golf course, are expressly excluded from this provision. Any excess fill from permitted excavations on the Easement Area may be exported off of the Easement Area;

- (b) *Erosion or Water Pollution.* Any use or activity that causes or is likely to cause significant, verifiable soil degradation or erosion, or significant, verifiable pollution of any surface or subsurface waters.
- (c) *Waste Disposal.* The long-term disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials on the Easement Area;
- (d) *Mining.* The exploration for, or development and extraction of, minerals, hydrocarbons and geothermal resources on, below or through the surface of the Easement Area;
- (e) *Maintaining Predators.* The intentional feeding or maintaining of predator colonies (i.e., mongooses, rats, dogs, or cats) on the Easement Area;
- (f) *Clearing and Trimming Trees Greater than 15 Feet Tall from June 1st to September 15th.* The clearing or trimming of trees greater than 15 feet tall from June 1st to September 15th during the pupping season of the endangered Hawaiian hoary bat; and
- (g) *Introduced Species.* The introduction or release of nonnative invasive species (defined as any plant listed in the Hawaii-Pacific Weed Risk Assessment, or otherwise designated by the Hawaii Invasive Species Council, as high risk or potentially high risk, as it may be amended from time to time) or non-naturalized plant or animal species, with the exception of species as described in the NAMP or as needed to maintain Conservation Values, and approved by Holder. Desirable nonnative plant species needed to improve and stabilize soils or improve habitat for native animals may be introduced, but should comply with recommendations in the NAMP.

5. *Rights of the U.S. Army.* If Owner or Holder (i) uses, (ii) attempts to transfer, or (iii) otherwise encumbers the title to the Easement Area, for an incompatible purpose without approval of the U.S. Army, the Secretary of the U.S. Army, at their discretion, through an authorized agency official shall, in accordance with 10 U.S.C. § 2684a(d)(5), be entitled to demand from Owner or Holder and receive the transfer of a conservation easement necessary to maintain the Easement Area in a use and condition for which it was purchased.

6. Height Limitation. No structure constructed or installed within the Easement Area after the Effective Date shall be more than 50 feet in height.

F. Rights Conveyed to Holder

To accomplish the Purpose of this Easement, the following rights are conveyed to Holder:

1. Monitoring Easement. Holder shall have the right to monitor the Easement Area to determine if a violation of this Easement has occurred.

Any and all rights granted to Holder under this Easement may be fulfilled directly by Holder, its agent, or through an appointed third party (the "Third Party Manager"). Any Third Party Manager must be qualified to manage a conservation easement of the size and nature of this Easement. Holder must seek the prior written approval of Owner prior to appointing any Third Party Manager, which consent shall not be unreasonably withheld by Owner.

2. Protection. Holder shall have the right to enforce the provisions of this Easement so as to: (i) preserve and protect the Easement Area in perpetuity; (ii) prevent any use of, or activity on, the Easement Area that will significantly impair or interfere with the Conservation Values or the Purpose of the Easement; and (iii) enhance the Conservation Values.

3. Access. Holder shall have the right to enter the Easement Area for the purpose of making inspections to monitor compliance with this Easement and for enforcement purposes as follows:

(a) Annual Monitoring. Upon seven (7) calendar days prior Notice to Owner in the manner set forth in Section G.5, and without unreasonably interfering with Owner's use of the Easement Area, Holder shall have the right to enter the Easement Area, but not including building interiors, at reasonable times and in a reasonable manner in order to monitor Owner's compliance with, and otherwise enforce the terms of, this Easement.

(b) Emergency Entry. Where Holder shall have a reasonable belief that there is a threat of imminent violation of this Easement or a significant and imminent threat to any of the Conservation Values or the Purpose of this Easement, Holder has the right to enter the Easement Area, but not including building interiors, without Notice. However, where time permits, Holder shall make good faith efforts to provide prior Notice to Owner in the manner set forth in Section G.5.b.

- (c) *Other Entry.* To enter the Easement Area, but not including building interiors, at such other times as are necessary if Holder, in its sole discretion, has reason, based upon its possession of credible information, to believe a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Holder shall provide Notice to Owner in the manner set forth in Section G.5.b.

4. *Enforcement and Remedies.* Holder shall have the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Easement Area that is inconsistent with the Purpose of this Easement, an impairment to the Conservation Values, or which is prohibited by this Easement, and to require the restoration of such areas or features of the Easement Area as may be damaged by uses or activities in violation of the provisions of this Easement.

- (a) *Notice of Violation, Corrective Action, Opportunity to Cure.* If Holder determines that Owner is in violation of the terms of this Easement or that a violation is threatened, Holder shall give written Notice to Owner (in the manner set forth in Section G.5) of such violation and demand that Owner take corrective action sufficient to cure the violation (within the permitted time periods set forth in Section F.4.b) and, where the violation involves injury to the Easement Area or Conservation Values resulting from any use or activity prohibited under this Easement, to demand that Owner restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by Holder.
- (b) *Owner's Failure to Cure.* Holder may bring an action as provided in this Section F.4 if Owner:
- i. Fails to cure the violation within 30 days after receipt of Notice thereof; or,
 - ii. Under circumstances where the violation cannot reasonably be cured within the 30 day period, fails to begin curing such violation within the 30 day period and fails to continue diligently to cure such violation until finally cured.
- (c) *Damages.* Holder's rights and remedies identified in this Easement shall apply equally in the event of either actual or threatened violations of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at Law or in equity.

- (d) *Injunctive Relief.* Holder shall be entitled to pursue and enforce any and all remedies as may be available at law or pursuant to this Easement, including damages pursuant to HRS § 198-5 or any successor provisions then applicable. Holder's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Owner agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate and that Holder shall be entitled to injunctive and other relief to which Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- (e) *Money Damages.* Holder shall be entitled to recover money damages for any injury to the Conservation Values protected by this Easement or for the violation of the terms of this Easement. In assessing such damages, there may be taken into account, in addition to the cost of restoration, the loss of recreational, open space, cultural, scenic, aesthetic, or environmental value to the Easement Area, and other damages.
- (f) *No Bond Required.* Any action for injunctive relief or damages may be taken without Holder being required to post bond or provide other security. Owner is barred from using this provision regarding damages as an affirmative defense against Holder's rights to injunctive relief.
- (g) *Emergency Enforcement.* If Holder, in its sole discretion, determines that a violation of this Easement has created circumstances requiring immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Holder may pursue its remedies under this section without prior Notice to Owner or without waiting for the period provided for cure to expire; provided, that Holder shall first make a reasonable attempt under the circumstances to give verbal/telephone Notice to Owner of the violation and proposed action.
- (h) *Costs of Enforcement.* In the event Holder must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Owner or anyone under Owner's control or authority or anyone in contractual privity with Owner, in violation of the terms of this Easement, and Holder's reasonable enforcement expenses, including attorney's fees, shall be borne by Owner. In the event that Holder secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Holder's reasonable expenses shall be borne by Owner. If Owner ultimately prevails in any judicial proceeding initiated by Holder to

enforce the terms of this Easement, each Party shall bear its own attorneys' fees and costs.

- (i) *Holder's Forbearance.* Forbearance by Holder to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Owner, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Holder of such term or any of Holder's rights under this Easement. No delay or omission by Holder in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.
- (j) *Waiver of Certain Defenses.* Owner acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Owner hereby waives any claim or defense it may have against Holder under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.
- (k) *Acts Beyond Owner's Control; Emergency Conditions.* Nothing contained in this Easement shall be construed to entitle Holder to bring any action against Owner to abate, correct, or restore any condition on the Easement Area or to recover damages for any injury to or change in the Easement Area resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, earth movement, tsunami, any other act of God, war, strike, labor dispute, vandalism, embargo, and terrorism, or for acts of trespassers, that Owner could not reasonably have anticipated or prevented, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes or to protect *bona fide* public health or safety in an emergency situation.

G. Notice; Approval; Breach; Compliance Certificates

1. *Notice to Holder.* To afford Holder an opportunity to ensure that any use or activity proposed by Owner is designed and carried out in a manner consistent with the terms and Purpose of this Easement, Owner shall notify Holder in writing not less than 30 days prior to undertaking certain activities permitted only after prior Notice to Holder as identified in this Easement. The Notice to Holder may be transmitted electronically by e-mail or facsimile, and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Holder to understand the nature of the proposed use or activity.

2. Approval by Holder. Whenever this Easement requires Owner to obtain Approval by Holder, Owner shall follow the procedures set forth in this Section G.2.

(a) *Approval by Holder*. Owner shall request Approval by Holder in writing. The request for Approval by Holder shall describe the nature, scope, location, timetable, identify its conformity with this Easement, and, when applicable, evidence conformity with existing land use regulations, and any other material aspect of the proposed activity. Delivery of the request shall conform to the service methods set forth in Section G.5. Holder shall have 60 days from receipt of the request in which to approve, disapprove, or approve subject to modification, the request for Approval by Holder.

a. *Further Information*. If Holder reasonably determines that it requires additional information regarding the requested use or activity to process any request for Approval by Holder, Holder must request in writing such information within 30 days of receipt of Owner's request for Approval by Holder, and shall specifically identify, to the extent possible, the information requested. Holder shall have 60 days from receipt of all information requested in which to approve, disapprove, or approve subject to modification, the request for Approval by Holder. If no request for additional information is timely made, the request for Approval shall have been deemed received upon delivery to Holder.

b. *Extension Request*. If Holder reasonably requires more than 60 days to respond to the request for Approval by Holder, Holder must provide Notice to Owner in writing within 30 days after receiving the request, which Notice shall provide the reason for such extension request. Holder may then, without need for approval by Owner, have an additional 30 days to process Owner's request for Approval by Holder.

c. *Withholding Approval by Holder*. In the case of withholding of Approval by Holder, Holder shall notify Owner in writing with reasonable specificity of the reasons for withholding of Approval by Holder, and the conditions, if any, on which Approval by Holder might otherwise be given.

d. *Failure to Respond*. If Holder fails to timely respond to Owner's request, the proposed enterprise, use or activity shall automatically be deemed approved, subject to the condition that the enterprise, use or activity be carried out in a manner that does not significantly impair or degrade the Conservation Values of the Easement Area or unreasonably interfere with activities permitted under this Easement.

- (b) *Standard of Approval by Holder.* Holder shall not unreasonably withhold Approval by Holder of a proposed use or activity requiring Approval by Holder under this Easement where the proposed activity or use will not be inconsistent with the Purpose of this Easement or impair the Conservation Values.

3. *Breach of Approval by Holder Provisions.* If Owner undertakes any action for which Approval by Holder is required under this Easement, but without first obtaining such Approval by Holder, Owner shall be deemed to be in material breach of this Easement and Holder shall be entitled to such rights or remedies as may be available under Section F.4 of this Easement. Notwithstanding the foregoing, Holder may, at its sole option, permit Owner to cure the breach by submitting after-the-fact communications and documents showing the conformity of such activity with this Easement and with any relevant Law, or by showing, despite a lack of conformity with this Easement or the Law, that the action was justified because of an emergency.

4. *Compliance Certificates.* Holder, or its successor, as the primary steward and enforcer of this Easement shall, within 30 days of a request by Owner, execute and deliver to Owner, or to any party designated by Owner, any document, including an estoppel certificate, that certifies Owner's compliance or lack thereof with any obligation of Owner contained in this Easement and otherwise evidences the status of this Easement. Such certificate shall be binding upon Holder. Such certification shall be limited to the condition of the Easement Area as of the most recent inspection carried out by Holder. If Owner requests more current documentation, Holder shall conduct an inspection, at Owner's expense, within 45 of receipt of Owner's written request.

5. *Notices and Responses.* Any notice, demand, request, consent, approval, or communication (collectively, a "Notice") that either Party desires or is required to give to the other shall be in accordance with the following procedures.

- (a) In ordinary circumstances, the Notice shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed to the appropriate Party, at the appropriate address set forth below in this Section. Where Notice is served by certified mail, the receipt of Notice shall be considered to have occurred on the sixth day after mailing. The serving Party may also attempt to, in addition, serve Notice pursuant to the "emergency circumstances" provisions set forth immediately below.
- (b) In emergency circumstances (where Notice needs to occur in 48 hours or less), the party shall make best efforts to deliver the Notice in writing and either serve it personally, or by email or by facsimile transmission. Where Notice is served by email or fax, the party serving the Notice shall, in addition, make concurrent attempts to notify the other Party by telephone of the Notice,

and attempt to receive oral or written confirmation from the Party or the Party's attorney that the Notice has been received.

- (c) Notices may also be served by any other method mutually agreed to between the Parties.
- (d) Notices shall be served at the following addresses or to such other address as any of the Parties from time to time shall designate by written Notice to the other:

To Owner:
TURTLE BAY RESORT, LLC
c/o Scott McCormack
57-091 Kamehameha Highway
Kahuku, Hawaii 96731
SMcCormack@replayresorts.com
Fax: (808) 232-2396

With a copy to:
MCCORRISTON MILLER MUKAI MACKINNON LLP
c/o Randall Sakumoto
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813
sakumoto@m4law.com
Fax: (808) 535-8025

To Holder:
Department of Land and Natural Resources
Division of Forestry and Wildlife
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813
E-Mail: Irene.M.Sprecher@hawaii.gov
Fax: (808) 587-0166

With a copy to:
Department of the Attorney General
State of Hawaii
Land/Transportation Division
465 South King Street, Room 300
Honolulu, Hawaii 96813

E-Mail: Julie.H.China@hawaii.gov
Fax: (808) 587-2999

or to such other address as either Party from time to time shall designate by written Notices to the other Party.

H. Costs, Liabilities and Insurance, Taxes, Environmental Compliance and Indemnification.

1. Costs, Legal Requirements, Liabilities and Insurance. Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area, including the maintenance of any insurance coverage desired by Owner. Owner and Holder release and relieve the other, and waive their entire right to recover for loss or damage to the extent that the loss or damage is covered by proceeds of the injured Party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Owner or Holder. Owner remains solely responsible for obtaining any applicable Governmental Authority permits and approval for any activity or use permitted by this Easement, and any such activity or use shall be undertaken in accordance with all Laws.

2. Taxes. Owner shall timely pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement. If Owner fails to pay any Taxes when due, Holder is authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written Notice to Owner, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Owner at the maximum rate allowed by Law.

3. Environmental Warranty and Remediation.

(a) Owner warrants that, to the best of Owner's knowledge, Owner is in compliance with all applicable Environmental Laws as of the Effective Date. Owner covenants to operate and maintain the Easement Area from and after the Effective Date in compliance with all applicable Environmental Laws. Owner warrants that, to the best of Owner's knowledge, Owner has received no notices from any Governmental Authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Easement Area as of the Effective Date. Owner warrants that, as of the

Effective Date, Owner has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Easement Area exceeding regulatory limits.

- (b) Owner promises to indemnify and hold harmless Holder against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Easement Area, or arising from or connected with a violation of any Environmental Laws by Owner or any other prior Owner of the Easement Area; provided, however, that Owner's indemnification obligation shall not apply to any release of Hazardous Materials or violation of any Environmental Laws caused by Holder. Owner's indemnification obligation shall not be affected by any authorizations provided by Holder to Owner with respect to the Easement Area; provided, however, that Holder shall be responsible for any Hazardous Materials contributed after the Effective Date to the Easement Area by Holder.
- (c) If at any time, there occurs, or has occurred, a release in or on the Easement Area of a Hazardous Material, Owner shall, at its own expense, promptly take all actions as shall be required under applicable Environmental Law for the clean-up of any and all portions of the Easement Area, as the case may be, so that a No Further Action (NFA)/No Further Remediation (NFR) Letter can be issued by the State of Hawaii Department of Health, or its successor agency, acknowledging the Hazardous Substance has been abated to the satisfaction of the State of Hawaii Department of Health, unless the release was caused by Holder.

4. Control. Nothing in this Easement shall be construed as giving rise to any right or ability in Holder to exercise physical or managerial control over the day-to-day operations of the Easement Area, of any of Owner's activities on the Easement Area, or otherwise to become an "operator" with respect to the Easement Area within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any other applicable Environmental Law.

5. General Indemnifications. Owner shall indemnify and hold harmless Holder, its departments, divisions, members, directors, officers, employees, agents, invitees, and contractors, and each of the personal representatives, heirs, successors, and assigns of such parties (collectively "Holder's Parties"), for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, costs, suits, proceedings, actions and causes of action, judgments or sanctions asserted by or on behalf of any person or Governmental Authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and

attorneys' fees on appeal) to which Holder or Holder's Parties may be subject or incur relating to the Easement Area, which may arise from Owner's or Owner's Parties negligent acts or omissions or Owner's breach of any representation, warranty, covenant, agreements contained in this Easement, or violations of any Law, including all Environmental Laws.

I. Transfer; Amendment; Extinguishment

1. Transfer of Easement Area. Owner agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Easement Area, including, without limitation, a leasehold interest. Owner further agrees to give written Notice to Holder of the proposed transfer of any such interest at least 15 days prior to the date of such transfer in the manner provided in Section G.5.(a). The Notice to Holder shall include the name, address, and telephone number of the transferee or the transferee's representative. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

2. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Owner and Holder may by written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Holder under any applicable Laws, including HRS Chapter 198. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit any dwellings on the Easement Area other than those expressly reserved in this Easement, and shall not permit any impairment of the Conservation Values. Any such amendment shall be signed and executed by Owner and Holder and filed in the State of Hawaii Bureau of Conveyances. Owner and Holder shall not agree to any amendment that would affect the enforceability of this Easement. Nothing in this paragraph shall require Owner or Holder to agree to any amendment or to consult or negotiate regarding any amendment of this Easement. Notwithstanding anything contained herein to the contrary, Owner and Holder acknowledge that Owner's obligations under the Entitlements may require that Owner, from time to time, dedicate portions of the land which comprise the Easement Area to a Governmental Authority, and Holder hereby agrees to cooperate in good faith with Owner to take such steps as may be reasonably necessary to release such lands from this Grant of Easement so that the dedication process may be completed. Without limitation to the foregoing, Holder acknowledges Owner's conditional obligation under the UA to dedicate to the City and County of Honolulu Lot 17 of the "TURTLE BAY BULK LOT SUBDIVISION," as shown on Subdivision Map prepared by Ryan M. Suzuki, with R.M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145. In order to facilitate the dedication of said Lot 17, Holder shall, simultaneous with the execution and delivery of this Grant of

Easement, deposit with a licensed escrow company mutually acceptable to Owner and Holder, an instrument which releases said Lot 17 from this Grant of Easement. Holder shall deposit said instrument with the escrow company subject to an instruction to release the same to Owner upon receipt by the escrow company of written confirmation from the City and County of Honolulu that the obligation to dedicate said Lot 17 has been triggered under the terms of the UA.

3. Limitations on Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Easement Area, by judicial proceedings in a court of competent jurisdiction. If the Easement is extinguished by judicial proceeding, Owner shall pay to Holder the value of the Easement calculated in accordance with Section I.4 below.

4. Percentage Interests. This Easement constitutes a real property interest immediately vested in Holder, which, for purposes of this Section I.4, the parties stipulate to have a value determined by multiplying (a) the fair market value of the Easement Area unencumbered by the Easement, as determined by Holder's appraiser as of the date of extinguishment of the Easement by (b) the ratio of the value of the Easement at the Effective Date to the Easement Area unencumbered by this Easement at the Effective Date (the "Easement/FMV Ratio"). The Easement/FMV Ratio has been determined by Holder's 2015 appraisal of the Easement Area. The parties agree that the Easement/FMV Ratio at the time of this Easement is _____ (%). For the purpose of this Section I.4, the Easement/FMV Ratio shall remain constant at all times in the future, regardless of the change in Easement FMV or other factors.

5. Condemnation. If all or any part of the Easement Area is proposed to be taken under the power of eminent domain, Owner and Holder shall join in appropriate proceedings at the time of such proposed taking to recover the full value of the interests in the Easement Area subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Owner and Holder shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Sections I.3 and I.4 (with respect to the allocation of proceeds). The rights of Owner and Holder set forth in this Section I.5 shall be in addition to, and not in limitation of, any rights they may have at common law.

J. Assignment and Succession

1. Assignment. This Easement is transferable. Subject to the following conditions, Holder may assign its rights and obligations under this Easement as described below:

- (a) Holder may assign this Easement only to an organization that is at the time of the assignment a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code (the "Code"), and is, in addition, authorized to acquire and hold conservation easements under HRS Chapter 198;
- (b) The assignment shall be subject to the terms of succession referenced in Section J.2 below;
- (c) Holder shall require the assignee to exercise its rights under the assignment consistent with the Purpose of this Easement; and
- (d) Holder agrees to give written Notice in the manner provided in Section G.5.(a) to Owner of the proposed transfer of any such interest at least 15 days prior to the date of such transfer. The Notice to Owner shall include the name, address, and telephone number of the transferee or the transferee's representative.

2. Succession. If at any time it becomes impossible for Holder to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Holder has not named a successor organization, or if Holder shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under HRS Chapter 198, then Holder's rights and obligations under this Easement shall be transferred to a Governmental Authority approved by Owner and Holder, or, failing such joint approval, shall vest in such Governmental Authority or organization as a court having jurisdiction shall direct, pursuant to the applicable Law and the Code, and with due regard to the terms and purposes of this Easement. Transfer of the Easement Area does not extinguish or alter any of the provisions of this Easement, which runs with the land. The failure of Owner to perform any act required by Section J.1 shall not impair the validity of this Easement or of the transfer, or limit their enforceability in any way.

K. General Provisions

1. Reasonableness Standard. Owner and Holder shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.

2. Controlling Law. The interpretation and performance of this Easement shall be governed by and construed in accordance with the laws of the State of Hawaii.

3. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to fulfill the Purpose of this Easement and the policy and purpose of HRS Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

4. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

5. Entire Agreement. This Easement sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings, or agreements between Owner and Holder relating to the Easement Area, all of which are merged into this Easement. No alteration or variation of this Easement shall be valid or binding unless contained in an amendment that complies with Section 1.2.

6. No Forfeiture. Nothing contained in this Easement shall result in a forfeiture or reversion of Owner's title in any respect.

7. Successors and Assigns; Runs with Land. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Easement Area.

8. Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Easement Area, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

9. Counterparts. The Parties may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

10. Effective Date. Owner and Holder intend that the restrictions arising hereunder shall take effect on the date of this Easement being recorded in the State of Hawaii Bureau of Conveyances after all required signatures have been affixed hereto, and after closing of the transaction contemplated in this Easement whereby Owner

agrees to the perpetual covenants and restrictions set forth in this Easement in exchange for the funds in the amount agreed to between Owner and Holder.

11. No Merger. Holder agrees to take whatever steps are necessary to ensure that merger of the fee and Easement estates does not occur in order to ensure the continued viability of this Easement.

12. Exhibits. The following exhibits are attached hereto and made a part of this Easement:

Exhibit A: Legal Description of the Easement Area

Exhibit B: Map of the Easement Area

Exhibit C: Map Showing the Preservation Zone, the Recreation Zone, the Open Space Zone, and the Public Access Trails

Exhibit D: Entitlement Improvements

13. Calendar Days. Unless otherwise expressly stated herein, all references to a specific number of days shall mean and refer to that specific number of calendar days.

L. Glossary

The definitions below shall have the same meaning as the reference source, where provided, and in all other cases, shall be given their natural, commonly accepted definitions. Some definitions for other terms used in this Easement are set forth in other parts of the Easement, and not included here.

1. "*Act 121*" means Act 121, Session Laws of Hawaii 2015.
2. "*Allowable Facilities Area*" has the meaning set forth in Section D.2.
3. "*Approval by Holder*" means an approval by Holder required prior to certain Owner actions, as identified throughout this Easement, subject to the procedures set forth in Section G.2.
4. "*Baseline Documents*" has the meaning set forth in Section II.B.
5. "*CHSP*" has the meaning set forth in Section C.4.
6. "*City*" means the City and County of Honolulu.
7. "*Code*" means the Internal Revenue Code of 1986, as now enacted or hereinafter amended, and the regulations thereunder.
8. "*Conservation Values*" has the meaning set forth in Section II.C.
9. "*DOFAW*" has the meaning set forth in Section C.2.
10. "*Easement Area*" has the meaning set forth in Section I.A.

11. "*Easement FMV*" has the meaning set forth in Section D.6.

12. "*Easement/FMV Ratio*" has the meaning set forth in Section I.4.

13. "*Easement*" has the meaning set forth in the Preamble.

14. "*Effective Date*" has the meaning set forth in the Preamble.

15. "*Entitlements*" has the meaning set forth in Section B.2.

16. "*Environmental Law*" or "*Environmental Laws*" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any Governmental Authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

17. "*Existing Uses*" has the meaning set forth in Section B.1.

18. "*Floor Area*" means the same as the definition set forth in Section 21-10.1 of the LUO on the Effective Date, namely as follows: the area of all floors of a structure excluding unroofed areas, measured from the exterior faces of the exterior walls or from the center line of party walls dividing a structure. The floor area of a structure, or portion thereof, which is not enclosed by exterior walls shall be the area under the covering, roof or floor above which is supported by posts, columns, partial walls, or similar structural members which define the wall line. Excluded from the Floor Area are: parking structures, including covered driveways and accessways, porte cocheres, and parking attendant booths; attic areas with head room less than seven feet; basements; lanais; projections such as sunshade devices and architectural embellishments which are decorative only; areas covered by roofing treatment to screen roof top machinery only; and areas underneath unsupported building overhangs, provided the area is not otherwise enclosed.

19. "*FMV*" has the meaning set forth in Section I.4.

20. "*General Plan*" has the meaning set forth in Section IV.C.

21. "*Governmental Authority*" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

22. "*Hazardous Materials*" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials,

hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which now or hereafter defined, listed, or otherwise classified, pursuant to any federal, state, or local law, regulation, or requirement as, toxic or dangerous to the air, water, or soil, or in any other way harmful or threatening to human health or the environment.

23. "*Holder's Parties*" has the meaning set forth in Section H.5.a.

24. "*Holder*" means the State of Hawai'i, though its Board of Land and Natural Resources, and its representatives, successors and assigns, subject to the assignment and succession limitations set forth in Section J.

25. "*HRS Chapter 198*" means the law governing conservation easements in Hawai'i, currently codified at Chapter 198 of the HRS, or as hereinafter amended, or any successor provision(s) hereinafter applicable.

26. "*HRS*" means the Hawai'i Revised Statutes.

27. "*Impervious Surfaces*" means permanent, non-seasonal roof tops, concrete or asphalt surfaces, including commercial buildings, residential buildings, agricultural buildings (with and without flooring), and paved areas.

28. "*Infrastructure Facilities*" has the meaning set forth in Section D.

29. "*Ko'olau Loa Plan*" means the Ko'olau Loa Sustainable Communities Plan.

30. "*KTA*" has the meaning given in Section II.C.

31. "*Law*" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

32. "*LUO*" means the Land Use Ordinance for the City and County of Honolulu, currently codified as Chapter 21 of the Revised Ordinances of Honolulu, or as hereinafter amended, or any successor provision(s) hereinafter applicable.

33. "*NAMP*" has the meaning set forth in Section C.2.

34. "*Notice*" has the meaning set forth in Section G.5.

35. "*Open Space Zone*" has the meaning set forth in Section A.

36. "*Owner's Parties*" has the meaning set forth in Section H.5.a.

37. "*Owner*" has the meaning set forth in the Preamble.

38. "*Party*" has the meaning set forth in the Preamble.

39. "*Parties*" has the meaning set forth in the Preamble.

40. "*Preservation Zone*" has the meaning set forth in Section A.

41. "*Public Access Trails*" has the meaning set forth in Section B.19.b.

42. "*Purpose*" has the meaning set forth in Section A.
43. "*Recreation Zone*" has the meaning set forth in Section A.
44. "*State*" means the State of Hawai'i.
45. "*Taxes*" has the meaning set forth in Section H.2.
46. "*Third Party Manager*" has the meaning set forth in Section F.1.
47. "*Turtle Bay Resort*" has the meaning set forth in Section III.
48. "*U.S. Army*" has the meaning set forth in Section II.C.

49. "*Water Rights*" means and includes any and all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, Owner and Holder shall have entered into this Easement as of the Effective Date.

OWNER:

TURTLE BAY RESORT, LLC,
a Delaware limited liability company

By Turtle Bay Holdings, LLC,
a Delaware limited liability company
Its Sole Member

By _____
Name: _____
Title: _____

HOLDER:

THE STATE OF HAWAII

By _____
Suzanne D. Case
Chairperson
Board of Land and Natural Resources

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

APPROVED AS TO FORM:

Julie H. China
Deputy Attorney General

EXHIBIT A

[Insert legal descriptions of Lots 5, 7, 8, 14, 17, 18, 20, 21, 22, 23, 24, 25, and 26 of the "TURTLE BAY BULK LOT SUBDIVISION," as shown on the Subdivision Map prepared by Ryan M. Suzuki, with R. M. Towill Corporation, approved by Department of Planning and Permitting, City and County of Honolulu, on July 17, 2015, File No. 2014/SUB-145, and of Lot 1204-A as shown on Map 187, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application No. 1095 of the Trustees of the Estate of James Campbell, deceased.]

[EXHIBIT B – MAP OF THE EASEMENT AREA]

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[EXHIBIT C – MAP SHOWING THE PRESERVATION ZONE, THE RECREATION
ZONE, THE OPEN SPACE ZONE, AND THE PUBLIC ACCESS TRAILS]

[EXHIBIT D – ENTITLEMENT IMPROVEMENTS]

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