

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

April 25, 2014

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

14OD-067

OAHU

Consent to Plan and Agreement of Merger between Waimanalo Teen Project and Hui Malama O Ke Kai Foundation regarding General Lease No. S-5468, Waimanalo Teen Project, Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009:265.

APPLICANT:

Waimanalo Teen Project and Hui Malama O Ke Kai, both domestic non-profit corporations.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waimanalo Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009:265 as shown on the map attached as **Exhibit A**.

AREA:

10.893 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

For multi-purpose community facility purposes.

TERM OF LEASE:

65 years, commencing on May 1, 1996 and expiring on April 30, 2061. Last rental reopening occurred on May 1, 2011; next rental reopening is scheduled for May 1, 2021.

ANNUAL RENTAL:

\$480.00.

CONSIDERATION:

Not applicable.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

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>
Good standing confirmed:	YES <u> x </u>	NO <u> </u>

REMARKS:

The subject 65-year lease was issued to Waimanalo Teen Project (“WTP”) in 1990 for multi purposes community facility. In 1999, the Board authorized the amendment of the lease to allowing sublease on the property subject to prior written approval. Currently, Honolulu Community Action Program is the authorized sublessee on the property conducting the head start program. Further, condition 13 of the subject lease allows the lease be transferred to another non-profit corporation subject to the prior written approval of the Board.

Hui Malama O Ke Kai Foundation (“HMOKK”) is a domestic nonprofit corporation focusing on cultivating pride and leadership in Waimanalo’s youth and families by living Hawaiian values. Both WTP and HMOKK believe that it is in the best interests for the community and themselves by merging the two nonprofit corporations. Therefore, they plan to enter into the Plan and Agreement of Merger (“Agreement”), from which HMOKK will be the surviving corporation. A copy of the agreement is attached as **Exhibit B**.

There is no compliance issue with all lease terms and conditions (rent, insurance, performance bond, etc.). HMOKK has not had a lease, permit, easement or other disposition

of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The proposed merger as described above is similar to assignment of lease, which will require the consent from the Board pursuant to the lease condition.

Staff did not solicit comments from other agencies as there is no change in the use of lands and recommends the Board consent to the Agreement.

RECOMMENDATION:

That the Board consent to the Plan and Agreement between Waimanalo Teen Project and Hui Malama O Ke Kai Foundation as described above regarding General Lease No. S-5468, subject to the following:

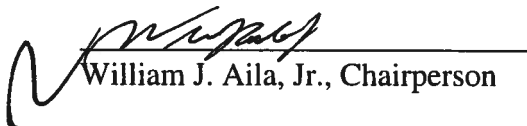
1. The standard terms and conditions of the most current consent form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

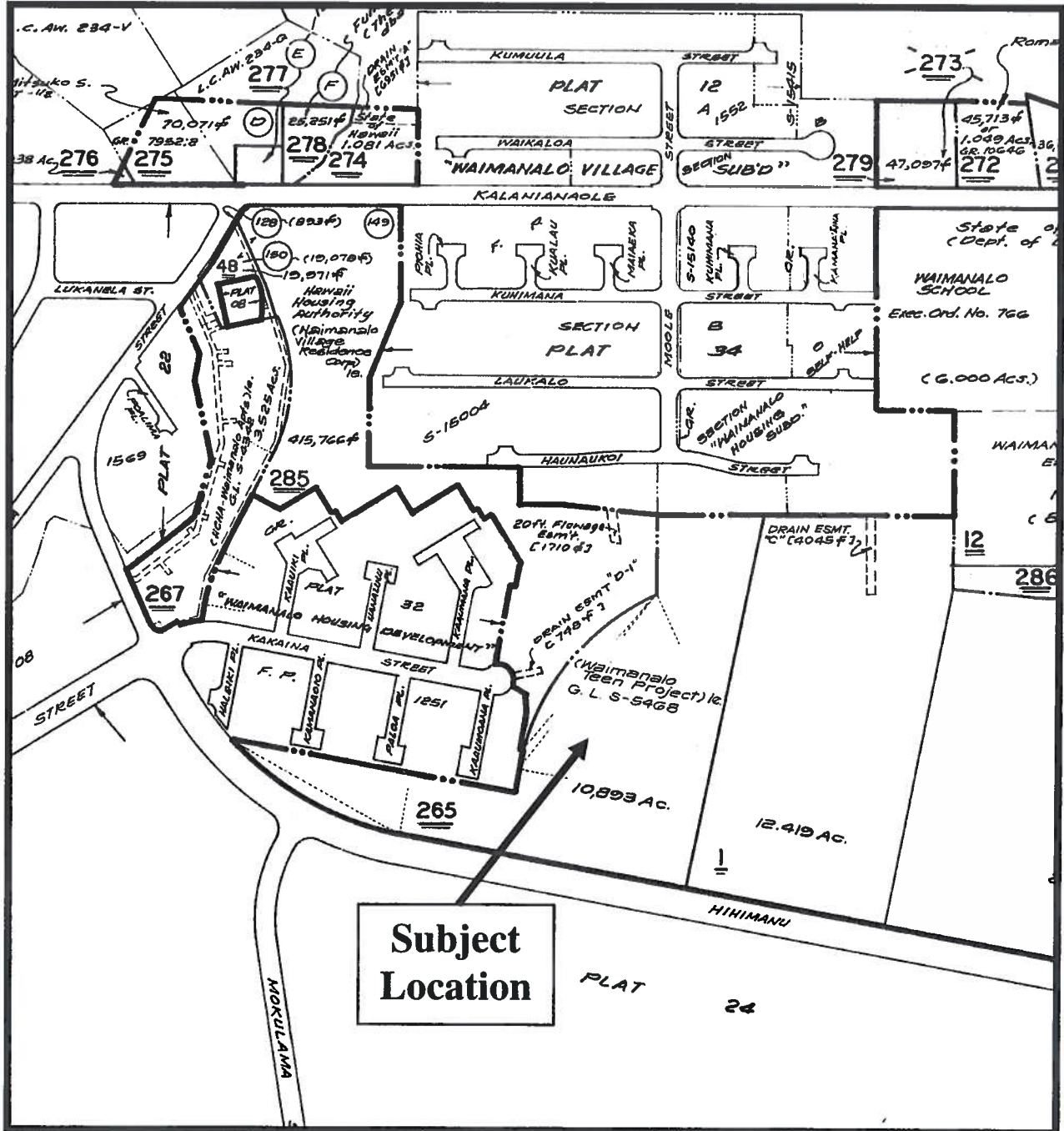


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (1) 4-1-009:265

EXHIBIT A

PLAN AND AGREEMENT OF MERGER

THIS PLAN AND AGREEMENT OF MERGER (the “Agreement”) is made and entered into as of the ___ day of _____, 2014, by and among HUI MALAMA O KE KAI FOUNDATION, a Hawaii nonprofit corporation, whose mailing address is 41-1537 Kalanianaʻole Highway, Suite 201B, Waimanalo, Hawaii 96795 (the “Surviving Corporation”) and WAIMANALO TEEN PROJECT, a Hawaii nonprofit corporation, whose mailing address is 41-477 Hihimanu Street, Waimanalo, Hawaii 96795 (the “Merging Corporation”).

RECITALS:

A. Surviving Corporation is a Hawaii nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The mission of Surviving Corporation is to cultivate pride and leadership in Waimanalo’s youth and families by living Hawaiian values.

B. Merging Corporation is a Hawaii nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Code. The mission of Merging Corporation is to develop the young person of Waimanalo through individual development, rapport-building, goal setting and goal achievement, to establish and maintain a youth program that is largely planned by the youth, and to provide communication between the youth and the community at large.

C. Surviving Corporation and Merging Corporation believe that it is in their respective best interests and in the best interests of the Waimanalo community for Merging Corporation to be merged with and into Surviving Corporation, as permitted by, pursuant to, and in compliance with the laws of the State of Hawaii and the Code.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and conditions contained herein, the parties agree as follows:

1. Terms of the Merger.

1.1. Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Hawaii Nonprofit Corporations Act, Chapter 414D of the Hawaii Revised Statutes, at the Effective Time (as hereinafter defined), Merging Corporation shall be merged with and into Surviving Corporation and the separate existence of Merging Corporation shall cease (the “Merger”).

1.2. Effects of the Merger. The Merger shall have the effects specified in Section 414D-204 of the Hawaii Revised Statutes and as set forth herein. Surviving Corporation shall be the surviving entity in the Merger, and the separate existence of Surviving Corporation with all of its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger. The separate existence of Merging Corporation shall cease. Surviving Corporation shall have all rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a nonprofit corporation organized under the laws of the State of Hawaii. Surviving

Corporation shall possess all rights, privileges, immunities and franchises of Merging Corporation, and all property, real, personal and mixed, and all debts due on whatever account, and all other interest of or belonging to Merging Corporation, shall be taken and deemed to be transferred to and vested in Surviving Corporation without further act or deed. Surviving Corporation shall be responsible and liable for all the liabilities and obligations of Merging Corporation, and any claim existing or action or proceeding pending by or against Merging Corporation may be prosecuted as if the Merger had not taken place, or Surviving Corporation may be substituted in place of Merging Corporation. Neither the rights of creditors nor any liens upon the property of Merging Corporation shall be impaired by the Merger. The fund balances of Surviving Corporation and Merging Corporation shall collectively be and become the fund balances of Surviving Corporation.

1.3. Governing Documents. The Articles of Incorporation of Surviving Corporation as in effect at the Effective Time shall be and remain the Articles of Incorporation of Surviving Corporation from and after the Effective Time, until thereafter amended as provided therein or by applicable law. There shall be no changes or amendments to the Articles of Incorporation of Surviving Corporation as a result of the Merger. The Bylaws of Surviving Corporation as in effect at the Effective Time shall be and remain the Bylaws of Surviving Corporation from and after the Effective Time, until thereafter amended as provided therein or by applicable law. There shall be no changes or amendments to the Bylaws of Surviving Corporation as a result of the Merger.

1.4. Officers and Directors. The officers and directors of Surviving Corporation at the Effective Time shall be and remain the officers and directors of Surviving Corporation from and after the Effective Time, to serve until their successors are duly elected and qualified or until their earlier resignation or removal.

1.5. Registered Agent and Office. The parties agree that the Surviving Corporation may be served with process in the State of Hawaii in any action or proceeding for the enforcement of any liability or obligation of Merging Corporation previously subject to suit in the State of Hawaii. The registered agent and office of Surviving Corporation at the Effective Time shall be and remain the registered agent and office of the Surviving Corporation from and after the Effective Time, until such registered agent or office is changed in accordance with applicable law.

2. Closing and Effective Time. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the office of Surviving Corporation at 10:00 a.m. (local time) on the third (3rd) business day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement, or such other date, time and place as the parties may agree (the "Closing Date"). At the Closing, the parties shall execute Articles of Merger, in the form attached as **Exhibit "A"** hereto and made a part hereof, and shall cause the executed Articles of Merger to be filed with the Director of the Department of Commerce and Consumer Affairs, State of Hawaii. The Merger shall be effective on the date and at the time specified in the Articles of Merger (the "Effective Time").

3. Representations and Warranties of Merging Corporation. Merging Corporation represents and warrants as follows:

3.1. Organization, Standing and Authority. Merging Corporation (a) is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Hawaii; (b) is properly licensed or registered, and has all necessary corporate powers and authority to own its properties and assets and carry on its business as now being conducted; and (c) is duly qualified to do business and is in good standing in every jurisdiction in which it conducts business. All action on the part of Merging Corporation necessary for the authorization, execution and delivery of this Agreement, and the performance of Merging Corporation's obligations hereunder, has been taken or will be taken prior to the Closing. Merging Corporation has no members.

3.2. Tax Exempt Status. Merging Corporation is exempt from federal income tax under section 501(a) of the Code as an organization described in Section 501(c)(3). Merging Corporation is a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Merging Corporation is exempt from Hawaii general excise tax under Section 237-23(a)(4) of the Hawaii Revised Statutes.

3.3. Financial Statements. Merging Corporation has delivered to Surviving Corporation the financial statements of Merging Corporation as of December 31, 2013 (the "Financial Statements"). The Financial Statements are true, complete and correct and present fairly the financial condition of Merging Corporation as of the dates thereof and the results of its operations for the periods covered thereby and have been prepared in accordance with generally accepted accounting practices applied on a consistent basis throughout the periods involved.

3.4. Books and Records. The books of account, minute books and other records of Merging Corporation (financial and otherwise), all of which have been made available to Surviving Corporation, are complete and correct in all material respects and have been maintained in accordance with sound business practices.

3.5. Absence of Certain Changes. Since the date of the Financial Statements, there has not occurred:

(a) Any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the assets, properties, condition (financial or otherwise), business or prospects of Merging Corporation; or

(b) Any increase in the compensation payable or to become payable by Merging Corporation to its employees or any bonus, insurance, pension, retirement, severance or other benefit plan, payment or arrangement made to, for or with any of such persons; or

(c) Any resignation or termination of employment of any key employee of Merging Corporation; or

(d) Any change, except in the ordinary course of business, in the contingent obligations of Merging Corporation by way of guaranty, endorsement, indemnity, warranty or otherwise; or

(e) Any change in the accounting methods or practices of Merging Corporation; or

(f) Any sale, transfer, mortgage, pledge or hypothecation of any asset or property of Merging Corporation; any amendment or termination of any lease, contract, agreement or license to which Merging Corporation is a party or by which Merging Corporation or its assets and properties are bound; any loans by Merging Corporation; any guaranty by Merging Corporation of any loan or obligation; any waiver or release of any right or claim of Merging Corporation; or any offer or agreement by Merging Corporation to do any of the foregoing.

3.6. Tax Returns and Audits.

(a) Merging Corporation has filed or will file all tax returns for all periods ending on or prior to the Closing Date that were, are or will be required to be filed by, or with respect to, Merging Corporation pursuant to any applicable Legal Requirement (as hereinafter defined). All taxes that Merging Corporation is or was required by any Legal Requirement to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Body (as hereinafter defined) or other Person (as hereinafter defined).

(b) All contributions due from Merging Corporation pursuant to any unemployment insurance or workers compensation laws and all general excise, sales or use taxes which are due or payable by Merging Corporation have been paid in full and will be so paid through the Closing Date.

(c) For purposes of this Agreement, the following terms have the meanings specified below:

(i) "Governmental Body" or "Governmental Bodies" - any (A) nation, state, county, city or other jurisdiction of any nature; (B) federal, state, local, municipal, foreign, or other government; (C) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); or (D) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

(ii) "Person" or "Persons" - any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

(iii) "Legal Requirement" - any federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance,

principle of common law, rule, regulation, statute or treaty.

3.7. Undisclosed Liabilities. Merging Corporation does not have and as of the Closing Date will not have, liabilities of any nature, whether accrued, absolute, contingent or otherwise, not listed or shown in this Agreement or in the Financial Statements.

3.8. Tangible Personal Property. **Schedule 3.8** contains a true, correct and complete description of all furnishings, fixtures, machinery, equipment and other tangible personal property owned by Merging Corporation (collectively, the “Tangible Personal Property”). Merging Corporation has good title to each item of Tangible Personal Property, free and clear of all pledges, security interests, mortgages, liens, claims, charges, encumbrances, adverse claims, options, rights, covenants, conditions, or restrictions on transfer of any nature whatsoever (“Security Interests”). Each item of Tangible Personal Property is in operating condition and repair adequate for its present use, reasonable wear and tear and scheduled maintenance excepted, and is suitable for the conduct of the business of Merging Corporation as currently conducted. Merging Corporation has not received notice that any such item of Tangible Personal Property is in violation of any Legal Requirement. The Tangible Personal Property set forth on **Schedule 3.8** is a true correct and complete list of all Tangible Personal Property used by Merging Corporation in the operation of its business.

3.9. Intangible Personal Property. **Schedule 3.9** contains a true, correct and complete list of all trademarks, tradenames, service marks and other intangible assets owned by Merging Corporation (collectively, the “Intangible Personal Property”). Merging Corporation is the owner of all right, title and interest in and to each such Intangible Personal Property, free and clear of all Security Interests. No actions or other judicial or adversary proceedings nor any adverse claims concerning any of the Intangible Personal Property have been initiated or made or threatened. Merging Corporation has the right and authority to use the Intangible Personal Property in connection with the conduct of its business in the manner it is presently being conducted. The consummation of the transactions contemplated herein will not result in the loss or impairment of any of the Intangible Personal Property.

3.10. Leases and Subleases. **Schedule 3.10** sets forth a true, correct and complete list of all leases, subleases and licenses (each, a “Lease” and collectively, “Leases”) (the land, buildings, other improvements and other rights covered by the Leases being herein called the “Leased Real Property”) in respect of which Merging Corporation is a party, as lessor, lessee, landlord, tenant, licensor, licensee, sublessor, sublessee or otherwise. Merging Corporation has heretofore delivered to Surviving Corporation a true, correct and complete copy of each Lease. Each Lease is in full force and effect and is a legally valid and binding obligation of Merging Corporation. Merging Corporation has not mortgaged or pledged any Lease. All rent and other properly billed sums and charges payable by or to Merging Corporation under each Lease has been paid in full. No notice of default or termination under any Lease is outstanding, no termination event or condition or uncured default on the part of any party to a Lease is outstanding, and no event of default is outstanding which, with the giving of notice or the lapse of time or both, would constitute such a default or termination event or condition or uncured default under any Lease. Merging Corporation has good right under valid and subsisting Leases to occupy and peaceably enjoy all of the Leased Real Property of which Merging Corporation is a

lessee or tenant. As to all of the Leased Real Property, Merging Corporation has not received any notice from any other party under any Lease to perform any repair or maintenance obligations thereunder which remains outstanding and, the landlord under each Lease has performed all of its repair and maintenance obligations under the Lease which are necessary to permit the Leased Real Property to be used as currently used by Merging Corporation. Merging Corporation has not received notice that any of the Leased Real Property is in violation of any applicable building, zoning, health or safety ordinance, code or regulation or any other Legal Requirement. Merging Corporation has not received notice, nor has Merging Corporation any knowledge of, any pending or threatened condemnation proceedings or similar taking affecting the Leased Real Property or any part thereof or of any sale or other disposition of the Leased Real Property or any portion thereof in lieu of condemnation or similar taking.

3.11. Contracts and Grants.

(a) **Schedule 3.11** contains a true, correct and complete list of all contracts, grants and agreements (individually, a “Contract” and collectively, the “Contracts”) to which Merging Corporation is a party or by which Merging Corporation is bound in any way. Merging Corporation has delivered to Surviving Corporation true, correct and complete copies of all Contracts (or, where such Contracts are oral, true and complete summaries thereof).

(b) Except as disclosed on **Schedule 3.11**:

(i) Each Contract is in full force and effect and is valid and enforceable in accordance with its terms;

(ii) Merging Corporation at all times has been in full compliance with all applicable terms and requirements of each Contract;

(iii) Each other Person that has or had any obligation or liability under any Contract is, and at all times has been, in full compliance with all applicable terms and requirements of such Contract;

(iv) No event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give Merging Corporation or any other Person the right to declare a default or exercise a remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Contract;

(v) Merging Corporation has not given nor received any notice or other communication (whether oral or written) regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Contract;

(vi) Merging Corporation has received no notice or other communication (whether oral or written), or has any knowledge of any Person’s desire or intention, to cancel, terminate or modify any Contract; and

(vii) The Contracts have been entered into at arm's length in the ordinary course of business.

(c) There are not pending any renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to Merging Corporation under current or completed Contracts with any Person and no such Person has made demand for such renegotiations.

(d) The Contracts have been entered into in the ordinary course of business and have been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

3.12. Labor and Employment Matters.

(a) **Schedule 3.12** sets forth a true, correct and complete list of (i) each employment, profit sharing, deferred compensation, bonus, stock option, stock purchase, pension, supplemental retirement, severance or termination pay, retainer, consulting, retirement, health, welfare, or incentive plan, agreement, contract, program policy or arrangement to which Merging Corporation is a party, or by which any of them is bound; and (ii) each plan, agreement, contract, program, policy or arrangement of Merging Corporation under which benefits are afforded to employees of Merging Corporation (the items referred to in (i) and (ii) being collectively referred to as the "Fringe Benefits"). Merging Corporation has no commitment to establish any such new plan or arrangement or to change any existing plan or arrangement listed herein. Merging Corporation has heretofore delivered to Surviving Corporation true and correct copies of all documents embodying or relating to the Fringe Benefits, including all amendments, and any trust or other funding arrangement.

(b) Merging Corporation is not in default with respect to any term or condition of any of the arrangements referred to herein, nor to the best of Merging Corporation's knowledge has any event occurred which through the passage of time or the giving of notice, or both, would constitute a default of material term or condition thereunder or would cause the acceleration of any obligation of any party thereto. The execution and delivery of, and performance of the transactions contemplated in this Agreement will not constitute any event under any Fringe Benefit Plan or agreement that will or may result in any payment by Surviving Corporation (whether of severance pay or otherwise) or acceleration vesting or increase in benefits payable by Surviving Corporation with respect to any employee, former employee or director of Merging Corporation pursuant to the terms of any such Fringe Benefit Plan or agreement (either alone or together with the occurrence of any additional or subsequent event which would not by itself result in any of foregoing).

(c) Full payment has been made of all amounts which Merging Corporation is required, under applicable law or under any Fringe Benefit Plan or any agreement relating to any Fringe Benefit Plan to which Merging Corporation is a party, up to the most recent fiscal year of such Fringe Benefit Plan ended prior to the date hereof. Merging Corporation has each made adequate provision for reserves to meet contributions that have not been made because they are not yet due under the terms of any Fringe Benefit Plan or related

agreements. Benefits under the Fringe Benefit Plans are as represented and have not been increased subsequent to the date as of which documents have been provided.

(d) Merging Corporation is not, and to the best of Merging Corporation's knowledge Merging Corporation has not, engaged in any unfair labor practice within the meaning of the National Labor Relations Act. There exists no pending or threatened unfair labor practice charges or discrimination complaints relating to race, color, national origin, sex, religion, age, marital status or handicap against Merging Corporation before any federal, state, local or foreign board, department, commission or agency nor, to the best of Merging Corporation's knowledge, does any basis therefor exist.

(e) There are no existing or threatened labor strikes, disputes, walkouts, work stoppage, grievances, or other labor controversies affecting Merging Corporation, nor does any basis therefor exist.

(f) Merging Corporation presently is, and to the best of Merging Corporation's knowledge Merging Corporation has been, in compliance with the Federal Occupational Safety and Health Act and comparable state laws and all wage and hour laws and regulations regarding any of its employees.

3.13. Inventories and Supplies. All supplies and inventories of Merging Corporation consist of items, in the case of inventory, of a quality, quantity and condition suitable for sale in the ordinary course of its business at prevailing market prices without discounts, or, in the case of supplies, usable in the normal course of its business; and the values at which such inventories and supplies are reflected on the Financial Statements, at no more than the lower of cost or market. The quantities of each item of inventories are not excessive but are reasonable in the present circumstances of Merging Corporation.

3.14. Insurance. **Schedule 3.14** sets forth a true and correct list of all insurance policies currently maintained by or on behalf of Merging Corporation and all performance bonds currently in effect as to Merging Corporation (collectively, the "Insurance Policies"). Merging Corporation has not received any notice or other communication from any insurance company within the one (1) year period preceding the date hereof canceling any of the Insurance Policies and no such cancellation is threatened. Each Insurance Policy is in full force and effect and all premiums with respect to each Insurance Policy have been paid or accrued. Merging Corporation has not received any notice that it is in default with respect to any provision contained in any Insurance Policy and has not failed to give any notice or present any claim under any Insurance Policy or binder in a due and timely manner. Except as listed on **Schedule 3.14**, no claims (whether successful, unsuccessful or settled) have been filed under, against or in respect of any insurance policy during the past five (5) years.

3.15. Litigation.

(a) There is no action, suit, or other legal, administrative or arbitration proceeding or investigations of a legal nature or group of related such proceedings or investigations pending or threatened (i) against or involving Merging Corporation; or (ii) which may, on the date hereof, prohibit the execution and delivery of this Agreement or the

consummation of the transactions contemplated hereby. To the knowledge of Merging Corporation, no such proceeding nor investigation has been threatened, and no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such proceeding or investigation.

(b) There is not in existence on the date hereof any order, judgment or decree of any court or other tribunal or other agency enjoining or requiring Merging Corporation to take any action of any kind with respect to its business, assets or properties or otherwise involving Merging Corporation or any of its assets or properties.

3.16. Related Party Transactions. No officer, director or employee of Merging Corporation, or any other Person controlling, controlled by or under common control with Merging Corporation, has, either directly or indirectly, (i) an interest in any corporation, partnership, limited liability company, firm or other Person which furnishes or sells services or products to Merging Corporation, or (ii) a beneficial interest in any contract or agreement to which Merging Corporation is a party or by which Merging Corporation may be bound. Merging Corporation is not indebted, directly or indirectly, to any officer, director or employee of Merging Corporation, or any other Person controlling, controlled by or under common control with Merging Corporation, other than for compensation or benefits for services rendered, or reimbursable business expenses. No officer, director or employee of Merging Corporation, or any other Person controlling, controlled by or under common control with Merging Corporation, is indebted to Merging Corporation.

3.17. No Interest in Other Entities. Merging Corporation has no shares of any corporation or any ownership or other investment interest, either of record, beneficially or equitably, in any association, partnership, limited liability company, joint venture or other legal entity.

3.18. Permits and Licenses. **Schedule 3.18** sets forth a true, correct and complete list of all permits, licenses, franchises, approvals and authorizations from Governmental Bodies (collectively, the "Permits") necessary to the conduct of its business. Each Permit listed or required to be listed on **Schedule 3.18** is valid and in full force and effect. The Permits collectively constitute all of the Permits necessary to permit Merging Corporation to lawfully conduct and operate its business in the manner it currently conducts and operates such business and to permit it to own and use its assets in the manner in which it currently owns and uses such assets. With respect to the Permits:

(a) Merging Corporation is in full compliance with all of the terms and requirements of each Permit, and has disclosed to Surviving Corporation in writing any instances where Merging Corporation has not been in material compliance with any Permit during the last five years;

(b) No event has occurred or circumstance exists that may, with or without notice or lapse of time, (i) constitute or result in a violation by Merging Corporation of, or a failure on the part of Merging Corporation to comply with, any Permit, or (ii) result, directly or indirectly, in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Permit;

(c) Merging Corporation has not received any notice or other communication, whether oral or written, from any Governmental Body or any other Person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Permit, or (ii) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any Permit; and

(d) All applications required to have been filed for the renewal of any Permit have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Permits have been duly made on a timely basis with the appropriate Governmental Bodies.

3.19. Compliance with Legal Requirements.

(a) Merging Corporation is in compliance, and has at all times complied, with each Legal Requirement that is or was applicable to Merging Corporation, the conduct or operation of its business, or the ownership or use of any of its assets;

(b) No event has occurred or circumstance exists that (with or without notice or lapse of time) (i) may constitute or result in a violation by Merging Corporation of, or a failure on the part of Merging Corporation to comply with, any Legal Requirement, or (ii) may give rise to any obligation on the part of Merging Corporation to undertake, or to bear all or any portion of the cost of any remedial action of any nature; and

(c) Merging Corporation has not received any notice or other communication, whether oral or written, from any Governmental Body or any other person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement, or (ii) any actual, alleged, possible or potential obligations on the part of Merging Corporation to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

3.20. Environmental Protection.

(a) Merging Corporation is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law (as defined below). Merging Corporation has no basis to expect, and neither Merging Corporation, nor any other Person for whose conduct Merging Corporation is or may be held to be responsible, has received, any actual or threatened order, notice, or other communication from (i) any Governmental Body or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Facilities (as defined below), of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities (as defined

below) with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which Merging Corporation has had an interest, or with respect to any property or Facility (as defined below) at or to which Hazardous Materials (as defined below) were generated, manufactured, refined, transferred, imported, used, or processed by Merging Corporation, or any other Person for whose conduct Merging Corporation is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(b) There are no pending or threatened, claims, encumbrances or other restrictions of any nature, resulting from any Environmental, Health, and Safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Facilities or any other properties and assets (whether real, personal, or mixed) in which Merging Corporation has or had an interest.

(c) Merging Corporation has no basis to expect, and neither Merging Corporation nor any other Person for whose conduct Merging Corporation is or may be held responsible, has received, any citation, directive, inquiry, notice, order, summons, warning, or other communication that relates to Hazardous Activity (as defined below), Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which Merging Corporation had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed by Merging Corporation, or any other Person for whose conduct Merging Corporation is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(d) Neither Merging Corporation, nor any other Person for whose conduct Merging Corporation is or may be held responsible, has any Environmental, Health, and Safety Liabilities with respect to the Facilities or with respect to any other properties and assets (whether real, personal, or mixed) in which Merging Corporation (or any predecessor), has or had an interest, or at any property geologically or hydrologically adjoining the Facilities or any such other property or assets.

(e) There are no Hazardous Materials present on or in the Environment (as defined below) at the Facilities or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facilities or such adjoining property, or incorporated into any structure therein or thereon. Neither Merging Corporation, any other Person for whose conduct Merging Corporation is or may be held responsible, or to the best of Merging Corporation's knowledge any other Person, has permitted or conducted, or to the best of Merging Corporation's knowledge is aware of, any Hazardous Activity conducted with respect to the Facilities or any other properties or assets (whether real, personal, or mixed) in which Merging Corporation has or had an interest except in full compliance with all applicable Environmental Laws.

(f) There has been no Release (as defined below), or to the best of Merging Corporation's knowledge Threat of Release (as defined below), of any Hazardous Materials at or from the Facilities or at any other locations where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by the Facilities, or from or by any other properties and assets (whether real, personal, or mixed) in which Merging Corporation has or had an interest, or any geologically or hydrologically adjoining property, whether by Merging Corporation, or any other Person; and

(g) Merging Corporation has delivered to Surviving Corporation true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Merging Corporation pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance by Merging Corporation, or any other Person for whose conduct Merging Corporation is or may be held responsible, with Environmental Laws.

(h) For purposes of this Agreement, the following terms have the meanings specified below:

(i) "Environment" - soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

(ii) "Environmental, Health, and Safety Liabilities" - any cost, damages, expense, liability, obligation, or other responsibility arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to: (A) any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); (B) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law; (C) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions ("Cleanup") required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or (D) any other compliance, corrective, investigative, or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms "removal," "remedial," and "response action," include the types of activities covered by the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended ("CERCLA").

(iii) "Environmental Law" - any Legal Requirement that requires or relates to: (A) advising appropriate authorities, employees, and the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits, or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment; (B) preventing or

reducing to acceptable levels the release of pollutants or hazardous substances or materials into the Environment; (C) reducing the quantities, preventing the release, or minimizing the hazardous characteristics of wastes that are generated; (D) assuring that products are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; (E) protecting resources, species, or ecological amenities; (F) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil, or other potentially harmful substances; (G) cleaning up pollutants that have been released, preventing the threat of release, or paying the costs of such clean up or prevention; or (H) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment, or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

(iv) “Facilities” - any real property, leaseholds or other interests currently or formerly owned, operated or used by Merging Corporation, including any property or area used by Merging Corporation under any Permit, and any buildings, plants, structures, or equipment (including motor vehicles) currently or formerly owned or operated by Merging Corporation.

(v) “Hazardous Activity” - the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about, or from the Facilities or any part thereof into the Environment, and any other act, business, operation, or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm to persons or property on or off the Facilities, or that may affect the value of the Facilities or Merging Corporation.

(vi) “Hazardous Materials” - any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

(vii) “Occupational Safety and Health Law” – any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

(viii) “Release” - any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, or other releasing into the Environment, whether intentional or unintentional.

(i) “Threat of Release” - a substantial likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

3.21. Absence of Breach of Contract or Violation of Articles, Etc. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in or constitute any of the following: (a) a breach of any term or provision of this Agreement; (b) a default or an event that, with notice or lapse of time or both, would be a default, breach, or violation of the Articles of Incorporation or Bylaws of Merging Corporation or of any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, loan agreement or other agreement, instrument, document or arrangement to which Merging Corporation is a party or by which Merging Corporation or its properties and assets are bound; (c) an event that would permit any person or entity to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of Merging Corporation; or (d) the creation or imposition of any lien, charge, or encumbrance on any of the properties or assets of Merging Corporation; (e) a default or breach under, or a violation of, any Permit; (f) an event which will cause Surviving Corporation to become subject to, or become liable for the payment of, any tax; and (g) any of the assets owned by Merging Corporation to be reassessed or revalued by any federal, state, local or foreign taxing authority or Governmental Body.

3.22. Regulatory Approvals. There are no approvals, authorizations, consents or other requirements prescribed by any Governmental Body or Legal Requirement which must be obtained or satisfied in order to permit the execution and delivery of this Agreement by Merging Corporation or the consummation by Merging Corporation of the transactions contemplated hereby.

3.23. Consents of Other Persons. Except for such approvals or consents listed in **Schedule 5.3**, no approvals or consents of any other Person (including, without limitation, consents of lessors, financial institutions, lenders and suppliers) are necessary to authorize the execution and delivery of this Agreement by Merging Corporation or the consummation by Merging Corporation of the transactions contemplated hereby.

3.24. Exhibits, Agreements and Other Instruments and Documents. All exhibits, schedules, agreements, lists and other instruments and documents delivered or furnished by Merging Corporation or Merging Corporation to Surviving Corporation pursuant to this Agreement are or will be authentic, genuine, complete and accurate; and all such agreements are or will be binding on the parties to any such agreements in accordance with their terms.

3.25. Disclosure. No representation or warranty by Merging Corporation in this Agreement or in any statement, certificate, or schedule furnished or to be furnished pursuant to this Agreement, or in connection with the transaction contemplated hereby, contains or will contain on the Closing Date any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading. There is no fact known to Merging Corporation that has specific application to Merging Corporation (other than general economic industry conditions) and that materially adversely affects Merging Corporation that has not been set forth in this Agreement.

4. Representations and Warranties of the Surviving Corporation. Surviving Corporation represents and warrants as follows:

4.1. Organization, Standing and Authority. Surviving Corporation (a) is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Hawaii; (b) is properly licensed or registered, and has all necessary corporate powers and authority to own its properties and assets and carry on its business as now being conducted; and (c) is duly qualified to do business and is in good standing in every jurisdiction in which it conducts business. All action on the part of Surviving Corporation necessary for the authorization, execution and delivery of this Agreement, and the performance of Surviving Corporation's obligations hereunder, has been taken or will be taken prior to the Closing.

4.2. Tax Exempt Status. Surviving Corporation is exempt from federal income tax under section 501(a) of the Code as an organization described in Section 501(c)(3). Surviving Corporation is a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Surviving Corporation is exempt from Hawaii general excise tax under Section 237-23(a)(4) of the Hawaii Revised Statutes.

4.3. Exhibits, Agreements and Other Instruments and Documents. All exhibits, schedules, agreements, lists and other instruments and documents delivered or furnished by Surviving Corporation to Merging Corporation pursuant to this Agreement are or will be authentic, genuine, complete and accurate; and all such agreements are or will be binding on the parties to any such agreements in accordance with their terms.

4.4. Disclosure. No representation or warranty by Surviving Corporation in this agreement or in any statement, certificate, or schedule furnished or to be furnished to Merging Corporation pursuant to this agreement, or in connection with the transaction contemplated hereby, contains or will contain on the Closing Date any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

5. Covenants of the Parties.

5.1. Access to Premises, Information and Employees. Merging Corporation will permit Surviving Corporation and the authorized representatives and designees of Surviving Corporation to have full access during normal business hours to all the properties, books, contracts, documents and records of Merging Corporation and will furnish to Surviving Corporation or such representatives or designees upon request all such documents, records and information with respect to the business or affairs of Merging Corporation as Surviving Corporation or such representatives or designees from time to time shall reasonably request, including such information as Surviving Corporation or such representatives or designees shall reasonably require in order to comply with all federal and state laws and regulations and for the purpose of carrying out this Agreement. Without further consideration, Merging Corporation shall provide Surviving Corporation with access to all of the books, records, tax returns, leases, insurance policies, contracts, lists, documents and papers of Merging Corporation, together with a list of all creditors and debtors of Merging Corporation and all working papers used by Merging Corporation's accountants in preparing Merging Corporation's financial statements. Any information received by Surviving Corporation pursuant to this section or through any other

source whatsoever shall not affect the representations, warranties or covenants of Merging Corporation hereunder.

5.2. Conduct of Business Pending the Closing. Between the date of this Agreement and the Closing, and except as otherwise consented to or approved in writing by Surviving Corporation or otherwise contemplated by this Agreement:

(a) Merging Corporation shall carry on the business of Merging Corporation only in the ordinary course of business consistent with past practice and in compliance with all applicable laws and regulations. Merging Corporation shall use its best efforts to preserve intact Merging Corporation's business organization, to keep available the services of its employees and to maintain satisfactory relationships with suppliers, distributors, sales representatives, customers and others having business relationships with it.

(b) Merging Corporation shall not, without the prior written consent of Surviving Corporation:

(i) Incur or assume any debt, or assume, guarantee or otherwise become liable or responsible for the obligations of any other person, or make any loans, advances or capital contributions to, or investments in, any other person or entity;

(ii) Cancel any debt or waive any claim or right which is in excess of Five Hundred Dollars (\$500) or cancel any debts or waive any claims or rights which are, in the aggregate, in excess of One Thousand Dollars (\$1,000);

(iii) Transfer, lease, license, sell, mortgage, pledge, dispose of or encumber any of its properties or assets, other than inventory and supplies disposed of in the ordinary course of business;

(iv) Grant any increase in the compensation payable or to become payable by Merging Corporation or enter into any new employment agreement, sales agency, severance agreement or other contract or arrangement with respect to the performance of personal services, or adopt any new, or, except as required by law, amend or otherwise increase the amounts payable or to become payable under any existing, bonus, incentive compensation, deferred compensation, profit sharing, insurance, pension, retirement or other employee benefit plan;

(v) Make any tax election or settle or compromise any federal, state, local or foreign tax liability;

(vi) Settle or compromise any contingent claims or litigation;

(vii) Change or alter the manner of keeping its books, accounts or records or change accounting principles or methods;

(viii) Authorize or make any capital expenditures;

(ix) Enter into any agreement with any person or entity involving or reasonably likely to involve an expenditure or payment in excess of One Thousand Dollars (\$1,000);

(x) Enter into any leases, subleases or licenses; or

(xi) Enter into any agreement arrangement or understanding to do any of the foregoing.

(c) Merging Corporation shall pay and discharge, before the same become delinquent and before penalties accrue thereon, all taxes, assessments and governmental charges upon or against it or any of its properties, and all other liabilities and obligations of Merging Corporation at any time existing, except to the extent and so long as (i) the same are being contested in good faith and by appropriate proceedings in such manner as not to cause any materially adverse effect upon the financial condition of Merging Corporation, and (ii) Merging Corporation shall have set aside on its books reserves deemed by it adequate with respect thereof.

(d) Merging Corporation shall promptly notify Surviving Corporation of any suits or litigation instituted against Merging Corporation or Merging Corporation or any disputes that may materially adversely affect the business of Merging Corporation.

5.3. Consents. Merging Corporation shall obtain at the earliest practicable date and prior to the Closing the consents of all Persons and Governmental Bodies necessary for the consummation of the transactions contemplated hereby including, but not limited to, the consents of the Persons and Governmental Bodies listed in **Schedule 5.3** hereof, and will provide to Surviving Corporation copies of each consent promptly after it is obtained. Surviving Corporation shall cooperate with Merging Corporation to obtain such consents.

5.4. Filings. The parties will each make or cause to be made any filings and submissions under the laws of any jurisdiction to the extent that such filings are necessary to consummate the transactions contemplated hereby and will take all actions necessary to consummate the transactions contemplated hereby in a manner consistent with federal, state and local law.

5.5. Tax Clearance Certificate; Certificate of Good Standing. At the Closing, Merging Corporation shall deliver to Surviving Corporation a tax clearance certificate and a certificate of good standing for Merging Corporation, issued by the appropriate state authorities and dated within five (5) days of the Closing Date.

5.6. Resignations. On the Closing Date, Merging Corporation shall deliver to Surviving Corporation the written resignations of all officers and directors of Merging Corporation.

5.7. Confidentiality. Each party hereto will hold and will cause its consultants and advisors to hold in strict confidence, unless compelled to disclose by judicial or administrative process or in making any filings with governmental entities with respect to the

transactions contemplated hereby or, in the opinion of its counsel, by other requirements of law, all documents and information concerning the other party furnished it by such other party or its representatives in connection with the transactions contemplated by this Agreement (except to the extent that such information can be shown to have been (a) previously known by the party to which it was furnished, (b) in the public domain through no fault of such party, or (c) later lawfully acquired from other sources by the party to which it was furnished), and each party will not release or disclose such information to any other person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors who need to know such information in connection with this Agreement.

5.8. Publicity. Prior to the Closing, none of Merging Corporation, Surviving Corporation or any of their representatives or agents shall make or issue, or cause to be made or issued, any announcement or written statement concerning this Agreement or the transactions contemplated hereby for dissemination to the public without the prior consent of the other parties. This provision shall not apply, however, to any announcement or written statement required to be made by law or the regulations of any governmental entity, except that the party required to make such announcement shall, whenever practicable, consult with the other party concerning the timing and content of such announcement before such announcement is made and shall not apply to efforts to obtain financing. The parties hereto shall mutually agree on the substance of any press releases concerning either the execution of this Agreement or the consummation of the transactions contemplated hereby to be disseminated to the public by Merging Corporation, Surviving Corporation or any of their representatives or agents on or about the date of the execution of this Agreement or on the Closing Date, as the case may be.

5.9. Further Assurances. Upon the terms and subject to the conditions herein provided, each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement as expeditiously as practicable. In case at any time any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each of the parties to this Agreement shall take or cause to be taken all such necessary action, including without limitation the execution and delivery of such further instruments and documents as may be reasonably requested by any party for such purposes or otherwise to complete or perfect the transactions contemplated hereby.

6. Conditions to Closing.

6.1. Conditions Precedent to the Obligations of Surviving Corporation. The obligations of Surviving Corporation to consummate the transactions contemplated herein are subject to the satisfaction, on or prior to the Closing Date, of all of the following conditions, the compliance with, or occurrence of, any or all of which may be waived in whole or in part by Surviving Corporation in its sole discretion:

(a) The representations and warranties of Merging Corporation contained in this Agreement shall be correct and complete as of the date made and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except for changes contemplated by this Agreement.

(b) Merging Corporation shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Merging Corporation on or prior to the Closing Date.

(c) Merging Corporation shall have delivered all instruments and documents required to be delivered pursuant to **Section 7.1** hereof.

(d) All necessary agreements, consents and approvals from third parties required to be obtained by Merging Corporation, whose consent or approval is necessary to consummate the transactions contemplated herein, shall have been duly, validly and unconditionally granted, and on and as of the Closing Date, no such consent or approval shall have been revoked, rescinded, terminated or modified.

(e) All permits, licenses, certificates, franchises, approvals and authorizations from Governmental Bodies which may be necessary for Surviving Corporation's ownership and operation of the assets of Merging Corporation shall have been obtained.

(f) Since the date of this Agreement there shall have been no material adverse changes in the condition (financial or otherwise), business, prospects, employees, operations, obligations or liabilities of Merging Corporation.

(g) There shall be no action, suit, or other legal, administrative or arbitration proceeding or investigations of a legal nature or group of related such proceedings or investigations pending or threatened (i) against or involving Merging Corporation; or (ii) which may, on the date hereof, prohibit the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(h) Transferee shall have completed its due diligence examination and shall not have terminated this Agreement pursuant to Section 8 hereof.

6.2. Conditions Precedent to the Obligations of Merging Corporation. The obligations of Merging Corporation to consummate the transactions contemplated herein are subject to the satisfaction, on or prior to the Closing Date, of all of the following conditions, the compliance with, or occurrence of, any or all of which may be waived in whole or in part by Merging Corporation in writing in its sole discretion:

(a) The representations and warranties of Surviving Corporation contained in this Agreement shall be correct and complete as of the date made and as of the Closing Date with the same force and effect as though made on and as of the Closing Date except for changes contemplated by this Agreement.

(b) Surviving Corporation shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Surviving Corporation on or prior to the Closing Date.

(c) Surviving Corporation shall have delivered all instruments and documents required to be delivered pursuant to **Section 7.2** hereof.

(d) All necessary agreements, consents and approvals from third parties required to be obtained by Surviving Corporation, whose consent or approval is necessary to consummate the transactions contemplated herein, shall have been duly, validly and unconditionally granted, and on and as of the Closing Date, no such consent or approval shall have been revoked, rescinded, terminated or modified.

7. Deliveries at Closing.

7.1. Deliveries by Merging Corporation. On or before the Closing Date, or at any other time prescribed in this Agreement, Merging Corporation shall deliver to Surviving Corporation the following instruments and documents in form and substance satisfactory to Surviving Corporation:

- (a) The Articles of Merger;
- (b) The consents described in **Section 5.3**;
- (c) The tax clearance certificate and certificate of good standing described in **Section 5.5**;
- (d) The written resignations of all officers and directors of Merging Corporation;
- (e) Such other agreements, documents and instruments required to be delivered by Merging Corporation, or required to evidence fulfillment by Merging Corporation of the conditions set forth in this Agreement, and such other certificates, documents and instruments, in each case as Surviving Corporation may reasonably request by notice to Merging Corporation not later than five (5) business days prior to the Closing Date; and
- (f) All such other items and documents as may be necessary for Surviving Corporation to take possession of the assets of Merging Corporation after the Closing.

7.2. Deliveries by Surviving Corporation. On or before the Closing Date, or at any other time prescribed in this Agreement, Surviving Corporation shall deliver or cause to be delivered to Merging Corporation the following instruments and documents in form and substance satisfactory to Seller:

- (a) The Articles of Merger; and
- (b) Such other agreements, documents and instruments required to be delivered by Surviving Corporation, or required to evidence fulfillment by Surviving Corporation of the conditions set forth in this Agreement, and such other certificates, documents and instruments, in each case as Merging Corporation may reasonably request by notice to Surviving Corporation not later than five (5) business days prior to the Closing Date.

8. Due Diligence Investigation. Commencing on the date of this Agreement and continuing through the Closing Date (the “Due Diligence Period”), Surviving Corporation shall

have the right to conduct a full and complete due diligence investigation into the business, assets, liabilities and affairs of Merging Corporation. Merging Corporation shall permit Surviving Corporation and the authorized representatives and designees of Surviving Corporation to have full access during normal business hours to all the properties, books, contracts, documents and records of Merging Corporation and will furnish to Surviving Corporation or such representatives or designees upon request all such documents, records and information as Surviving Corporation or such representatives or designees from time to time shall reasonably request, including such information as Surviving Corporation or such representatives or designees shall reasonably require in order to comply with all federal and state laws and regulations and for the purpose of carrying out this Agreement. Notwithstanding any provision of this Agreement to the contrary, if for any reason whatsoever, Surviving Corporation is not satisfied with the results of this due diligence investigation, then Surviving Corporation shall have the right and option, by written notice to Merging Corporation delivered prior to the expiration of the Due Diligence Period, to cancel and terminate this Agreement without penalty or any further liability on its part.

9. Termination.

9.1. Termination of Events. By written notice given prior to or at the Closing, this Agreement may be terminated as follows:

(a) By Surviving Corporation, for any reason or no reason at any time prior to the expiration of the Due Diligence Period.

(b) By Surviving Corporation, if a material breach of any provision of this Agreement has been committed by Merging Corporation and such breach has not been waived by Surviving Corporation;

(c) By Merging Corporation, if a material breach of any provision of this Agreement has been committed by Surviving Corporation and such breach has not been waived by Merging Corporation;

(d) By Surviving Corporation, if any condition in **Section 6.1** has not been satisfied as of the date specified for Closing in **Section 2** or, if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Surviving Corporation to comply with its obligations under this Agreement), Surviving Corporation has not waived such condition on or before such date;

(e) By Merging Corporation, if any condition in **Section 6.2** has not been satisfied as of the date specified for Closing in **Section 2** or, if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Merging Corporation to comply with their obligations under this Agreement), Merging Corporation have not waived such condition on or before such date;

(f) By the mutual consent of Surviving Corporation and Merging Corporation;

(g) By Surviving Corporation if the Closing has not occurred on or before December 31, 2014, or such later date as the parties may agree upon, unless Surviving Corporation is in material breach of this Agreement; or

(h) By Merging Corporation if the Closing has not occurred on or before December 31, 2014, or such later date as the parties may agree upon, unless Merging Corporation are in material breach of this Agreement.

9.2. Effect of Termination. Each party's right of termination hereunder is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination shall not be an election of remedies. If this Agreement is terminated pursuant to the provisions hereof, all obligations of the parties under this Agreement shall terminate, provided, however, that, if this Agreement is terminated because of a breach of this Agreement by the nonterminating party or because one or more of the conditions to the terminating party's obligations under this Agreement are not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

10. Miscellaneous.

10.1. Notices. Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and may be delivered personally or shall be deemed to be delivered when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address indicated above, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

10.2. Waiver. No consent or waiver, express or implied, by a party of any breach or default by the other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance shall not limit or waive the necessity to obtain such party's consent in any future instance.

10.3. Governing Law. This Agreement has been entered into in the State of Hawaii and shall be governed by and construed in accordance with the laws of said state and all applicable federal laws.

10.4. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall, to the extent possible and without destroying the intent of this Agreement, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof

shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid or enforceable.

10.5. Binding Effect. Except as otherwise provided herein to the contrary, this Agreement shall be binding upon and is for the benefit of the parties hereto and their permitted successors, transferees, assigns, heirs, estates and legal representatives, as applicable.

10.6. Remedies in Equity. The rights and remedies of either of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law will be an inadequate remedy for a breach or threatened breach of this Agreement and agree that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any rights at law or by statute or otherwise of any party aggrieved as agent the other for a breach or threatened breach of any provision hereof, it being the intention by this section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity well as at law or otherwise.

10.7. Attorneys' Fees. Should suit or arbitration be brought to enforce this Agreement or by reason of any claimed default in the performance thereof by any party, the prevailing party (or parties) in such suit or arbitration shall be awarded its costs and reasonable attorneys' fees in the defense or prosecution thereof.

10.8. Construction. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of Articles, Sections and subsections are for convenience only, and neither limit nor amplify the provisions of this Agreement itself. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific time or matter set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

10.9. Exhibits. All schedules and exhibits attached hereto are hereby incorporated by reference into this Agreement.

10.10. Entire Agreement. This Agreement (and the exhibits attached or to be attached hereto) shall be deemed to be the complete and entire agreement between the parties and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties and/or their representatives.

10.11. Counterpart and Electronic Transmission Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, delivery of this Agreement, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties further agree that signatures on this Agreement, and any addenda, and/or other documents related to this Agreement, transmitted by facsimile or electronic transmission shall be fully binding and effective for all purposes.

10.12. Assignability and Parties in Interest. This Agreement and the rights, interests and obligations of the parties hereunder shall not be assignable by any party hereto without the prior written consent of the other parties hereto, and any assignment made without such consent shall be void ab initio and the assignee shall acquire no rights by reason of such assignment.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

HUI MALAMA O KE KAI FOUNDATION

By _____
Its

“Surviving Corporation”

WAIMANALO TEEN PROJECT

By _____
Its

“Merging Corporation”