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STATE OF HAWAII
LAND USE COMMISSION

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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

MARK J. BENNETT, as ATTORNEY
GENERAL, STATE OF HAWAII,

Petitioner,

vs.

RICHARD W. GUSHMAN, II, CLINTON
R. CHURCHILL, DAVID A. HEENAN,
and R.J. ZLATOPEL, Trustees under the
Will and of the Estate of James Campbell,

Respondents.

DOCKET NO. DR06-32

INTERVENOR KAPOLEI PROPERTY
DEVELOPMENT LLC'S MOTION TO
DISMISS PETITION FOR
DECLARATORY ORDER;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF
KATHERINE G. LEONARD;
DECLARATION OF DAVID W. RAE;
EXHIBITS 1-10; CERTIFICATE OF
SERVICE

**INTERVENOR KAPOLEI PROPERTY DEVELOPMENT LLC'S
MOTION TO DISMISS PETITION FOR DECLARATORY ORDER**

Intervenor Kapolei Property Development LLC ("KPD"), by and through its attorneys, Carlsmith Ball LLP, moves this Commission for dismissal of Attorney General Mark J. Bennett's Petition for Declaratory Order Regarding Pre-Condition No. 9.b. of Land Use Commission's September 23, 1988 Decision and Order in Docket No. A87-613 (the "AG Petition"). KPD has filed a Petition to Intervene (pending) pursuant to HAR §

15-15- 53, is a party in interest pursuant to HAR § 15-15-103, and concurrently herewith is filing a request that the Commission conduct a contested case proceeding on the AG Petition pursuant to HRS § 91-9, unless the AG Petition is denied or refused for hearing.

The grounds for this motion are:

1. Under controlling Hawaii law, the Commission has no jurisdiction to reconsider an unappealed order that was entered over 17 years ago or to set aside valid and enforceable agreements entered into by the State. *See* HAR § 15-15-102(4).
2. Under controlling Hawaii law, the Attorney General lacks standing to prosecute the AG Petition before the Commission. *See* HRS §§ 91-1 and 91-8.
3. Although fashioning the AG Petition as a petition for a declaratory ruling on a Commission order, the Attorney General's real objective is to try to get relief from long-standing agreements entered into by the State. He has not cited any statute or other authority for this proposition because the Commission has no legal authority to modify the terms of an agreement. The relief he has requested will impact hundreds of homeowners, businesses, and state and local government bodies who have relied on the 17 year old boundary amendment urbanizing the City of Kapolei, not just KPD. The Commission should not even consider nullifying its June 1989 Order. The Commission should not even consider modifying the terms of agreements entered by the State.

For these reasons, KPD respectfully requests that the AG Petition be dismissed. This motion is made pursuant to HRS Chapters 91 and 205, HAR §§ 15-15-70, 15-15-98, 15-15-100, and 15-15-102, the other authorities and arguments stated in the attached Memorandum in Support of Motion, Declaration of Katherine G. Leonard, Declaration of

David W. Rae; Exhibits 1-10, and the pleadings and files herein. Pursuant to HAR § 15-15-70(c), KPD requests a hearing on this motion.

DATED: Honolulu, Hawaii, March 8, 2007.



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KAPOLEI PROPERTY DEVELOPMENT
LLC

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MEMORANDUM IN SUPPORT OF
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MEMORANDUM IN SUPPORT OF MOTION

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MEMORANDUM IN SUPPORT OF
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I. OVERVIEW

Seventeen years of inaction by the State of Hawaii ("State") have caused it to lose a *conditional* right to receive about 15 acres of land in Kapolei, which was initially documented in an April 1989 Agreement executed by the Campbell Estate¹ and *three State agencies*, and approved by the *Attorney General's Office*. In a desperate attempt to avoid that loss, on December 26, 2006, Mark J. Bennett, Attorney General of the State of Hawaii (the "**Attorney General**"), filed a petition purportedly seeking a declaratory order under HAR § 15-15-98 (the "**AG Petition**"). In actuality, the Attorney General petitions

¹ "Campbell Estate" means and refers to Richard W. Gushman, II, Clinton R. Churchill, David A. Heenan, and R.J. Zlatoper, Trustees under the Will and of the Estate of James Campbell, acting in their capacity as the trustees of the Estate of James Campbell and not their individual capacities, and, to the extent relevant to these proceedings, means and refers to their predecessor trustees.

the Commission to reconsider a 17-year-old order (the "**June 1989 Order**") and to modify the long-standing agreements entered into by the State. The Commission should dismiss the Petition for lack of jurisdiction, the Attorney General's lack of standing, the other grounds stated herein, and on such further evidence and arguments as may be brought before the Commission on this motion.

II. SUMMARY OF POSITIONS

A. The Attorney General's Petition

The AG's Petition is based on a thin string of unsupportable assertions:

- The June 1989 Order -- which plainly states that all pre-conditions were *satisfied* -- "modified" a pre-condition in the Commission's Decision and Order ("**D&O**") on the underlying petition for a boundary amendment;
- Therefore, Campbell Estate should have sought to modify the pre-condition, rather than to approve its satisfaction;
- The Commission had and has no authority to determine that a pre-condition for approval of a boundary amendment has been satisfied; and
- Therefore, the June 1989 Order is "null and void."

The relief requested by the Attorney General is unprecedented. Based on a Commission rule that allows an interested person to seek a declaration as to the *applicability* of a Commission order, the Attorney General seeks a declaration that:

The June 1989 Order is "null and void."

The Attorney General offers no legal authority whatsoever to support his request for the Commission to *nullify* the Order previously agreed to by the State, including the Attorney General's office, and to *void* the Commission's ruling that the pre-conditions

that the Commission set were satisfied. The Attorney General also seeks a declaration that Campbell Estate "remains" unconditionally obligated to convey at least forty acres of land in Kapolei Town Center to the State. This is ironic since "unconditional" is a concept newly introduced by the Attorney General in the AG Petition. The pre-condition in the D&O was "the execution of an agreement or document evidencing the Petitioner's commitment," which undeniably was done to the State's and the Commission's satisfaction in 1989.

B. Response to the Attorney General's Petition

There are numerous grounds for the Commission to deny the relief requested by the Attorney General, not the least of which is the stunning attempt to re-write history. As a threshold matter, however, the Commission should grant the outright dismissal of the AG's Petition on the grounds that:

1. Under controlling Hawaii law, the Commission has no jurisdiction to reconsider an unappealed order that was entered over 17 years ago or to set aside valid and enforceable agreements entered into by the State;
2. Under controlling Hawaii law, the Attorney General lacks standing to prosecute the AG Petition before the Commission; and
3. The AG Petition does not simply seek a declaration on the "applicability" of a statute, rule or order. In addition to requesting the nullification of a pivotal 1989 Commission order that allowed the urbanization of Oahu's Second City, the AG Petition seeks a ruling modifying agreements entered by the State. The Hawaii courts, not the

Commission, should rule on the agreements entered into by the State, Campbell Estate and KPD.

For these reasons, as developed below, the Commission should deny the relief requested in the AG's Petition and dismiss this action without delay. However, there are additional compelling reasons to deny the requested relief including, but not limited to:

- The pre-condition in the D&O *was* satisfied -- Campbell Estate entered into an agreement or document evidencing its commitment to the State;
- The State *agreed* that the pre-condition was satisfied -- so did the Attorney General's office, so did the Land Use Commission -- after lengthy and detailed negotiations between the State and Campbell Estate;
- The Commission unquestionably had and has the authority to order that a pre-condition to a boundary amendment has been satisfied and an amendment is therefore approved;
- There would be grave public policy implications if the Commission facilitated the State's repudiation of its 17-year-old agreement or, more importantly, if the Commission overturned the 17-year-old order approving the satisfaction of a *pre-condition* to the boundary amendment urbanizing the City of Kapolei; and
- There are 17 years of performance by both parties under the 1989 Agreement, and many subsequent negotiations and agreements between the parties built upon the foundation of the 1989 Agreement.

III. FACTS RELEVANT TO THIS MOTION.

On September 23, 1988, the Commission entered Findings of Fact, Conclusions of Law and Decision and Order ("**September 1988 Order**") in Docket No. A87-613. *See* Ex. 1. The Commission conditionally granted Campbell Estate's petition to reclassify approximately 890 acres of land from the agricultural district to the urban district to

develop Kapolei. Paragraph 9 of the September 1988 Order contained a *pre-condition* requiring the *execution of an agreement* as follows:

b. **The execution of an agreement** or document evidencing the Petitioner's commitment to provide forty acres to the State of Hawaii at no cost for governmental offices or other uses in the Kapolei Town Center with all off-site costs to be borne by the Petitioner.

...

The agreement referenced in subparagraphs 9.a., b., and c. is the **oral agreement entered into between the State of Hawaii and Petitioner involving mutual rights and obligations.**

Id. at 57-58, ¶ 9 (emphases added). The above-quoted language is referred to herein as "**Paragraph 9b.**"

On March 29, 1989, the Commission entered the First Amended Findings of Fact, Conclusions of Law and Decision and Order ("**March 1989 Order**"), amending the September 1988 Order. Paragraph 9 of the March 1989 Order (at pages 58-59) restated the above quoted language *verbatim*. See Declaration of Katherine G. Leonard ("**Leonard Dec.**"), ¶ 4.

In April 1989, Campbell Estate filed a Motion for Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification and Department of Health in Decision and Order. That motion sought approval of a "Document Evidencing Petitioner's Commitments" dated April 11, 1989 ("**April 1989 Agreement**") as satisfying Paragraph 9b. See Ex. 2. **Three** State agencies executed the April 1989 Agreement: Office of State Planning, Department of Transportation, and Department of Land and Natural Resources. The Attorney General's Office approved it. In fact, at the hearing to approve the June 1989 Order, the State's attorney said:

[T]he State, as you know, has been intimately involved with the working out of these arrangements, and it has been a long and tedious procedure, but it's been worth it I think, and I think we are going to have a quality product, and **the State takes pleasure in joining in the motion at this time.**"

See Ex. 3 (4/14/89 LUC Tr.) at 17, lines 10-15 (emphasis added).

The April 1989 Agreement expressly referred to the pre-conditions in Paragraph 9 of the September 1988 Order and the March 1989 Order. Ex.2 at 2. In the April 1989 Agreement, the State also acknowledged and agreed:

The Estate wishes to formally commit to the pre-conditions contained in subparagraphs 9.b. and c. in satisfaction of the Decision and Order, **subject, however, to fulfillment by the State of the consideration for which the commitments are made.**

Ex. 2 at 3, ¶ 4 (emphasis added). The State thereby recognized it would have to fulfill certain obligations (*i.e.*, "consideration") to obtain the land. **The State expressly acknowledged and agreed that the purpose of the April 1989 Agreement was to comply with and satisfy Paragraph 9b:**

NOW, THEREFORE, **in compliance with and in satisfaction of subparagraphs 9.b., and c. of the LUC's Decision and Order and in consideration of the mutual promises** contained herein, the parties to this Document Evidencing Petitioner's Commitments hereby agree . . .

Id. at 3 (emphases added).

In the April 1989 Agreement, the State specifically agreed to a **ten-year deadline** within which to perform its obligations to obtain up to forty acres of land in Kapolei:

B. KAPOLEI TOWN CENTER

1. Estate shall provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations, at no cost, **upon execution of building construction contracts for governmental offices or other public facilities** in Kapolei Town Center with all off-site costs to be borne by the

Estate. The property will be conveyed incrementally as reasonably required for the Planned Improvements based on execution of building construction contracts for governmental offices or other facilities ("Planned Improvements"), as more specifically described in paragraph B.2. below.

2. **Estate's obligation to make any conveyances of any portion of the foregoing 40 acres will terminate on the tenth anniversary of this Document Evidencing Petitioner's Commitments ("Document"), unless by that date the State has executed building construction contracts for governmental offices or other public facilities on such portion(s) of the subject property.** Within such ten year period, the Estate's obligation shall be to convey portions of the property in increments, as reasonably required for the Planned Improvements. By way of example, if the State's Planned Improvements require a land area of 5 acres, the Estate's obligation shall be to convey 5 acres. As a further example, **if on the tenth anniversary of execution of this Document, the State will have required 30 acres for its Planned Improvements, the Estate will have no further obligation to convey the remaining 10 acres.**

Id. at 4-5 (emphases added).

The initial deadline for the State to perform its obligations was **April 11, 1999.**

The State *agreed* it could obtain land from Campbell Estate only if it had executed building construction contracts for governmental offices or other public facilities on such land before the deadline. In the April 1989 Agreement, the State specifically agreed: **"Time is of the essence in this Document."** *Id.* at 12, ¶ 2 (emphasis added).

On May 30, 1989, the Commission entered Second Amended Findings of Fact, Conclusions of Law and Decision and Order ("**May 1989 Order**"). Paragraph 9b of the May 1989 Order provided the identical pre-conditions of Paragraph 9b in the September 1988 Order and March 1989 Order. *See* Leonard Dec., ¶ 8.

On June 6, 1989, the Commission entered an Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification (the "**June 1989**

Order"). *See* Ex. 4. The Commission prefaced its ruling: "there being *no objections from the Office of State Planning, State of Hawaii*[".]" *Id.* at 2 (emphasis added). The Commission accepted the April 1989 Agreement as the "execution of an agreement" as specified in Paragraph 9b:

THE COMMISSION FURTHER ORDERS that Exhibits A and B attached to said Supplement Memorandum filed on April 12, 1989, and identified as "Kapolei Village Condemnation Agreement" and "**Document Evidencing Petitioner Commitments**", respectively, are approved and that *they satisfy Pre-Conditions 9.a., 9.b., and 9.c. of the Commission's Second Amended Decision and Order dated May 30, 1989, and that the district boundaries are hereby amended accordingly.*

Id. at 2-3 (emphasis added). The June 1989 Order (1) approved the satisfaction of the Commission's pre-conditions to the requested district boundary amendments and (2) ordered the amendment of the district boundaries.

Campbell Estate and the State later executed a series of letter agreements acknowledging, relying on, and supplementing the April 1989 Agreement. In a September 14, 1994 Letter Agreement (the "**September 1994 Letter Agreement**"), concerning in part the conveyance of a 7-acre parcel for the State Office Building, the State acknowledged:

The [May 1989] Decision and Order contained a **number of pre-conditions which were more particularly described in that certain Document Evidencing Petitioner's Commitments dated April 11, 1989.**

...

[T]he purpose of this letter is to set forth the additional agreements we have reached regarding the transfer, development and use of these lands[.]

See Ex. 5 at 1 (emphasis and bracketed information added). The State agreed:

Land will be conveyed **incrementally as reasonably required** by the State for governmental offices or other public facilities[.]

Id. at 2 ¶ 2 (emphases added). The State again agreed:

The Estate's obligation to make any conveyances of any portion of Land **shall terminate on April 11, 1999 as to any portion of Land for which the State has not satisfied the requirements** of subparagraphs 2(a) or 2(b) above.

Id. at 3 ¶ 2 (emphases added).

The September 1994 Letter Agreement was the first of several letter agreements entered into by the State after the April 1989 Agreement, acknowledging the State's obligation to comply with the agreed upon deadline. For example, the State and Campbell Estate entered into a letter agreement dated March 31, 1997, in which, *inter alia*, the deadline was *extended* from April 11, 1999 until **December 31, 2006**. *See* Ex. 6. Under the April 1989 Agreement and those subsequent letter agreements, land was conveyed for the State Office Building in Kapolei and for the Kapolei Library Complex. As recently as October 31, 2006, KPD, Campbell Estate and the State entered into a letter agreement regarding the conveyance of land for the Kapolei Judiciary Complex, including a further extended deadline (to June 30, 2007) for satisfaction of the conditions to this particular conveyance. *See* Ex. 7. KPD, Campbell Estate and the State currently are performing under the October 2006 Letter Agreement. *See* Declaration of David W. Rae.

Condition 11 of the May 1989 Order required Campbell Estate to file annual reports with the Commission concerning its compliance with the conditions in the May 1989 Order. *See* May 1989 Order at 61, ¶ 11. On September 26, 1989, the Estate filed

its First Annual Report with the Commission, served on the State Office of Planning (Harold S. Masumoto, Director), which specifically discussed the June 1989 Order and the satisfaction of preconditions 9.a, 9.b., and 9.c . through various agreements with the State. *See* Ex. 8, § I.E., at 4-5, 8.

The State did not object to the first annual report. *See* Ex. 9 (Docket A87-613). The annual reports filed thereafter all refer to Paragraph 9b as having been satisfied by the various agreements with the State. For over 16 years, the State received such annual reports and never objected or otherwise indicated any disagreement. *Id.*

Only *after* the State failed to fulfill its agreed upon obligations necessary to receive the further conveyance of land did the State raise any issue over the June 1989 Order, by filing the AG Petition.

IV. ANALYSIS

A. The Commission Lacks Jurisdiction to Reconsider the June 1989 Order

The Commission has no jurisdiction to reconsider an unappealed order entered over 17 years ago or to set aside valid and enforceable agreements entered by the State. *See, e.g., Tanaka v. Department of Hawaiian Home Lands*, 106 Hawai'i 246, 103 P.3d 406 (App. 2004) (holding (1) *a party's failure to timely request agency review bars the agency from reconsidering a prior order because the agency has no jurisdiction to hear an untimely request*, and (2) *an agency may not enlarge or extend mandatory time limits*); *see also* HAR § 15-15-84 (requiring motion for reconsideration to be timely filed).

As a preliminary matter, the Commission should not be sidetracked by the

Attorney General's labeling of his belated motion for reconsideration as a petition for declaratory relief. The Attorney General's tactical tag does not control which agency rule applies. Substance controls. *See Tanaka v. Department of Hawaiian Home Lands*, 106 Hawai'i 246, 103 P.3d 406 (App. 2004).²

Consider the rule cited in the AG's Petition, HAR § 15-15-98. This rule, like the underlying Administrative Procedure Act, allows an interested person to seek a declaratory order from an agency "as to the *applicability* of any statutory provision or of any rule or order of the agency." Haw. Rev. Stat. § 91-8 (emphasis added); HAR 15-15-98 (same). The AG Petition is not seeking a ruling on the *applicability* of a Commission order; rather it is asking the Commission to declare "null and void" the June 1989 Order to which the State did not object, and from which the State did not appeal. The Attorney General's Petition necessarily seeks reconsideration of the Commission's prior order, 17 years after-the-fact.

In *Tanaka*, the appellant argued on appeal that his requests for reinstatement of his lease before the agency, and the subsequent hearing thereon, constituted a new contested case and not a request for reconsideration. *Tanaka*, 106 Hawai'i at 251, 103 P.3d at 411. The court disagreed, explaining that the crux of the appellant's requests was that the agency "should **reconsider its decision** to cancel his lease based on new evidence[.]" *Id.* (emphasis added). The court found the appellant's requests involved the same lease and the same grounds, so there was no legitimate ground upon which to conclude those

² "[I]t is the substance of the pleading that controls, not its nomenclature." 106 Hawai'i at 251, 103 P.3d at 411 (citations omitted). A courtesy copy of *Tanaka* is attached as Ex. 10.

requests constituted a new matter. *Id.* at 251-52, 103 P.3d at 411-12.

The Attorney General specifies the crux of the purported "controversy" triggering his Petition (AG Petition, Memo at 1):

The controversy involves the effect of a subsequent Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification, filed on June 6, 1989.

There is no question about the "effect" of the June 6, 1989 Order -- the Order clearly approved the April 1989 Agreement as satisfying the pre-condition in Paragraph 9b. *See* Ex. 4. The Attorney General simply *does not agree* with the effect the Commission's June 1989 Order -- ignoring the fact that all of the State's representatives (including the Attorney General's Office) actively supported it at the time. *See* Ex. 3. The Attorney General now declares that the Commission's actions in 1989 were unnecessary and unauthorized. The AG Petition *absolutely* would require the Commission to reconsider its June 1989 Order, explicitly asking the Commission to find the June 1989 Order "null and void."

The jurisdictional problem for the Attorney General is that it is 17 years too late to seek reconsideration of the June 1989 Order. In *Tanaka*, the Intermediate Court of Appeals held that a party's failure to timely request agency review under the agency's administrative rule or HRS § 91-14, divested the agency of jurisdiction and barred the agency from reconsidering the un-appealed agency order. *Tanaka*, 106 Hawai'i at 249, 103 P.3d at 409. It also held that an agency has no authority to extend mandatory time limits to reconsider or appeal an agency order. *Id.*

HAR § 15-15-84 provides:

§ 15-15-84 Reconsideration of decision. (a) A motion for reconsideration shall be filed with the commission within seven calendar days after issuance of the commission's written decision and order.

...
(c) In no event will the commission consider any motion for reconsideration on any petition after the period within which the commission is required to act on the petition.

For the challenged June 1989 Order, the time for reconsideration has long since passed. None of the state agencies appearing before the Commission in 1989, and which signed the April 1989 Agreement, timely moved the Commission to reconsider the June 1989 Order under HAR § 15-15-84 or otherwise.³

If there is no jurisdiction over a matter, the Commission's rules specifically provide for the Commission to refuse to proceed. HAR § 15-15-102 states, in relevant part:

15-15-102 Refusal to issue declaratory order. The commission, for good cause, may refuse to issue a declaratory order by giving specific reasons for the determination. Without limiting the generality of the foregoing, the commission may so refuse when:

...
(4) The matter is not within the jurisdiction of the commission.

The Commission should refuse to issue a declaratory order nullifying the June 1989 Order, and it should dismiss or deny the AG Petition forthwith based on its lack of jurisdiction over the AG Petition. HAR §§ 15-15-100 and 15-15-102(4).

³ Indeed, the deadline for an appeal from the June 1989 Order has expired. HRS § 205-4(i) provides: "Parties to proceedings to amend land use district boundaries may obtain judicial reviews thereof in the manner set forth in section 91-14 . . ." HAR § 15-15-75 similarly provides: "Parties to proceedings to amend land use district boundaries may obtain judicial reviews thereof in the manner set forth in section 91-14, HRS." HRS § 91-14(b), in turn, requires an appeal of an agency order to be filed with the circuit court within **30 days** of the entry of the order.

B. The Attorney General Lacks Standing to Seek a Declaratory Order

The AG Petition is filed pursuant to HAR § 15-15-98 (a), which provides (emphasis added):

§ 15-15-98 Who may petition. (a) On the petition of *an interested person*, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission.

HRS § 91-8 provides the statutory authority for HAR § 15-15-98:

§ 91-8. Declaratory rulings by agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency.

These authorities provide the fundamental regulatory and statutory parameters determining who has standing to petition for a declaratory order of the Commission. As explained below, the Attorney General does not have standing because:

- Under HRS ch. 91, the Department of the Attorney General cannot be an interested person; and
- If the Department of the Attorney General cannot be an interested person, the Attorney General cannot be an interested person.

The Department of the Attorney General is an "agency," as defined in HRS § 91-1(1) because it is "authorized by law to make rules." *See* HRS § 28-10.8. Because the Department of the Attorney General is an "agency," it is *not* a "person" under HRS ch. 91, which excludes agencies from the definition of "person." *See* HRS § 91-1(2). That the Department of the Attorney General is not a "person" under HRS ch. 91 also means it is not an "interested person" that can petition the Commission under HRS § 91-8.⁴

⁴ "Person" is a component of "interested person" in HRS ch. 91. *See RGIS Inventory Specialist v. Hawai'i Civil Rights Comm'n*, 104 Hawai'i 158, 162, 86 P.3d 449, 453 (Hawai'i

The *Department* of the Attorney General's lack of standing under HRS § 91-8 also negates the Attorney General's standing under HRS § 91-8. In *RGIS Inventory Specialist v. Hawai'i Civil Rights Comm'n*, 104 Hawai'i 158, 86 P.3d 449 (Hawai'i 2004), the Hawaii Supreme Court held that the executive director of a state agency was not an "interested person," because he was an "agency" employee, reasoning:

The Executive Director's "interest" stems only from her or his official capacity as an agency employee, and this is insufficient to satisfy the standing requirements of HRS § 91-8. To hold otherwise would lead to an absurd result: an "agency" would not be able to petition for declaratory relief, but the agency could circumvent that rule simply by having an employee file the petition in her or his name.

104 Hawai'i at 162, 86 P.3d at 453 (emphasis added).

The Attorney General's "interest" in the Commission's June 1989 Order stems *only* from his official capacity in the Department of the Attorney General, which is analogous to the agency director in *RGIS Inventory Specialist*. That case is directly on point; it bars the Attorney General from petitioning the Commission under HRS § 91-8, when the Department of the Attorney General clearly cannot.

Finally, the Attorney General cites no statutory or common law authority giving him the right to seek review of the June 1989 Order as an "interested person." The Attorney General cites two statutes as authority, HRS §§ 26-7 and 661-10, neither of which authorizes his filing of the petition.⁵ HRS § 26-7 concerns the "department of the

2004) ("Although HCRC's Executive Director fits the technical definition of "person," she or he does not fall within the HRS § 91-8's requirement that the petitioner be an "*interested* person" when petitioning HCRC.")

⁵ In *In re Application of Hawaiian Tel. Co.*, 54 Haw. 663, 666, 513 P.2d 1376, 1378 (1973), the Hawaii Supreme Court plainly stated that HRS § 28-1, concerning the Attorney

attorney general" as an agency providing the State with legal services. HRS § 26-7 says nothing about representing the public's interests before any state agency generally,⁶ or appearing as an "interested person" on a petition for declaratory order before the Commission specifically. HRS § 661-10 concerns "Actions by State" "in any appropriate court or courts." (Emphasis added.) The Commission is not a court. HRS § 661-10 does not apply.

C. The First Circuit Court Should Determine the Parties' Rights and Obligations under the April 1989 Agreement

If the truth were to be told, it is the April 1989 Agreement, not the June 1989 Order, that is objectionable to the Attorney General. He apparently wants to unilaterally delete the negotiated provisions in the April 1989 Agreement that required agreed upon actions by the State, within an agreed period of time, for the State to obtain certain lands in the City of Kapolei at no cost. The Attorney General cites no statute or other authority granting the Commission the power to modify the terms of an agreement.

The Attorney General, not KPD, has the burden to show that the AG Petition is properly filed and the relief requested is within the scope of the statute and rule providing for declaratory orders. *See* HRS § 91-8 and HAR § 15-15-98. He has failed to do so.

The potential consequences of the Commission exceeding its statutory mandate in this

General's appearance in Hawaii courts, and HRS § 661-10 were "not pertinent" to the AG's standing before the PUC.

⁶ The public's interest already was fully protected in the underlying boundary amendment proceeding by the participation of the Office of Planning (and the county planning department), as mandated by both Hawaii statute and the Commission's administrative rule. *See* HRS § 205-4(e)(1) and HAR § 15-15-52; *see also In re Application of Hawaiian Tel. Co.*, 54 Haw. 663, 666, 513 P.2d 1376, 1378 (1973) (holding that Attorney General lacked standing because there was already a statutorily-mandated party to protect the public's interest before the PUC).

matter are exceptionally grievous. The June 1989 Order not only approved the satisfaction of the pre-conditions to the boundary amendment, it ordered the boundary amendment urbanizing the land on which the City of Kapolei has been built. *See* Ex. 4. The voiding of that order, to allow the State to avoid its contractual obligations under agreements it freely entered into with advice of the Attorney General's Office, is not something that the Commission should contemplate further. *See also* HAR § 15-15-102(3).

Moreover, KPD, as the assignee of the April 1989 Agreement and all of the related land previously owned by Campbell Estate (the "**Subject Land**"), has filed a Declaratory Judgment action in the First Circuit Court seeking a declaration under the April 1989 Agreement and the subsequent related agreements between the State, Campbell Estate and KPD (collectively the "**Subject Agreements**") that:

(1) any obligation to convey the Subject Land and the State's entitlement to receive the Subject Land terminated on December 31, 2006; (2) KPD owns the Subject Land free from any obligation to convey the Subject Land to the State; and (3) with the exception of any continuing obligations set forth in the October 2006 Letter Agreement as to the Kapolei Judiciary Complex, any and all obligations to convey land under the Subject Agreements have expired.

See Leonard Dec., ¶ 12.

The pending litigation will determine whether the deadline set in the April 1989 Agreement, and later extended, is enforceable. The First Circuit Court, not the Commission, is the proper forum for a declaration on the disputed contract terms. *See* HRS §§ 632-1 and 661-1. The Commission should refuse to issue the requested declaratory order and dismiss the AG Petition for this reason and the other reasons stated herein.

V. CONCLUSION

The Commission lacks jurisdiction to reconsider an order entered over 17 years ago. The Attorney General lacks standing to seek a declaratory order of the Commission. The Commission should not involve itself in the dispute over whether the contractual obligations to convey land to the State have expired. In sum, this is the wrong petition, filed by the wrong party, in the wrong place, for reasons other than as stated. KPD respectfully requests that the Commission dismiss the AG Petition.

DATED: Honolulu, Hawaii, March 8, 2007.



STEVEN M. EGESDAL
KATHERINE G. LEONARD

Attorneys for Intervenor
KAPOLEI PROPERTY DEVELOPMENT
LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

MARK J. BENNETT, as ATTORNEY
GENERAL, STATE OF HAWAII,

Petitioner,

vs.

RICHARD W. GUSHMAN, II, CLINTON
R. CHURCHILL, DAVID A. HEENAN,
and R.J. ZLATOPER, Trustees under the
Will and of the Estate of James Campbell,

Respondents.

DOCKET NO. DR06-32

DECLARATION OF KATHERINE G.
LEONARD

DECLARATION OF KATHERINE G. LEONARD

I, KATHERINE G. LEONARD, declare as follows:

1. I am a partner in the firm of Carlsmith Ball LLP ("Carlsmith"), located at 1001 Bishop Street, Suite 2200, American Savings Tower, Honolulu, Hawaii, 96813, am duly admitted to practice law in the State of Hawaii, and am one of the attorneys for Intervenor Kapolei Property Development LLC ("KPD") in the above-referenced case.

2. Except where otherwise noted, I make this Declaration based on my personal knowledge, my role as counsel for KPD herein, and based upon the review of the Land Use Commission's (the "Commission's") official records and files in Docket No. A87-613, which review was done at my direction and under my supervision.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Commission's Findings of Fact, Conclusions of Law and Decision and Order, filed on September 23, 1988, in Docket No. A87-613.

4. On March 29, 1989, the Commission entered its First Amended Findings of Fact, Conclusions of Law and Decision and Order, in Docket No. A87-613. Paragraph 9 of the March 1989 Order (at pages 58-59) restated *verbatim* the language quoted at page 5 of the attached Memorandum in Support of Motion.

5. On April 4, 1989, Campbell Estate filed a Motion for Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification and Department of Health in Decision and Order, in Docket No. A87-613. That motion sought approval of a "Document Evidencing Petitioner's Commitments" dated April 11, 1989 (the "April 1989 Agreement"). The fully executed April 1989 Agreement was submitted to the Commission, on April 12, 1989, in a supplement to the motion. Attached hereto as Exhibit 2 is a true and correct copy of the fully executed April 1989 Agreement.

6. Attached hereto as Exhibit 3 is a true and correct copy of p. 17 of the transcript of the Commission's April 14, 1989 proceedings in Docket No. A87-613.

7. Attached hereto as Exhibit 4 is a true and correct copy of the Commission's Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification, filed on June 6, 1989.

8. On May 30, 1989, the Commission entered its Second Amended Findings of Fact, Conclusions of Law and Decision and Order, in Docket No. A87-613.

Paragraph 9 of the May 1989 Order (at page 60) restated *verbatim* the language quoted at page 5 of the attached Memorandum in Support of Motion.

9. Attached hereto as Exhibit 8 is a true and correct copy of Campbell Estate's First Annual Report to the Commission, in Docket No. A87-613, filed and served on or about September 26, 1989.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Commission's Docket in Docket No. A87-613, as it appears in the Commission's files on or about the date of this Declaration.

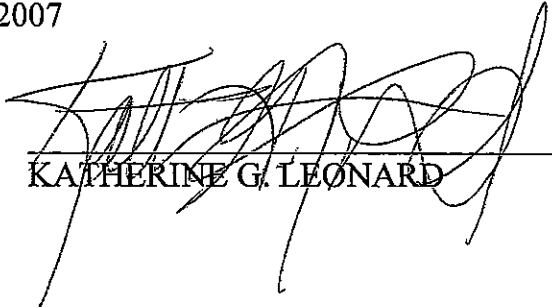
11. Attached hereto as Exhibit 10 is a true and correct copy of *Tanaka v. Department of Hawaiian Home Lands*, 106 Hawai'i 246, 103 P.3d 406 (App. 2004).

12. On March 8, 2007, on behalf of KPD, Carlsmith filed a Complaint for a Declaratory Judgment in the First Circuit Court, seeking a declaration under the April 1989 Agreement and the subsequent related agreements between the State, Campbell Estate and KPD (collectively the "**Subject Agreements**") that:

(1) any obligation to convey the Subject Land and the State's entitlement to receive the Subject Land terminated on December 31, 2006; (2) KPD owns the Subject Land free from any obligation to convey the Subject Land to the State; and (3) with the exception of any continuing obligations set forth in the October 2006 Letter Agreement as to the Kapolei Judiciary Complex, any and all obligations to convey land under the Subject Agreements have expired.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, March 8, 2007


KATHERINE G. LEONARD

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

MARK J. BENNETT, as ATTORNEY
GENERAL, STATE OF HAWAII,

Petitioner,

vs.

RICHARD W. GUSHMAN, II, CLINTON
R. CHURCHILL, DAVID A. HEENAN,
and R.J. ZLATOPER, Trustees under the
Will and of the Estate of James Campbell,

Respondents.

DOCKET NO. DR06-32

DECLARATION OF DAVID W. RAE

DECLARATION OF DAVID W. RAE

I, DAVID W. RAE, declare as follows:

1. I am the Senior Vice President, Development, of Kapolei Property Development LLC ("KPD").
2. Except where otherwise noted, I make this Declaration based on my personal knowledge, my role as Senior Vice President, Development, of KPD, and my review of KPD's business records and files, and would be competent to testify to the statements contained herein.
3. KPD is an affiliate of the James Campbell Company LLC. Campbell Estate has conveyed to KPD various obligations, real property interests, and related records and files, including records and files related to the subject matter of the above-referenced action and KPD's Motion to Dismiss Petition for Declaratory Action.

4. Attached hereto as Exhibit 5 is a true and correct copy of a September 14, 1994 Letter Agreement between the Campbell Estate and the State of Hawaii.


5. Attached hereto as Exhibit 6 is a true and correct copy of a March 31, 1997 Letter Agreement between the Campbell Estate and the State of Hawaii.

6. Attached hereto as Exhibit 7 is a true and correct copy of a October 31, 2006 Letter Agreement between the Campbell Estate, KPD and the State of Hawaii.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, March 8, 2007

KAPOLEI PROPERTY DEVELOPMENT LLC

By 
DAVID W. RAE
Senior Vice President, Development

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
THE TRUSTEES UNDER THE WILL AND)
OF THE ESTATE OF JAMES CAMPBELL,)
DECEASED)
)
To Amend the Agricultural Land Use)
District Boundary into Urban Land)
Use District for Approximately 890)
acres of land at Honouliuli, Ewa,)
Island of Oahu, State of Hawaii,)
Tax Map Key Numbers: 9-1-15:)
Portion of 4; 9-1-16: Portion of 1,)
Portion of 4, 5, 6, Portion of 9,)
12, 13, Portion of 16, 18, Portion)
of 24, 30; 9-2-03: Portion of 2,)
12; and 9-2-19: Portion of 1)
)

DOCKET NO. A87-613

THE TRUSTEES UNDER THE
WILL AND OF THE ESTATE
OF JAMES CAMPBELL,
DECEASED

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii

SEP 23 1988

Date

by [Signature]

Executive Officer

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION AND ORDER

SEP 23 7 59 AM '88
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A87-613
THE TRUSTEES UNDER THE WILL AND)	
OF THE ESTATE OF JAMES CAMPBELL,)	THE TRUSTEES UNDER THE
DECEASED)	WILL AND OF THE ESTATE
	OF JAMES CAMPBELL,
	DECEASED
To Amend the Agricultural Land Use)	
District Boundary into Urban Land)	
Use District for Approximately 890)	
acres of land at Honouliuli, Ewa,)	
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Portion of 4; 9-1-16: Portion of 1,)	
Portion of 4, 5, 6, Portion of 9,)	
12, 13, Portion of 16, 18, Portion)	
of 24, 30; 9-2-03: Portion of 2,)	
12; and 9-2-19: Portion of 1)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION AND ORDER

The Trustees Under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual corporate capacities (hereinafter "Petitioner"), filed a Petition on June 29, 1987, and an amendment to the Petition on August 26, 1987, pursuant to Chapter 205, Hawaii Revised Statutes, as amended ("HRS"), and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"), to amend the Land Use District Boundary to reclassify approximately 890 acres of land situate at Honouliuli, Ewa, Island of Oahu, State of Hawaii, Oahu Tax Map Numbers: 9-1-15: Portion of 4; 9-1-16: Portion of

1, Portion of 4, 5, 6, Portion of 9, 12, 13, Portion of 16, 18, Portion of 24, 30; 9-2-03: Portion of 2, 12; and 9-2-19: Portion of 1, (hereinafter "Property") from the Agricultural District to the Urban District to develop the Kapolei Town Center. The Land Use Commission (hereinafter "Commission") having heard and examined the testimony and evidence presented during the hearings, the parties' proposed findings of fact, conclusions of law and decision and order, hereby makes the following findings of fact:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Commission conducted hearings on the Petition on September 29, 1987, September 30, 1987, November 16, 1987, November 17, 1987, December 17, 1987, December 18, 1987, January 5, 1988, January 19, 1988, February 9, 1988, and May 24, 1988, pursuant to notice published on August 14, 1987 in the Honolulu Star Bulletin.

2. The Commission allowed Captain Walter D. West, III to testify as a public witness on November 16, 1987 and John L. Busekrus to testify as a public witness on November 17, 1987. The Commission also admitted into evidence as written submissions from the public, the written testimonies of Elizabeth Ann Stone (letter dated November 14, 1987 and December 15, 1987), Captain R.M. Gallen, Jane A. Ross, Captain T.L. Ferrier, Sharlyn Palacio and Captain K.S. Webster.

3. The Commission did not receive any petition to intervene in the proceeding.

DESCRIPTION OF THE PROPERTY

4. The Property consists of approximately 890 acres of land located on the Ewa Plain on the southwest portion of the Island of Oahu. The Property is located mauka of the U.S. Navy Air Station Barbers Point ("NASBP"), makai of the existing Makakilo City, west of NASBP access road and east of Ko Olina Resort.

5. The Property also surrounds a 29.543-acre triangular parcel which was reclassified to the Urban District by the Commission under Docket No. A84-582/The Trustees Under the Will and of the Estate of James Campbell, Deceased, for the development of a community shopping center.

6. The Property is owned by Petitioner. Portions are currently leased to the Oahu Sugar Company, Ltd. ("OSC") for sugarcane production until 1995. Said lease allows for partial withdrawal of lands for urbanization.

7. The Property is located on a relatively level coralline/alluvial plain, and has a variety of soil types including coral deposits in the flat lands, silty clays, and stony steep lands. In general, soil types within the Property include dark red-brown to dark brown silty clays and dark grayish-brown clays (alluvial and residual). Coral, consolidated and unconsolidated marine deposits occur on lower-elevation flat lands and coastal areas.

8. Soil types found on the Property are as follows:
Ewa silty clay loam, 3 to 6 percent slopes, EaB, on alluvial fans and terraces. In a representative profile, the surface layer is dark reddish-brown silty clay loam about 18 inches thick. The sub-soil, about 42 inches thick, is dark reddish-brown and dark-red silty clay loam that has subangular blocky structure. The substratum is coral limestone, sand, or gravelly alluvium. The soil is neutral in the surface layer and subsoil. Permeability is moderate, runoff is slow, and the erosion hazard is slight. The U.S. Soil Conservation Service (SCS) rating for this soil type is II when irrigated and IV when non-irrigated.

Ewa silty clay loam with 0 to 2% slopes, EmA. Runoff is very slow, and the erosion hazard is no more than slight. The SCS rating for this soil type is II for irrigated and IV for non-irrigated.

Honouliuli clay, 0 to 2 percent slopes, HxA. This soil occurs in the lowlands along the coastal plains. In a representative profile, the soil is dark reddish-brown, very sticky and very plastic clay throughout. The surface layers are about 15 inches thick. The subsoil and substratum have subangular blocky structure, and they have common to many slickensides. The soil is neutral to mildly alkaline. Permeability is moderately slow. Runoff is slow, and the erosion hazard is no more than slight. The SCS rating for this soil type is I when irrigated and IV when non-irrigated.

Mamala stony silty clay loam with a slope of 0 to 12%, MnC. This soil type occurs along the coastal plains of Oahu. They are formed of alluvial deposits over coral limestone and consolidated calcareous sand. Permeability is moderate. Runoff is very slow to medium, and the erosion hazard is slight to moderate. The SCS rating for this soil type is III when irrigated and VI when non-irrigated.

Waialua silty clay, 0 to 3 percent slopes, WkA. This soil is found on smooth coastal plains. Permeability is moderate. Runoff is slow, and the erosion hazard is no more than slight. The SCS rating for this soil type I when irrigated and IIIc when non-irrigated.

Waialua stony silty clay, 3 to 8 percent slopes, WIB. This soil has a profile like that of Waialua silty clay, 0 to 3 percent slopes. Runoff is slow, and the erosion hazard is slight. The SCS rating for this soil type is IIIe when irrigated, and IIIs when non-irrigated.

9. The State Department of Agriculture (DOA) indicated that under the Land Study Bureau's classification system, the soil of the Property is designated approximately 30 percent as Class A, 40 percent as Class B, 12 percent as Class C, 1 percent as Class D and 4 percent as Class E.

10. Under the DOA's Agricultural Lands of Importance to the State of Hawaii classification system (ALISH), 53 percent of the Property is classified "prime land", 30 percent

is classified "other important lands" and 17 percent is unclassified. There are no "unique lands".

11. The Property and surrounding areas are gently sloping with average slopes ranging between zero and three percent. Ground elevations within the Property range from 50 feet above mean sea level near the southern boundary to 492 feet above mean sea level at Puu Palailai at the Property's northern boundary.

12. The Property is currently under sugarcane cultivation containing cane haul roads, furrow irrigation ditches and other appurtenant structures.

13. The climate of the Property and surrounding area is dry and the average temperatures range from 69 degrees to 91 degrees Fahrenheit.

14. The Property and the Ewa Plain experiences approximately 20 inches of rain annually.

15. The Flood Insurance Study for the City and County of Honolulu conducted by the Federal Insurance Administration indicates that the Property is designated in Zone D, or an area of undetermined but possible flood hazards.

DESCRIPTION OF PROPOSED DEVELOPMENT

16. Petitioner proposes to develop the Property for commercial facilities, business parks, public facilities, parks, residential and mixed uses. The proposed development is to be known as the Kapolei Town Center. The first increment of

development will consist of 135 acres. The remaining balance of the Property, consisting of 755 acres is proposed for future development.

17. The first increment (hereinafter "Increment I") is identified as Tax Map Key Number: 9-1-16:portion of 1 and portion of 24. Increment I is approximately bounded by Waimanalo Road on the south, NASBP Access Road to the east, the future Kapolei Shopping Center to the north and Kalaeloa Boulevard to the west.

18. The remaining balance of the Property (hereinafter "Subsequent Increments") is identified as Tax Map Key Numbers: 9-1-15:portion of 4; 9-1-16:portion of 1, portion of 4, 5, 6, portion of 9, 12, 13, portion of 16, 18, portion of 24, 30; 9-2-03:portion of 2, 12; and 9-2-19:portion of 1.

19. The boundaries of the Subsequent Increments are generally formed by Naval Air Station Barbers Point (NASBP) on the south, NASBP Access Road to the east, Waimanalo Road and Puu Kapolei to the north, Kalaeloa Boulevard and Puu Palailai to the west.

20. The proposed Kapolei Town Center is part of Petitioner's Long Range Master Plan for the Ewa region (Long Range Plan). The Long Range Plan envisions the development of a secondary urban center for Oahu on the Ewa Plain. Petitioner proposes Kapolei Town Center to be the urban hub of Ewa to include a planned, integrated urban environment offering a full

complement of office and commercial space, government services and public facilities.

21. Petitioner's proposed major land uses and area allocations are summarized as follows:

LAND USE SUMMARY

<u>Land Use</u>	<u>Increment I</u>		
	<u>Size (Acres)</u>	<u>Percent of area</u>	<u>Sq. Ft. (1,000's)</u>
Office	34.2	25.3	573
Commercial	32.3	23.9	450
Public Facility	19.5	14.4	365
Business Park/ Light Industrial	9.5	7.1	288
Residential	--	0	--
Mixed Use	--	0	--
Park	--	0	--
Circulation/Open Space	39.5	29.3	
TOTAL	<u>135.0</u>	<u>100.0</u>	<u>1,676</u>

<u>Land Use</u>	<u>Property</u>			
	<u>Size (Acres)</u>	<u>Percent of area</u>	<u>Sq. Ft. (1,000's)</u>	<u>Dwelling Units</u>
Office	101	11	2,009	
Commercial	114	13	1,034	
Public Facility	51	6	860	
Business Park/ Light Industrial	23	3	333	
Residential	228	26		1,985
Mixed Use	73	8		460
Park	173	19		
Circulation/Open Space	127	14		
TOTAL	<u>890</u>	<u>100</u>	<u>4,236</u>	<u>2,445</u>

Office Use: Petitioner will provide regional office space and local office space mainly in office designated areas. Petitioner also anticipates providing "mixed use" and commercial areas.

Business Park Use: Petitioner proposes one or more landscaped business parks that will contain a mixture of light industrial activities, including high technology and research and development, within low-rise buildings. These business parks will provide operating space for a wide range of businesses and will serve as the major employment areas for Kapolei Town Center.

Government/Civic Use: Petitioner proposes that the Property will include federal, state and county government offices and service facilities, including administrative office, police and fire facilities, a library and other facilities providing government supported local and regional services.

Other Public Land Uses: Petitioner proposes a district park in the Subsequent Increments to be located south and adjacent to Increment I.

Commercial: Petitioner proposes a full range of commercial facilities, primarily retail in nature, such as a community shopping center, a regional mall, a discount center and an auto sales center, which are to be developed at various locations within the Property.

Infrastructure: Petitioner will develop roadways, sewer and water lines, and utility transmission to support Kapolei Town Center.

Housing: Although no housing is currently planned for Increment I, Petitioner designates approximately 228 acres of the Property for approximately 1,985 dwelling units as shown on the Ewa Long Range Master Plan dated January 1988.

22. Petitioner proposes that the initial phase of development will begin shortly with a retail/commercial village (Kapolei Shopping Center) located west and makai of the Makakilo Interchange. This area has been designated Commercial on the City and County of Honolulu (City) Ewa Development Plan Land Use Map and has recently received commercial zoning from the City. The next phase will be the development of Increment I in accordance with market demands. Increment I will probably start at the western end adjacent to Kalaeloa Boulevard, the Barbers Point Deep Draft Harbor and the James Campbell Industrial Park. Other development will occur adjacent to the proposed Kapolei Shopping Center.

Future increments of the Kapolei Town Center will gradually expand south toward the NASBP, north to the Makakilo foothills, and east above the proposed Kapolei Village site, and in step with infrastructure development and prevailing market conditions.

23. Petitioner estimates major off-site improvements and on-site costs including site clearing, drainage, landscaping, roadways, sewers, water, electrical, telephone, street lighting and cable television, in 1986 dollars, to be approximately \$39,000,000.

PETITIONER'S FINANCIAL CAPABILITY TO
UNDERTAKE THE PROPOSED DEVELOPMENT

24. Petitioner's Statements of Assets, Liabilities, Undistributed Income and Principal as of December 31, 1986, lists assets of \$135,317,292; total liabilities of \$43,519,605, joint venture investment basis of \$3,057,704, undistributed income of \$1,400,075 and principal of \$87,339,908.

25. In addressing a concern raised by the State Department of Business and Economic Development that Petitioner may not have the financial capability to finance the infrastructure for Increment I, Petitioner stated that should Petitioner require loan(s) to finance the infrastructure for the proposed Kapolei Town Center, Petitioner may be required to repay said loans by the year 2007 because the Estate of James Campbell Trust will terminate in the year 2007.

Petitioner intends to make mortgage payments as long as possible for a term greater than 20 years and has petitioned the Probate Court to be given the right to repay said loans beyond the termination date of 2007. The Probate Court has not made a decision on the petition at this time.

26. Petitioner anticipates that, if the Probate Court does not allow Petitioner's mortgage term to exceed 2007, it can repay loans by the termination date of its trust with existing assets or it can finance the proposed development with a joint developer.

In any event, Petitioner's chief executive officer, Oswald Stender, represented that Petitioner has the financial capability to make the infrastructure improvements required for Increment I.

STATE AND COUNTY PLANS AND PROGRAMS

27. The Property is designated within the State Land Use Agricultural District as reflected on the Commission's Official Map O-6, Ewa.

28. The City and County of Honolulu General Plan, as amended, encourages the development of a secondary urban center in the West Beach-Makakilo area to relieve developmental pressures in the urban-finge and rural areas.

29. The Property is zoned by the City and County of Honolulu as AG-1 Restricted Agriculture or AG-2 General Agriculture.

30. The Property is not located within the City Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

31. Petitioner's market analyst, Kenneth Leventhal & Company (KLC), prepared a market analysis for the proposed

project. The market study considered employment, housing and population projections for the Ewa Town Center, including the Property and the proposed Kapolei Village affordable housing project east of the Property. Existing developments and the proposed Ko Olina Resort, Ewa Marina and Ewa Plantation were also included in the market projections.

32. KLC's projections for population, employment, housing and hotel units for the Ewa Town Center and other areas in Ewa for 1985 to the year 2005 were based on the State Department of Planning and Economic Development's (DPED) Oahu Population and Employment Projections prepared in July, 1984. KLC subsequently derived the projections for specific land uses and absorption demand from DPED's population projections as distributed to the Ewa area by the County's General Plan. The following tables summarize projections of demand for the Ewa Town Center:

RANGE OF PROJECTIONS FOR POPULATION, HOUSING UNITS,
EMPLOYEE & HOTEL/MOTEL ROOMS FOR EWA TOWN CENTER
(INCLUDES THE PROPERTY AND KAPOLEI VILLAGE)
1985-2005

	<u>1985</u>	<u>1986-</u> <u>1990</u>	<u>1991-</u> <u>1995</u>	<u>1996-</u> <u>2000</u>	<u>2001-</u> <u>2005</u>	<u>TOTALS</u> <u>AS OF</u> <u>2005</u>
<u>ADDITIONAL</u> <u>POPULATION</u>	0	0- 866	1,265- 4,159	2,230- 4,330	2,288- 4,330	5,782- 13,685
Ewa Cumulative Totals ¹	31,405	33,514- 46,647	38,105- 72,065	44,302- 92,071	50,732- 99,452	--
<u>DEMAND FOR</u> <u>ADDITIONAL</u> <u>HOUSING UNITS</u>	0	0- 300	435- 1,400	755- 1,500	775- 1,500	1,965- 4,740
Ewa Cumulative Totals ¹	8,216	8,846- 13,062	10,746- 21,428	13,401- 29,659	16,201- 33,850	--
<u>ADDITIONAL</u> <u>EMPLOYMENT</u>	0	3,327- 5,176	1,361- 5,100	2,147- 4,991	2,447- 4,106	9,282- 19,373
Ewa Cumulative Totals ¹	4,400	9,732- 12,115	14,272- 21,863	18,567- 28,742	21,992- 34,315	--
<u>DEMAND FOR</u> <u>ADDITIONAL</u> <u>HOTEL/MOTEL ROOMS</u>	0	0	0	0	0-100	0-100
Ewa Cumulative Totals ¹	0	0- 500	2,800- 4,000	2,800- 5,200	2,800- 5,300	--

¹Ewa Cumulative Totals projections include the Property, Kapolei Village and other projects in Ewa such as Ko'Olina Resort, Ewa Marina and Ewa Plantation.

Source: Kenneth Leventhal & Company, March 1986, PROJECTIONS OF FUTURE EMPLOYMENT, POPULATION AND LAND USE FOR THE EWA TOWN CENTER, (Petitioner's Exhibit Y)

PROJECTED DEMAND FOR LAND USES
FOR EWA TOWN CENTER
(INCLUDES THE PROPERTY AND KAPOLEI VILLAGE)
1985-2005

	<u>1985</u>	<u>1986- 1990</u>	<u>1991- 1995</u>	<u>1996- 2000</u>	<u>2001- 2005</u>	<u>TOTALS AS OF 2005</u>
Residential (Acres)	0.0	7.3- 51.5	51.8- 141.1	81.9- 141.1	65.6- 112.9	206.0 446.0
Ewa Business Park Bldg. Sq. Footage	0	92,340- 226,364	177,108- 587,337	338,230- 637,148	383,653- 630,744	991,000 2,081,000
Saleable Acres	0.0	7.1- 16.8	12.7- 41.8	24.3- 45.9	27.7- 46.1	71.0 150.0
Commercial Development Bldg. Sq. Footage	0	719,905- 961,596	110,493- 507,196	149,780- 418,616	154,438- 227,162	134,000 2,114,000
Saleable Acres	0.0	63.7- 84.9	9.8- 44.7	13.3- 37.0	13.7- 18.3	100.0 184.0
Civic Center Development Bldg. Sq. Footage	0	0- 40,000	40,000- 110,000	40,000- 130,000	60,000- 150,000	140,000 430,000
Saleable Acres	0.0	4.7- 9.5	3.7- 11.9	4.0- 12.7	5.5- 12.6	17.0 46.0
Other Public Uses Bldg. Sq. Footage	0	0	0	0	0	0
Saleable Acres	0.0	89.9- 160.4	41.2- 181.4	65.7- 161.7	67.7- 110.3	264.0 613.0

Source: Kenneth Leventhal & Company, March 1986, PROJECTIONS OF FUTURE EMPLOYMENT, POPULATION AND LAND USE FOR THE EWA TOWN CENTER, (Petitioner's Exhibit Y).

33. Petitioner's market study highlighted the mid-range projections and summarized the important elements of the development of the Ewa Town Center as follows:

a) Total Ewa area population by the year 2005 is projected to be about 63,000, an increase of about 30,000 over the 1985 Ewa area population, with Ewa Town Center (ETC) accounting for 9,000 residents.

b) Most of the housing units projected for development in Ewa Town Center are planned to be affordable units.

c) Present Ewa area civilian employment is approximately 4,400, and is projected to increase by about 22,000 to 30,000 employees by 2005. Ewa Town Center is planned to be the primary employment location in Ewa, and ETC accordingly provides about 17,000 of the 22,000 increase in employment. The other significant generators of Ewa employment growth are Ko Olina and James Campbell Industrial Park.

d) By the year 2005, the employment/population ratio for Ewa is projected to be about 42 percent. This represents balance between jobs and residents in Ewa, and is close to the projected Oahu ratio of 47 percent. The 42 percent ratio indicates that Ewa residents will probably generate only a limited number of peak hour commute trips into Honolulu.

e) The projections indicate absorption of over three million square feet of building space in Ewa Town Center by 2005, with the Ewa business parks and ETC commercial uses each absorbing about 1.4 million square feet. The estimated mid-range commercial absorption of 740,000 square feet for the 1986-1990 period is to a large extent demand for community-level commercial uses by the present Ewa area population.

As commercial centers are developed in Ewa Town Center over the next 5-10 years, Ewa residents will progressively shift to ETC commercial centers for their shopping needs.

f) Approximately 930 net acres of land area are projected to be absorbed in Ewa Town Center by the year 2005. Net acres means land directly used for public and private uses, and do not include land used by streets, drainage, utility easements, etc., or land used by college campuses. It is estimated that there could be a gross ETC absorption of some 1,100-1,200 acres by 2005.

34. Petitioner states that affordable housing within the Ewa Town Center is of critical importance to the success of the proposed Kapolei Town Center. The State's proposed Kapolei Village will be located adjacent to the Property and will provide affordable housing opportunities to employees within the Kapolei Town Center.

35. Petitioner indicates that if the State is not able to develop the proposed Kapolei Village, Petitioner will make arrangements with developers to see that affordable housing is developed to assure the success of Kapolei Town Center.

36. Petitioner did not present any prices for the proposed land uses on the Property. However, in order to attract businesses to locate on the Property, KLC stated that land prices must be one-quarter to one-third lower than the prices of land for urbanized areas.

37. Petitioner did not prepare an economic feasibility report. However, KLC indicated that this type of development on the U.S. Mainland has had severe financial difficulties during startup. KLC indicated a negative cash flow for the first ten years of development is anticipated and a positive cash flow is anticipated thereafter.

IMPACT UPON RESOURCES OF THE AREA

Air Installations Compatible Use Zone (AICUZ)

38. The U.S. Department of the Navy (Navy) has prepared an Air Installations Compatible Use Zone (AICUZ) Study (1984) for NASBP. The NASBP AICUZ identifies significant noise contours and Accident Potential Zones (APZ) for areas under aircraft flight paths which have a higher than normal potential for aircraft accidents. Petitioner states the Property is well outside of the current APZ.

39. By letter to Petitioner dated September 24, 1987 (Petitioner's Exhibit AA), the Navy indicated the 1984 NASBP AICUZ was being updated and that the projected 65 Ldn (day-night) noise contour over the Property is no longer supported. The Navy further indicated that the APZ as published in the 1984 study will not change and is valid for planning purposes.

40. According to Petitioner, three noise studies have been prepared: 1) the Navy's 1984 AICUZ and ongoing update, 2) Petitioner's study of ambient noise, which included traffic as a source of noise, prepared for the Property on October, 1986, and 3) the State of Hawaii Housing Authority/City and County of Honolulu Department of Housing and Community Development analysis of the Navy and Petitioner's noise studies for the proposed Kapolei Village prepared in December, 1986.

The studies reflect no consensus as to the actual or projected noise impact that NASBP would have on the Property. Apparently the studies utilized different standards or procedures which resulted in increased or decreased apparent or projected noise impact. In addition, various assumptions are made on aircraft operations which are not utilized consistently. The potential for greater noise impacts is probable in the event military operations at NASBP increase.

41. The Navy testified that: ". . . an AICUZ is subject to change as the needs of the Navy and the national

defense require. Any aircraft in the Navy's inventory may, at some point in time, utilize NAS Barbers Point. Given the uncertain and volatile nature of international security affairs, no one can guarantee this Commission that the current state of operations and aircraft mix at Barbers Point will not be significantly altered in the future. Approving intense development, as proposed by the petitioner, would lay a foundation for future noise-related conflicts between the station and its neighbors. If the station is assigned new aircraft or new mission requirements, the Navy would then face the "no-win" alternative of compromising the station's mission or imposing greater noise and safety burdens on the community."

". . . Experience has taught us that intensive development near an air station results in a loss of flexibility for Navy operations that is not in the best interests of the nation, the State or the local community. NAS Barbers Point has a significant national security mission which is simply too important to be curtailed."

42. The Navy recommended that the Petitioner include a disclosure statement informing prospective purchasers/lessees that the area will be subject to noise from military aircraft overflights.

Other Noise Impacts

43. Petitioner's noise study also identified traffic corridors that will contribute to greater noise impacts when

the Property and surrounding areas are developed: Kalaeloa Boulevard, H-1 Freeway, NASBP Access Road and Farrington Highway.

a) Kalaeloa Boulevard and H-1 Freeway

The noise study indicated noise levels are considered "unacceptable" for residential development along a 100-foot wide strip on each side of Kalaeloa Boulevard and H-1 Freeway. In addition, noise levels are considered "normally unacceptable" for residential development within 400-feet of roadway centerline. These areas are proposed for light industrial uses within the Kapolei Town Center but may be used for residential purposes if mitigative measures are incorporated into the building design.

b) NASBP Access Road

Areas within 50 feet of the NASBP Access Road centerline are considered "unacceptable" for residential purposes. Residences that may situate between 50 and 200 feet off of centerline are considered "normally unacceptable" and must be shielded from roadway noise via a barrier wall or through acoustical treatments to reduce residential interior noise to acceptable levels.

c) Farrington Highway

Noise levels along Farrington Highway west of the NASBP Access Road (50 feet to 200 feet from the centerline of the roadway) fall within the "normally unacceptable" range for

residential structures. If residences are built in this area, they would require the same treatments as discussed above for residences fronting the NASBP Access Road (i.e., shielding via a barrier wall or through acoustical treatments to reduce residential interior noise levels).

44. Petitioner indicates other potential noise sources that may affect the Property. These include: (1) Palailai Landfill operations; (2) internal land uses; and, (3) construction activities.

The State Department of Health's letter dated August 11, 1987, to the Department of Business and Economic Development stated that industrial activities, agricultural activities, traffic and aircraft noise would result in adverse noise impacts on proposed residents of the project.

Agricultural Resources

45. Petitioner states that a long term impact of the proposed withdrawal of 890 acres of agricultural land is the loss of important agricultural lands and the impact on the profitability of Oahu Sugar Company.

46. Petitioner's proposal to withdraw Increment I from production will impact about 135-acres of currently cultivated sugarcane lands. Petitioner represents the proposed withdrawal is based on a demonstrated need for housing, employment, economic development or public facilities which overrides the need to retain Increment I in a State Land Use Agricultural District designation.

47. Waimanalo road, a cane haul access which serves fields on the Property and the surrounding area, traverses the Property and forms the southern boundary of Increment I. Petitioner states the development of Increment I will not impede the continued agricultural use of Waimanalo Road.

48. Petitioner's agricultural consultant, Jack Larsen, prepared a report evaluating the impact of a phased withdrawal of about 700 acres on the profitability of the Oahu Sugar Company.

The report indicates that Oahu Sugar Company (OSC) currently manages approximately 14,200 acres of plantation lands which cover portions of Central Oahu on each side of Kunia Road above Pearl Harbor, and portions of the Ewa Plain to the west of Pearl Harbor. In order to process harvested cane, OSC currently operates two sugar mill trains in tandem at their Waipahu processing facility.

49. Larsen's report examined five major continuing profitability factors of OSC as follows:

- a) Sugar production in Hawaii will depend upon the continued protection of the U.S. sugar industry by the U.S. Congress.
- b) It is very likely that profitable OSC operations will require about 100,000 tons of sugar annually in a double mill train system and 80,000 tons with a single mill train.

- c) Operating cost reductions and yield increases will continue to be the primary objective of OSC management.
- d) Long-term crop land withdrawals for urban use remain compatible with profitable sugar operations at OSC.
- e) No alternative crop prospects were found that are economically feasible sugar crop replacements at OSC.

50. Petitioner indicates that a ten-year summary of Hawaii Sugar Planters Association data on the sugar industry shows that OSC has averaged 100,000 tons annually with a range of 91,800 to 114,300 tons.

In addition, OSC has increased average plantation yields from 11.0 tons per acre (TPA) in 1977 to the current 14.87 TPA. Petitioner speculates that if plantation projections attain 16 and 17 TPA, then total plantation requirements will drop to under 12,000 acres while continuing to operate at 100,000 tons annually.

51. Petitioner referenced a report in the Village Park Expansion Environmental Impact Statement dated July 1986 entitled Proposed Village Park Expansion: Impact on Agriculture by Dr. Bruce Plasch which indicates that OSC could switch to a single train milling operation, releasing approximately 6,200 acres of land, and still remain viable.

Water Resources

52. Petitioner proposes to obtain the required water for Kapolei Town Center by withdrawing water from wells drilled in the Waianae Subarea of the Pearl Harbor Ground Water Control Area (PHGWA). According to Petitioner, the Department of Land and Natural Resources (DLNR) indicates that the Waianae Subarea has an established sustainable yield of 25 million gallons per day (mgd) of potable water of which 5.5 mgd is available for allocation upon approval of the Board of Land and Natural Resources.

53. Increment I is located over the boundary of the Waianae and coastal caprock. The Honolulu Board of Water Supply "No Pass" line extends through the Property and the Department of Health Underground Injection Control Line is located along the southern boundary of the Property. Petitioner indicated the reduction in the amount of groundwater recharge is slight and therefore not significant.

Historic and Archaeological Resources

54. Petitioner's archaeological consultant Paul Rosendahl conducted a preliminary archaeological reconnaissance survey of about 1400 acres during November 1986. This survey included the Property. The findings indicate that no archaeological remains are known to exist within the Property. Two historic sites within the Property, an irrigation ditch and a World War II military structure, were identified to be less than 50 years old.

The Oahu Railroad and Land Company right-of-way (Site 50-80-12-9714), which bounds the project area on the seaward side is listed on the National Register of Historic Places. A heiau and large rockshelter are reported to have been located on Puu Kapolei outside of the Property by McAllister (1933); however, these were said to have been destroyed prior to McAllister's 1930 field work.

55. Petitioner represents that in the event any previously unidentified sites or remains are encountered during construction and site work phases, work in the immediate area will cease until the State Historic Preservation Officer has been notified and is able to assess the impact and make further recommendations for mitigative actions, if warranted.

Air Quality

56. Petitioner's air quality consultant, J. W. Morrow, prepared an air quality impact report. The findings indicate that existing air quality in the Property appears to be in compliance with federal and state standards. Concentrations of the automotive-related pollutants are believed to be relatively low due to the current low level of source activity in the immediate area.

57. Petitioner anticipates the principal short-term adverse air quality impact will be from construction activity such as site preparation and earth moving.

The principal long-term adverse air quality impact will be from automotive-related pollutants.

58. The report predicts that there will be an initial decline in maximum 1-hour carbon monoxide (CO) levels. The levels, however, tend to increase after 1995. In all cases the projections made indicate compliance with the federal 1-hour CO standard. Under worst-case conditions, possible violations of the State 1-hour CO standard may occur along the H-1 Freeway between Palailai and Kunia by the year 2000. A concentration of the level of CO along Farrington Highway west of Palailai and Kalaeloa Boulevard is also projected to exceed the 1-hour standard by 2000.

59. Existing sources of air pollution in the general area which may have adverse effects on the proposed development are agricultural burning of sugarcane fields and industrial activities at the James Campbell Industrial Park (JCIP).

The impending construction of the proposed resource recovery facility and future construction of other as yet unidentified sources in JCIP may all contribute additional pollutants to the Ewa area. Petitioner states that these activities will have to be monitored by the responsible governmental agencies to assure continued compliance.

60. Petitioner proposes to mitigate short term fugitive dust by wetting down loose soil areas and by prompt paving or landscaping of bare soil areas.

Petitioner proposes to mitigate long-term air quality impacts from traffic by using structural improvements and

traffic demand reduction strategies to decrease traffic congestion.

Scenic and Visual Resources

61. The Property and the surrounding Ewa Plain adjacent to the Property are under sugarcane cultivation. Makakilo City and the Waianae Range are the predominant mauka views and BPNAS and JCIP are visible makai of the Property.

62. Petitioner recognizes the need to retain the scenic and visual resources of the area in order to assure that the proposed urban center has a "sense of place." Petitioner proposes the project to be designed with a series of major mauka-makai streets which will provide views of the local puus, the Waianae range and the Pacific Ocean. The two major physiographic features of the area, Puu Palailai and Puu Kapolei, will become major park areas and anchors for an extensive open space system.

Flora and Fauna

63. Petitioner indicates that the vegetation on the Property has been disturbed and greatly modified. Because of this condition, introduced plant species dominate the landscape.

64. Petitioner's biological consultant, Char and Associates, conducted a survey of the Property in October 1986. The findings of the survey indicate that the Property's plant communities consisted mainly of sugarcane, scrubland vegetation, ruderal vegetation, kiawe, and koa-haole. The

survey did not find any rare, threatened or endangered plant species on the Property.

65. The biological survey also indicates that due to the highly disturbed nature of the vegetation, as well as the dry climate on this part of Oahu, all but one of the observed bird species, the Pacific Golden Plover, were introduced (non-native).

The only mammal actually observed was the Feral Cat. Cat and Indian Mongoose tracks were found along the edge of the cane fields.

66. Petitioner believes the development of Kapolei Town Center will increase population in some bird species. Development in the mauka areas may adversely impact the habitat of the Pueo (Hawaiian Owl). However, a regional park is proposed for this area and the potential impact on the Pueo habitat is minimal.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water Service

67. The Property is located within the Board of Water Supply's Ewa - Waianae district. The existing water system consists of the following:

Well Sources:

Kunia I Wells (4.81 million gallons per day)

Hoaeae Wells (6.61 million gallons per day)

Booster Pumps:

Honouliuli Line Booster Station (four 7 million gallons per day)

Transmission Main:

30-inch in Farrington Highway from Honouliuli Booster Pump Station to Barbers Point Reservoir

Reservoirs:

Barbers Point 215 tanks - 4.0 million gallons and 5.0 million gallons

68. Petitioner's engineering consultant, R.M. Towill Corporation, prepared The Kapolei Water Master Plan Preliminary Report identified as Petitioner's Exhibit O (Report) which includes Kapolei Town Center and the proposed Kapolei Village housing development.

69. According to the Report, Kapolei Town Center is divided into four phases and is to be completed over 20 years. The total average daily water demand is 1.27 million gallons per day (mgd) with the majority of the demand occurring in the fourth phase. The maximum daily water demand and peak hour flow are 1.9 mgd and 3.8 mgd, respectively. The maximum fire flow requirement for all four phases is 4,000 gallons per minute (gpm) for industrial and municipal areas.

70. Petitioner also prepared the Ewa Long Range Master Plan (Petitioner's Exhibit OO) (Long Range Plan), which states that the development of adequate water resources to

accommodate Kapolei Town Center and the development of the Ewa Plain planning region is the responsibility of the Ewa Plains Water Development Corporation (EPWDC), whose membership consists of Petitioner and various Ewa developers. The EPWDC prepared the "Ewa Water Master Plan", as revised in August 1987, which identifies necessary source, transmission and storage systems for potable and non-potable water supplies necessary to accommodate the development programs of participating Ewa development projects. The Honolulu Board of Water Supply (BWS), which is responsible for operating and maintaining municipal water systems, approved the Ewa Water Master Plan in October 1987.

71. Petitioner's Long Range Plan indicates that as a conservation measure, the Ewa Water Master Plan promotes the use of dual water systems wherever possible for projects within the Ewa Plain planning region. Private, non-potable systems will be developed wherever possible for irrigation use. Single-family residential areas will be supplied exclusively by the potable water system.

72. The EPWDC, which consists of West Beach Estates (Developers of Ko Olina Resort), Tom Gentry (Developer of Soda Creek residential subdivision), and Campbell Estate (Ewa Marina and James Campbell Industrial Park), are committed to the first phase of improvements and will contribute their proportionate share of the cost of these improvements as follows:

West Beach Estates	25%
Campbell Estate	45%
Tom Gentry	<u>30%</u>
	100%

73. Petitioner estimates the cost of the first phase of improvements at approximately \$19 million which includes the development of the Honouliuli Well Field, one 1.0 million gallon (mg) and one 5.0 mg storage tanks, booster line along Farrington Highway, transmission line along Fort Weaver Road, and the Barbers Point Non-Potable Well Field and 1.5 mg Reservoir.

74. According to the Ewa Water Master Plan, new source wells in upper Honouliuli are required. Initially, 3.5 mgd is required for development through 1990. The ultimate potable requirement will reach 19.8 mgd upon completion of all projects.

75. Under the Ewa Water Master Plan, wells in upper Honouliuli will be developed first for potable water. Development of these wells is subject to meeting BWS water quality criteria and obtaining State Department of Land and Natural Resources (DLNR) approval for use of the groundwater. The first well has been drilled and is proposed to be outfitted with a 1,750 gallons per minute (gpm) pump. Further well development will be undertaken incrementally as demands require.

76. The Ewa Water Master Plan proposes that the next wells be developed with appropriate spacing in a northwest direction up into Honouliuli Gulch. All wells are proposed to be located at about the 400-foot elevation and designed to pump directly into the proposed 1.0 mgd tank with 420-foot floor elevation and 440-foot elevation spillway.

77. The State Department of Health strongly recommended that the proposed dual water system be designed to physically separate the potable and non-potable water systems to prevent cross connections of the two systems. The State Department of Health also recommended clear identification of the non-potable system to prevent the unintentional consumption of non-potable water.

Roadway and Highway Services and Facilities

78. The Property is accessible from Interstate H-1, Farrington Highway, BPNAS Access Road, and Kalaeloa Boulevard. Within the Property a network of private cane haul roads run through the area and connect to Waipahu.

Existing roadways operate well during peak periods, with traffic volumes ranging up to about 50% of capacities.

79. Petitioner projects that the development of the Kapolei Town Center will increase traffic volumes in the Ewa Plain and alter travel patterns on Oahu. The Property's potential employment opportunities could alleviate some congestion in corridors leading into downtown Honolulu.

80. Petitioner's traffic consultant focused on regional traffic impacts, and projects traffic demands will exceed highway system capacities at several locations within the next 20 years.

81. Petitioner anticipates that at the local level traffic conditions in Kapolei Town Center will be similar to existing local traffic conditions in outlying business areas with similar densities such as Waipahu, Kailua or Kaimuki.

Between the Property and Makakilo City, Petitioner estimates that 2,000 vehicles per hour will be generated and that adequate traffic service could be provided by the existing Makakilo Drive beyond the year 2000, with near capacity conditions occurring in year 2005 peak hours.

Petitioner estimates the capacity of Kalaeloa Boulevard to be 2,200 vehicles per hour. Capacity is projected to be reached by 1995.

82. Petitioner indicates regional traffic impacts to consist of:

a) An increase between Kapolei and Waianae on Farrington Highway. The capacity of the Farrington Highway is estimated to be 3,200 vehicles per hour and near-capacity conditions are projected to be reached during afternoon peak hours in the year 2005;

b) East of Kapolei, traffic volumes are projected to increase. The critical location being at Kunia Interchange

whereby the interchange's capacity of approximately 470 vehicles per hour will be exceeded in 1998;

c) Traffic west of Kunia Road will increase in both directions with estimated capacity of 5,400 vehicles per hour on H-1 and 1,100 vehicles per hour on Farrington Highway to be reached in 1998 (westbound) and 2003 (eastbound);

d) Near capacity conditions east of the Waiawa Interchange are predicted to occur about 1990.

83. Petitioner's traffic consultant recommended the following improvements as a result of its traffic analysis:

a) Traffic reduction strategies should be pursued immediately. High occupancy vehicle (HOV) lanes proposed for the highway system can be utilized to mitigate congestion. The Kapolei Town Center provides an excellent opportunity to create an employer-based ride sharing program on Oahu.

b) Use of contraflow lanes on highway corridors to increase peak hour capacities in existing peak directions should be carefully evaluated, in light of the rapid increase in traffic demands projected to occur in the "off-peak" direction.

c) A transportation terminal within Kapolei Town Center should be developed to encourage HOV use and accommodate regional mass transportation needs.

d) The Ewa Parkway between Kapolei Town Center and Ewa Villages/Ewa Marina should be constructed by year

2000. This corridor should have adequate width to accommodate a six-lane highway, fixed transit, and desired amenities. Initially, a two lane highway is projected to adequately serve year 2005 traffic demands.

e) A north-south roadway parallel to Fort Weaver Road will not be needed for development that is projected to occur by 2005.

f) The new loop ramp from westbound H-1 directly into the Kapolei Town Center should be constructed prior to 1995.

g) One additional off-ramp lane from the east and one additional on-ramp to H-1, eastbound should be provided before 2005.

84. Petitioner made no commitments regarding its participation in the traffic improvements recommended for the proposed development.

Wastewater Management

85. The City and County of Honolulu Honouliuli Wastewater Treatment Plant serves the Ewa area including Makakilo City. The existing Makakilo sewer trunk line runs along NASBP Access Road to the old railroad right-of-way on the northern side of NASBP and terminates at the Honouliuli sewage plant. Sewage is disposed, after treatment, off Barbers Point.

86. Petitioner estimates the Kapolei Town Center, when fully built, will generate a maximum daily flow of 6.5 mgd

and the peak daily flow estimated for Kapolei Village is approximately 5.5 mgd.

87. Petitioner's engineering consultant proposes that sewage generated by the project be treated at Honouliuli which has a current capacity of 25 mgd. The initial phase of development is proposed to be connected with the Makakilo trunk line along NASBP Access Road. Future phases are proposed to connect with the proposed Ko Olina sewer interceptors originating from the proposed resort. The proposed Kapolei Village will also tie into the proposed Ko Olina interceptors. In order to accommodate these projects and Ko Olina, the proposed Ko Olina interceptors will be sized at 36 inches for Phase I and 48 inches for Phase II.

88. Estimated sewage flows from the proposed Kapolei Town Center and the adjacent Ko Olina and Kapolei Village projects will exceed the Honouliuli treatment plant's capacity. Plans and requests for funding are underway to increase the plant's capacity to 51 mgd by 1994.

89. Petitioner did not make any commitments regarding its participation in the sewage infrastructure improvements recommended for the proposed development.

Drainage

90. Presently, storm runoff, originating from the Waianae mountains, crosses the Property by sheetflow or by natural drainageways and flows onto the NASBP. Two coral pits

located near the northern boundary of the NASBP receives a moderate amount of the runoff. However, the capacities of these pits are limited and may be inadequate during very large storms.

Flooding in portions of the NASBP have been reported for January 2 and 3, 1969, causing damage in the vicinity of the Enlisted Men's Housing Area.

91. Petitioner's proposed drainage improvements for the Kapolei Town Center include detention basins, a coral pit, and channels or culverts. Two basins are proposed, one located just west of Puu Kapolei and the second located towards the southwest, mauka of NASBP. Both basins are to be developed as large park and recreational areas. Overflows from a 100-year storm will flow into a drainage culvert connected to the James Campbell Industrial Park (JCIP) drainage channel which is disposed offshore. According to Petitioner, this system should alleviate runoff originating mauka of the Property and most areas on the Property except for the southeastern corner. Runoff from this corner is proposed to be disposed of in the existing coral pit located on the Property.

92. The Commanding Officer of NASBP (CO) expressed concern that the proposed project may compound the existing flooding problem due to an increase in impervious areas associated with all other developments planned for the area. In particular, the CO stated the drainage canal between NASBP

and JCIP may be too small to accommodate the increased load. The CO further stated that BPNAS seeks a commitment that there will be no increase in runoff or peak flows over existing conditions if the project is approved.

93. Petitioner made no commitments as to how it will contribute towards drainage improvements as a result of the development.

Solid Waste Disposal

94. Currently, residential areas near the project site are serviced by the City and County of Honolulu, Division of Refuse. Non-residential uses and multi-family residential areas are serviced by private refuse collection companies. Solid wastes are disposed of either at the Palailai Landfill which is near capacity and proposed to be closed, or the Waipahu Incinerator.

95. Petitioner proposes that private refuse collectors will service the commercial, office and light industrial areas on the Property and the refuse be disposed of at the new Waimanalo Landfill northwest of the Property. Petitioner also anticipates the Property to be served by the planned Garbage-to-Energy (H-POWER) facility in JCIP.

Schools

96. Barbers Point, Makakilo, Mauka Lani and Ewa, Iroquois Point, Kamiloa, Pohakea Ewa Beach Elementary Schools, Ilima Intermediate, and Campbell High School serve the Property and the surrounding area.

Petitioner's environmental assessment indicates that a comparison of existing enrollments with design capacity indicates that most Ewa schools have between 20 percent and 60 percent of their capacity to accommodate future growth.

97. In a letter to the Department of Business and Economic Development dated November 24, 1987, the Department of Education (DOE) indicated that the existing schools may be able to accommodate the students anticipated through 1992. The DOE however cannot assure the availability of classroom space beyond 1992. Legislative appropriations may be required on a timely basis to accommodate projected growth beyond 1992. Finally, DOE stated that the classroom requirements will depend on the timing of all subdivisions that affect the subject schools.

98. Petitioner states that in addition to an elementary school site being designated within the residential area located in the southern half of the Kapolei Town Center, the Ko Olina development has designated an elementary school site within its project area. The Kapolei Village development also provides areas to accommodate two elementary schools, one intermediate school, and one high school.

Recreational Facilities

99. Presently there are no existing parks or recreational facilities within the Property. Adjacent to the eastern border of the Property lies the 29-acre Puu Kapolei, a

former military reservation, a portion of which has been acquired by the City for park use. The park is not improved or maintained at the present time. The City Department of Parks and Recreation indicates that a shortage of recreational park areas exists in the Makakilo area.

100. Petitioner's market study projects a need for 134 net acres of park areas by the year 2005.

101. Petitioner's Long Range Plan proposes that a system of parks interlinked by greenbelts containing bikeways and pedestrian paths be included in its design theme. The greenbelt system connects all of the different land uses, and provides active and passive recreation for all residents and visitors.

The following park developments are proposed for the area: The 78-acre Kapolei Park, just south of Increment I (this Park includes the 29-acre Fort Barrette Park and has been identified as the site of a district park); a number of neighborhood parks within the residential areas in the southern portion of the Property; and the two neighborhood and one community park located within the major residential areas of the proposed Kapolei Village residential development.

102. In addition, Petitioner proposes that along the southern boundary of Kapolei Town Center and the OR&L right of way, a linear park would extend from Kalaeloa Boulevard to the NASBP Access Road. Puu Palailai, located mauka of the H-1

Freeway and the Property (currently used as a sanitary landfill), will be reclaimed and developed into a regional park.

Police Protection

103. Police service to the Ewa area is provided from the Pearl City station.

Petitioner's market study predicts that within 20 years of development, there will be a need for new police facilities in the vicinity and approximately 1.7 acres would be necessary to service the needs of the projected population. Petitioner proposes that a police station be accommodated within the 19.5 acres of public facility land uses within Increment I.

Fire Protection

104. Fire services to the Property are presently provided from the Makakilo station. Additional City Fire Department units are available from the Waipahu and Nanakuli stations.

The City and County of Honolulu Fire Department estimates that due to existing and future development in the Ewa, Campbell Industrial Park and Ko Olina areas, a new fire station will be needed within the Kapolei Town Center. The City and County of Honolulu Fire Department has requested that a site of about 25,000 square feet be set aside. Petitioner states it will coordinate plans for fire protection with the City and County of Honolulu Fire Department.

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Emergency Medical Services and Health Care Facilities

105. Currently, residents in the area use the Waipahu Clinic which serves the area from Waipahu to Waianae. Presently, the nearest hospital to the Property is the Moanalua Kaiser Medical Center. The closest emergency ambulance service is located in Waipahu and requires an eleven minute response time to the Property.

106. Petitioner's market study projects a need for new health care facilities to serve the Ewa population. The market study predicts that within 20-years of the initial development in Kapolei Town Center, there will be a need for new health care facilities in the vicinity, including clinic and hospital services.

Saint Francis Hospital began construction of a new hospital near the Farrington/Fort Weaver Road intersection in early 1987.

Power and Communications

107. The Property is not presently serviced by power and telecommunications utilities. Hawaiian Electric Company (HECO) maintains a 138 KV overhead transmission line (Kahe Power Plant to Campbell Industrial Park) which passes to the west of the Property mauka of the H-1 Freeway and terminates at the JCIP substation. HECO also maintains a 48 KV overhead transmission line servicing the NASBP which runs along the NASBP access road to the east of the Property.

In addition, a number of below-grade fuel lines are present in the area. An existing 8-inch Kahe Power Plant fuel oil pipeline runs from the industrial park along Kalaeloa Boulevard and then along the makai side of the OR&L right-of-way to the Kahe Power Plant. Chevron maintains a fuel pipeline along the makai side of the OR&L right-of-way south of the Property. A third underground pipeline extends along Kalaeloa Boulevard and turns eastward, running along the mauka side of Farrington Highway, traversing a portion of the Property.

Hawaiian Telephone Company also maintains telecommunications facilities in the project area at Makakilo, NASBP and the Honokai Hale subdivision.

108. Petitioner's preliminary consultations with HECO, Hawaiian Tel and CATV indicate that the project area can be serviced by the respective utilities with no adverse impact to existing and projected service levels.

Petitioner does not propose to relocate the pipeline easement lying along the mauka side of Farrington Highway. Current land use plans incorporate the easement into front-and side-yard setbacks and landscaped buffer areas of non-residential land uses (commercial, office and business park) within the Kapolei Town Center.

Petitioner indicates that provisions have been made to provide service access to this easement at all times.

Affordable Housing

109. Petitioner indicates a full range of housing will be provided in the surrounding area. Although no housing is proposed for Increment I, subsequent increments to the south will include a proposal for housing.

Deep Draft Harbor Facilities

110. Petitioner believes the existing and proposed expansion of the Barbers Point Deep Draft Harbor (Harbor) and Kapolei Town Center are complementary developments. The development of Kapolei Town Center and surrounding projects represent a major market that will create a demand initially for construction materials to build and outfit the hotels, homes, offices, shops and industrial buildings, and eventually, for consumer-type goods and services which could be brought into the area using the harbor facilities.

The Ewa Plain will in turn benefit from the Harbor. Petitioner anticipates the Harbor will provide a source of stevedoring and administrative jobs to service vessels. Petitioner believes the combination of less expensive land, the availability of large land parcels, lower land transportation costs, and access to Harbor facilities and ocean carriers will encourage the relocation of distribution-type firms to the adjacent JCIP, or to other industrial parks on the Leeward side.

SOCIAL AND ECONOMIC IMPACTS

111. Petitioner believes the development of the project will assist the accommodation and creation of a growing

population in the Ewa Plain and will allow Ewa residents to work close to home in employment centers such as Campbell Industrial Park, Barber's Point Naval Air Station, and the Ko Olina Resort area.

112. Petitioner's mid-range employment projections indicate that by the year 2005, Kapolei Town Center and the surrounding communities, principally Ko Olina and the James Campbell Industrial Park, will provide employment for about 12,400 and 26,170 persons, respectively.

113. Petitioner's economic analyst, Decision Analysts, prepared a study of the fiscal impacts of the proposed Kapolei Town Center which indicates that the State and County would derive substantial revenues from the development of Kapolei Town Center.

114. Petitioner projects that in terms of 1987 dollars and at projected development in the year 2005, annual County revenues derived from the Project are estimated to be about \$36 million. Expenditures to support the project would be about \$23.2 million per year, including debt service.

115. Petitioner estimates for the State, tax revenues generated by the 20-years of construction activity will be \$221 million. Expenditures which are estimated at \$41.5 million are to be spent on State-financed school, library, and freeway improvements.

STATE OF HAWAII'S AGREEMENT WITH PETITIONER

116. The State of Hawaii has recommended partial approval of the Petition, specifically the urbanization of 135 acres, which coincides with Increment I of the proposed development.

117. A major concern of the State in its review of the petition has been the viability of the Ewa Plain becoming the proposed Secondary Urban Center. The State's concern has centered on the infrastructure requirements, and the probability of the area developing into an employment center. Of concern also is the impact of the development of the area on agriculture.

118. Based on the State of Hawaii's understanding with the Petitioner, the State agrees that the Ewa Plain area, with proper attention, can be developed into the proposed second urban center.

119. The State of Hawaii has agreed with the Campbell Estate with respect to the following items:

- "a. The sale of 830 acres at \$19,400 per acre for the development of Kapolei Village in accordance with the Housing Finance and Development Corporation's (HFDC) Master Plan. 175,000 gallons/day of water will also be provided to HFDC for the first phase of the development. The development of Kapolei Village as a planned residential community should contribute towards the necessary population base (as well as provide much needed affordable housing) to make the proposed commercial center a reality.

- "b. At Barbers Point Harbor, the conveyance of 87 acres of land at no cost to the State, including 37 acres which were previously identified for transfer if need is demonstrated, and the sale of 56.6 acres at 50% of fair market price, not exceeding \$1.50 per square foot, plus escalation, based on comparables in the adjoining industrial area. The State in turn, will accelerate the development of the Harbor, including Phases I and II, of its Harbor Development Plan. The conveyance of the land, and its development as part of the Harbor should contribute towards making the industrial areas more effective as an employment center. Approximately 1,600 feet of pier will be constructed at the State's expense. The Legislature appropriated \$18 million this year to proceed with Phases I and II.
- "c. The conveyance at no cost of at least 40 acres of land in the proposed Town Center area with all off-site costs to be borne by the Campbell Estate. If need can be demonstrated, additional lands may be made available to the State at no cost. Possible additional public uses may include a new campus for the University of Hawaii. The establishment of governmental offices/services in the Town Center should also contribute towards the establishment of the Second Urban Center.
- "d. The Campbell Estate is aware that the State, through the Board of Land and Natural Resources intends to utilize the constitutional provisions regarding land-banking to acquire through condemnation, if necessary, additional acreage -- up to 3,000± -- to protect agriculture, and to provide options for the future."

CONFORMANCE WITH URBAN DISTRICT STANDARDS

120. The Property meets the standards applicable in establishing boundaries of the Urban District set forth in Section 15-15-18 of the Commission's Rules as follows:

- a. The proposed Kapolei Town Center will be a "city-like" concentration of people, structure, streets, urban level of services and related land use.

b. The Kapolei Town Center will be a new center for employment. In addition, the project will be proximately located to other centers of employment, including Ko Olina Resort, the James Campbell Industrial Park, the Barbers Point Deep Draft Harbor, Barbers Point Naval Air Station, West Loch Naval Operations and the developing community shopping center on the triangular parcel of land bounded by H-1 Interstate Highway, Farrington Highway and Makakilo Drive.

c. Petitioner has presented evidence regarding the economic feasibility of the development and Petitioner's financial capability to carry out the development.

d. The City and County of Honolulu General Plan has designated the area for future urban growth and new urban concentration.

e. The development of Kapolei Town Center will not contribute toward scattered spot urban development.

f. Kapolei Town Center will be developed on land sites with satisfactory topography and drainage and reasonably free from the danger of adverse environmental effects.

g. The majority of the Property is relatively level and readily adaptable for urban development. Basic services such as sewers, transportation, water, sanitation, schools, parks, police and fire protection will be provided as needed to serve the development.

h. Although the development of the Property will result in lands being withdrawn from sugarcane production, the reclassification is reasonably necessary for urban growth.

CONFORMANCE WITH THE HAWAII STATE PLAN

121. The proposed reclassification of the Property addresses the following goals, objectives, policies and priority guidelines of the Hawaii State Plan, Chapter 226, HRS: State Goals

- 226-4(1) A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations.
- 226-4(2) A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.
- 226-4(3) Physical, social, and economic well-being, for individuals and families in Hawaii, that nourishes a sense of community responsibility, of caring, and of participation in community life.

The development of Kapolei Town Center is envisioned to be a physical environment characterized by beauty, cleanliness, quiet, stable natural systems and uniqueness. The

development of Kapolei Town Center with its full complement of employment opportunities, public facilities, governmental service functions and related housing will help achieve a strong, viable economy characterized by stability, diversity and growth.

Objective and Policies for Population

- 226-5(b) (1) Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.
- 226-5(b) (7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

By focusing population and employment growth in the secondary urban center, the state's population objective of managing population growth and planning the development and availability of land and water resources in a coordinated manner, are met.

Objectives and Policies for the Economy - In General

- 226-6(a) (1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.

As a secondary employment center, the project will help increase and diversify employment opportunities to achieve full employment, increased income and job choice, and improve living standards.

Objective and Policies for the Physical Environment-Scenic, Natural Beauty, and Historic Resources

226-12(b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.

Petitioner proposes the physical characteristics, landscaping, and layout of Kapolei will be designed in a manner that will complement the natural beauty and scenic assets of the area.

Economic Priority Guidelines

226-103(a) Priority guidelines to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy.

The development of a secondary urban center is fully consistent with the state's economic priority guidelines of stimulating economic growth, encouraging business expansion and development, providing jobs and achieving stable and diversified economy.

INCREMENTAL DISTRICTING

122. Full urban development of the entire Property cannot reasonably be completed within five years from the date of county zoning approval. Petitioner proposes to initially develop Increment I of approximately 135 acres and the remaining balance of approximately 755 acres is to be developed in subsequent increments.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended, and the Commission Rules, the Commission finds upon a preponderance of evidence that the reclassification of the lands within Increment I of the Property, and approximately shown on Exhibit "A" attached hereto and incorporated herein by reference, consisting of approximately 135 acres of land situate at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, identified as Oahu Tax Map Key Nos.: 9-1-16: portion of 1 and portion of 24, from the Agricultural District to the Urban District for the Kapolei Town Center, subject to the conditions and pre-conditions in the Order, is reasonable, nonviolative of Section 205-2, Hawaii

Revised Statutes, and is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission further concludes that inasmuch as full development of the lands within the Subsequent Increments of the Property, as approximately shown in said Exhibit "A", consisting of approximately 755 acres of land, cannot be reasonably completed within five years from the date of final approval by the City and County of Honolulu in this matter, incremental districting of the lands within the Subsequent Increments of the Petitioner's development identified as Oahu Tax Map Key Numbers: 9-1-15: portion of 4; 9-1-16: portion of 1, portion of 4, 5, 6, portion of 9, 12, 13, portion of 16, 18, portion of 24, 30; 9-2-03: portion of 2, 12; and 9-2-19: portion of 1, situate at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, from the Agricultural to the Urban District and amendment of the Land Use District Boundaries to permit the development of the Subsequent Increments, subject to the conditions and pre-conditions in the Order, is reasonable, nonviolative of Section 205-2, Hawaii Revised Statutes, and consistent with the Commission Rules.

ORDER

IT IS HEREBY ORDERED that a portion of the Property identified as Increment I, consisting of approximately 135 acres, being the subject of Docket Number A87-613 by The

Trustees Under the Will and of the Estate of James Campbell, Deceased, situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii, identified as Oahu Tax Map Key 9-1-16: portion of 1 and portion of 24, and approximately identified on Exhibit "A", attached hereto and incorporated by reference herein, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved subject to the following conditions and pre-conditions of approval.

IT IS ALSO HEREBY ORDERED that the remaining balance of the Property, identified as the Subsequent Increments, consisting of approximately 755 acres, situate at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, identified as Oahu Tax Map Key 9-1-15: portion of 4; 9-1-16: portion of 1, portion of 4, 5, 6, portion of 9, 12, 13, portion of 16, 18, portion of 24, 30; 9-2-03: portion of 2, 12; and 9-2-19: portion of 1, and approximately identified on said Exhibit "A", shall be and the same is approved for incremental districting pursuant to Section 15-15-78 of the Commission Rules and that redistricting of the Subsequent Increments from the Agricultural District to the Urban District will be granted upon receipt of an application by Petitioner for redistricting of the Subsequent Increments upon a prima facie showing that there has occurred substantial completion of the on-site and off-site improvements and employment opportunities within Increment I and in accordance with the Petitioner's development

plan as represented, within five years of the date of final approval by the City and County of Honolulu subject to the conditions and pre-conditions as follows:

1. Kapolei Town Center shall be a commercial, industrial, government and business center. There shall be no residential construction in the entire petition area consisting of 890 acres without Land Use Commission approval.

2. Petitioner shall fund and construct the necessary transportation improvements to mitigate impacts from the subject project on an equitable basis with adjoining landowners and developers and/or other Federal, State or County agencies as determined by the State Department of Transportation. These improvements shall be implemented on a schedule acceptable to and approved by the State Department of Transportation.

3. Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

4. Petitioner shall immediately stop work and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, paving or walls be encountered during the project's development.

5. Petitioner shall provide water source and transmission to service the subject project.

6. Petitioner shall provide drainage improvements for the subject project and shall coordinate off-site

improvements with the State Housing Finance and Development Corporation and the Barbers Point Naval Air Station.

7. Petitioner shall construct or produce binding agreements to construct in the 135 acre Increment I a minimum of 1.0 million square feet of facilities for office space, commercial space, business park/light industrial and other uses.

8. Petitioner shall construct the Kapolei Shopping Center situated on 30 acres within the existing Urban District.

9. As Petitioner has advanced as justification for a secondary urban core at the Kapolei Town Center, the provision of affordable housing at Kapolei Village, the potential relocation of governmental offices to the town center and the potential expanded uses of the Barbers Point Deep Draft Harbor, the reclassification shall be subject to the following pre-conditions listed in these sub-paragraphs 9.a., b. and c.:

a. The execution of an agreement with the State Housing Finance and Development Corporation for the sale of 830 acres at \$19,400 per acre for the development of Kapolei Village in accordance with the State Housing Finance and Development Corporation's master plan and for provision of 175,000 gallons per day of water for the first phase of development.

b. The execution of an agreement or document evidencing the Petitioner's commitment to provide forty acres to the State of Hawaii at no cost for governmental offices or

other uses in the Kapolei Town Center with all off-site costs to be borne by the Petitioner.

c. The execution of an agreement or document evidencing the Petitioner's commitment to provide 87 acres at no cost to the State and the sale to the State of 56.5 acres at 50 percent of fair market value not to exceed \$1.50 per square foot, plus escalation based on comparables in the adjoining industrial area, to increase the productive capacity of Barbers Point Deep Draft Harbor.

The agreement referenced in sub-paragraphs 9.a., b. and c. is the oral agreement entered into between the State of Hawaii and Petitioner involving mutual rights and obligations.

The only pre-conditions to reclassification (as opposed to conditions upon approval of reclassification) are those listed in these sub-paragraphs 9.a., b. and c.

10. As Petitioner has testified that the portion of the agreement set forth in sub-paragraph 9.c. hereinabove is subject to approval by the Probate Court of the State of Hawaii, Petitioner shall obtain approval of the Probate Court of such portion of the agreement as is described in 9.c. above.

11. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning and the City and County of Honolulu Department of General Planning in connection with the status of the project and Petitioner's progress in complying with the conditions imposed.

12. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

13. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the Property covered by the approved petition prior to the development of the Property.

14. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

DOCKET NO. A87-613 - THE TRUSTEES UNDER THE WILL AND OF THE ESTATE
OF JAMES CAMPBELL, DECEASED

Done at Honolulu, Hawaii, this 23rd day of September 1988,
per motions on June 29, 1988 and September 7, 1988.

LAND USE COMMISSION
STATE OF HAWAII

By *Renton L. K. Nip*
RENTON L. K. NIP
Chairman and Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Vice Chairman and Commissioner

By *Sharon R. Himeno*
SHARON R. HIMENO
Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Commissioner

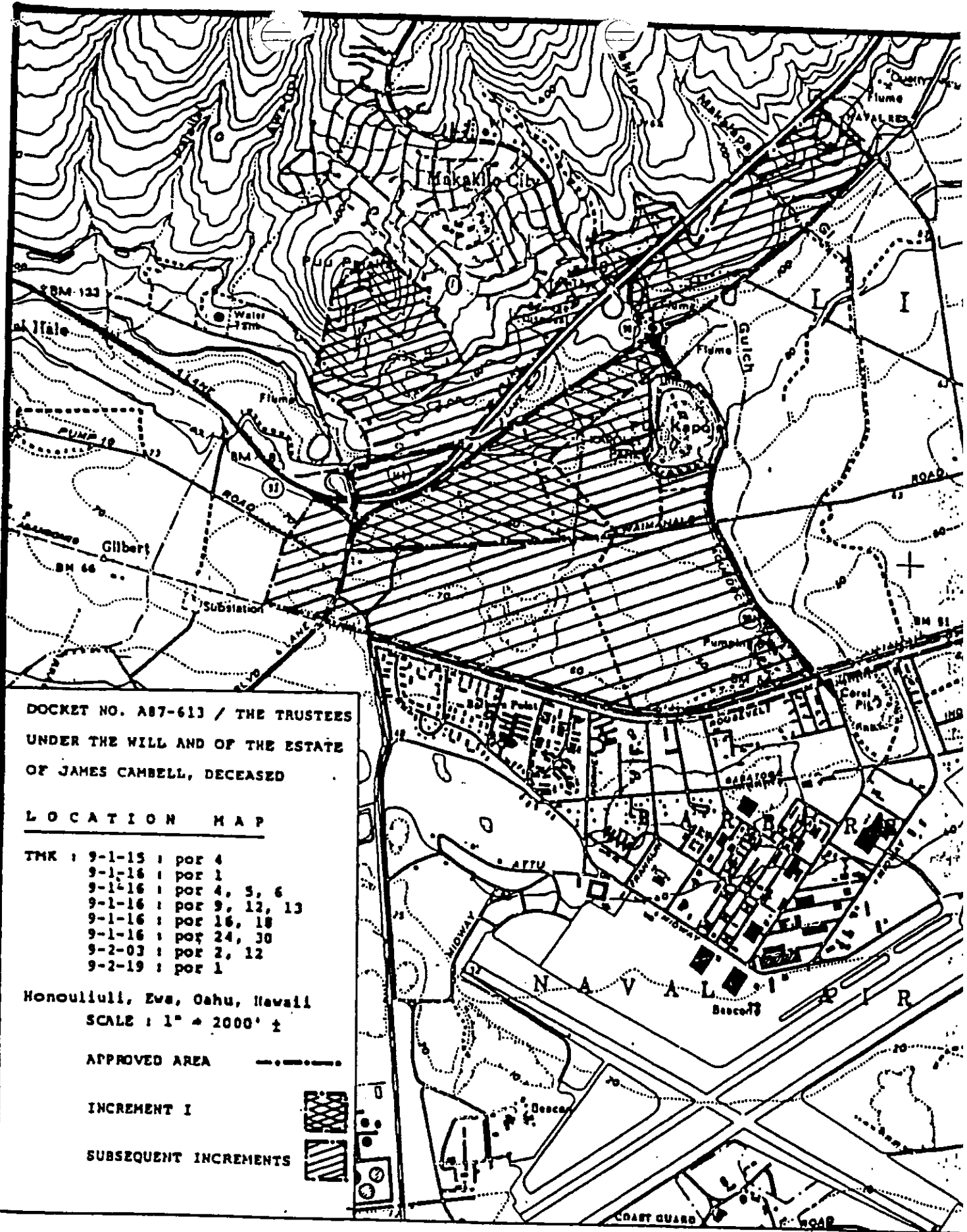
By *Toru Suzuki*
TORU SUZUKI
Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

By *Richard B. F. Choy*
RICHARD B. F. CHOY
Commissioner

By *Allen Y. Kajioka*
ALLEN Y. KAJIOKA
Commissioner

By *Teofilo Phil Tacbian*
TEOFILO PHIL TACBIAN
Commissioner



DOCKET NO. A87-613 / THE TRUSTEES
 UNDER THE WILL AND OF THE ESTATE
 OF JAMES CAMBELL, DECEASED

LOCATION MAP

- TMR : 9-1-15 : por 4
 9-1-16 : por 1
 9-1-16 : por 4, 5, 6
 9-1-16 : por 9, 12, 13
 9-1-16 : por 16, 18
 9-1-16 : por 24, 30
 9-2-03 : por 2, 12
 9-2-19 : por 1

Honouliuli, Ewa, Oahu, Hawaii

SCALE : 1" = 2000' ±

APPROVED AREA 

INCREMENT I 

SUBSEQUENT INCREMENTS 

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A87-613
THE TRUSTEES UNDER THE WILL AND)	
OF THE ESTATE OF JAMES CAMPBELL,)	THE TRUSTEES UNDER THE
DECEASED)	WILL AND OF THE ESTATE
	OF JAMES CAMPBELL,
	DECEASED
To Amend the Agricultural Land Use)	
District Boundary into Urban Land)	
Use District for Approximately 890)	
acres of land at Honouliuli, Ewa,)	
Island of Oahu, State of Hawaii,)	
Tax Map Key Numbers: 9-1-15:)	
Portion of 4; 9-1-16: Portion of 1,)	
Portion of 4, 5, 6, Portion of 9,)	
12, 13, Portion of 16, 18, Portion)	
of 24, 30; 9-2-03: Portion of 2,)	
12; and 9-2-19: Portion of 1)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

CERT. DONALD A. CLEGG, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

CERT. IVAN LUI-KWAN, ESQ., Attorney for Petitioner
Carlsmith, Wichman, Case, Mukai & Ichiki
P. O. Box 656
Honolulu, Hawaii 96809

DATED: Honolulu, Hawaii this 23rd day of September, 1988.



ESTHER UEDA, Executive Officer

DOCUMENT EVIDENCING PETITIONER'S COMMITMENTS

STATE OF HAWAII

OFFICE OF STATE PLANNING

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF LAND AND
NATURAL RESOURCES

TRUSTEES UNDER THE WILL OF THE
ESTATE OF JAMES CAMPBELL,
DECEASED

X8911276

EXHIBIT B
EXHIBIT 2

DOCUMENT EVIDENCING PETITIONER'S COMMITMENTS

This Document Evidencing Petitioner's Commitments is made on this 11th day of April, 1989 by and between the State of Hawaii by its Office of State Planning, the Department of Transportation and the Department of Land and Natural Resources; and F. E. Trotter, Inc., W. H. McVay, Inc., P. R. Cassidy, Inc. and H. C. Cornuelle, Inc., the duly appointed, qualified and acting Trustees Under the Will and of the Estate of James Campbell, Deceased ("Estate") acting in their fiduciary and not in their individual corporate capacities.

R E C I T A L S

1. The Estate filed a Petition on June 29, 1987, and an amendment to the Petition on August 26, 1987, pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended, to amend the Land Use District Boundary to reclassify approximately 890 acres of land situate at Honouliuli, Ewa, Island of Oahu, State of Hawaii, Oahu Tax Map Numbers: 9-1-15: Portion of 4; 9-1-16: Portion of 1, Portion of 4, 5, 6, Portion of 9, 12, 13, Portion of 16, 18, Portion of 24, 30; 9-2-03: Portion of 2, 12; and 9-2-19: Portion of 1, from the Agricultural District to the Urban District to develop Kapolei.

2.- The State of Hawaii Land Use Commission ("LUC") entered Findings of Fact, Conclusions of Law and Decision and Order on September 23, 1988 ("Decision and Order") which granted the Estate's Petition subject to certain conditions and pre-conditions.

3. The pre-conditions contained in the Decision and Order are listed as follows:

9. As Petitioner has advanced as justification for a secondary urban core at the Kapolei Town Center the provision of affordable housing at Kapolei Village, the potential relocation of governmental offices to the town center and the potential expanded uses of the deep draft harbor, the reclassification shall be subject to pre-conditions listed in these sub-paragraphs 9.a., b. and c. below:

a. The execution of an agreement with HFDC for the sale of 830 acres at \$19,400 per acre for the development of Kapolei Village in accordance with the HFDC's master plan and for provision of 175,000 gallons per day of water for the first phase of development.

b. The execution of an agreement or document evidencing the Petitioner's commitment to provide forty acres to State of Hawaii at no cost for governmental offices or other uses in Kapolei Town Center with all off-site costs to be borne by the Petitioner.

c. The execution of an agreement or document evidencing the Petitioner's commitment to provide 87 acres at no cost to the State and the sale of 56.5 acres at 50 percent of fair market value not to exceed \$1.50 per square foot plus escalation based on comparables in the adjoining industrial area to increase the productive capacity of Barbers Point Harbor.

The agreement referenced in sub-paragraph 9.a., b. and c. is the oral agreement entered into between the State of Hawaii and Petitioner involving mutual rights and obligations.

The only pre-conditions to reclassification (as opposed to conditions upon approval of reclassification) are those listed in these sub-paragraphs 9.a., b. and c.

4. The Estate wishes to formally commit to the pre-conditions contained in subparagraphs 9.b. and c. in satisfaction of the Decision and Order, subject, however, to fulfillment by the State of the consideration for which the commitments are made.

NOW, THEREFORE, in compliance with and in satisfaction of subparagraphs 9.b. and c. of the LUC's Decision and Order and in consideration of the mutual promises contained herein, the parties to this Document Evidencing Petitioner's Commitments hereby agree as follows:

A. GENERAL PROVISIONS

1. The State shall, where appropriate, support and recommend approval of Estate's applications with the City and County of Honolulu for land use changes, permits or approvals, including but not limited to rezoning, development plan amendments, general plan amendments, special management area permits, variances and conditional use permits relating to any and all land within the approved Petition area and the Barbers Point Harbor Area.

2. The State, in an effort to encourage Barbers Point Harbor Area use by appropriate carriers, shall undertake improvements to the Harbor area, subject to legislative appropriations.

3.

B. KAPOLEI TOWN CENTER

1. Estate shall provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations, at no cost, upon execution of building construction contracts for governmental offices or other public facilities in Kapolei Town Center with all off-site costs to be borne by the Estate. The property will be conveyed incrementally as reasonably required for the Planned Improvements based on execution of building construction contracts for governmental offices or other facilities ("Planned Improvements"), as more specifically described in paragraph B.2. below.

2. Estate's obligation to make any conveyances of any portion of the foregoing 40 acres will terminate on the tenth anniversary of this Document Evidencing Petitioner's Commitments ("Document"), unless by that date the State has executed building construction contracts for governmental offices or other public facilities on such portion(s) of the subject property. Within such ten year period, the Estate's obligation shall be to convey portions of the property in increments, as reasonably required for the Planned Improvements. By way of example, if the State's Planned Improvements require a land area of 5 acres, the Estate's obligation shall be to convey 5 acres. As a further example, if on the tenth anniversary of execution of this Document, the

State will have required 30 acres for its Planned Improvements, the Estate will have no further obligation to convey the remaining 10 acres.

C. BARBERS POINT HARBOR AREA

1. Subject to Probate Court approval and upon applicable subdivision, Estate agrees to convey (1) parcels 2 and 3 (approximately 84 acres) at no cost to the State, (2) parcel 1 (5.3 acres) at no cost to the State upon consummation of the tri-party agreement referenced in this paragraph C.1., and (3) under threat of condemnation, parcel 4 (approximately 56.5 acres) in accordance with the terms and conditions specified in paragraph C.2. below. Said parcels of land are identified on the map attached hereto as Exhibit A. The Estate's agreement to provide lands to the State as provided in this paragraph shall, upon the conveyance thereof, satisfy, extinguish and terminate the Estate's obligations to convey additional lands to the State pursuant to that certain letter agreement dated August 24, 1981 between the Estate and the State of Hawaii Department of Transportation ("Letter Agreement"), attached hereto as Exhibit B and as such obligations are referred to in paragraphs (3), (4) and (5) of said Letter Agreement. The conveyance of parcels 2 and 3 shall be made by December 31, 1990. The 5.3 acre parcel will be conveyed to the State, at no cost, by the same date, pursuant to the tri-party agreement being negotiated by the Estate, the

State and Cook Inlet Region, Inc., unless said date is extended by the State. Otherwise, the Estate will convey a similar size parcel contiguous to the harbor backup area at no cost to the State.

2. The State has the option to acquire under threat of condemnation, based on a single acquisition at 50 percent of fair market value not to exceed \$1.50 per square foot, approximately 56.5 acres of land (parcel 4) situate at the Barbers Point Harbor Area as shown on Exhibit A attached hereto. The acquisition cost of \$1.50 per square foot shall be increased based on the rate of increase of land and rental values at James Campbell Industrial Park to reflect the appreciated value of the subject harbor property from and after December 31, 1988, not to exceed 10% per annum compounded; provided, however, that the Estate's obligation to convey said 56.5 acres at the above-described acquisition cost shall terminate on the fifth anniversary of this Document. From and after the fifth anniversary of this Document through December 31, 1999, the State may proceed to acquire under threat of condemnation said 56.5 acres of land at the cost of fifty percent (50%) of the fair market value of said 56.5 acres of land then prevailing at the time of such acquisition; provided, however, that the Estate's obligation to convey said 56.5 acres at the cost of fifty percent (50%) of the fair market value shall terminate on December 31, 1999, if the State has not

commenced any action to acquire said land; provided further, however, that in the event Hawaiian Cement continues to quarry coral, or Grace Pacific continues to process coral, on parcels 2 and 3 beyond December 31, 1999, pursuant to paragraphs C.4.b. and c. of this Document, then the Estate's obligation to convey said 56.5 acres at the cost of fifty percent (50%) of fair market value shall be extended until such date that Hawaiian Cement ceases to quarry coral, and Grace Pacific ceases to process coral, on parcels 2 and 3 ("Alternate Option Expiration Date"), but no later than October 31, 2010. The Estate will provide written notice to DOT at least one and one-half (1 1/2) years in advance of the availability of parcels 2 and 3 to permit the State to develop its plans and to secure necessary funding for development of parcels 2 and 3. In the event DOT does not receive the full one and one-half (1 1/2) years of written notice prior to the Alternate Option Expiration Date, such Alternate Option Expiration Date shall be extended to the date which is one and one-half (1 1/2) years after such written notice is given to DOT, but in any event no later than October 31, 2010. Regardless of the formula used to determine the acquisition cost of said 56.5 acres, the State has agreed that the Estate shall be obligated to convey the 56.5 acres to the State only upon date of execution by the State of a contract for dredging and excavation of an additional slip suitable for construction of corresponding berthing facilities for deep

draft vessels that ordinarily service Hawaii and which would expand the basin area in the approximate location of parcel 2 on the 84 acre site (parcels 2 and 3). Within six (6) months of completion of said dredging and excavation, the State shall execute contracts for preliminary engineering for sounding which precede construction of said slip and corresponding berthing facilities; and within eighteen (18) months of completion of said dredging and excavation, the State shall execute contracts for construction of said slip and corresponding berthing facilities. Basic improvements, i.e., pier, paved areas and lighting will be provided for the container facility at the harbor excluding special equipment and facilities to be provided by the operator(s). Barbers Point Harbor will be improved as necessary to be fully functional for container operator(s). This Document shall not prejudice the State's right to acquire through condemnation the 56.5 acres at one hundred percent (100%) of its fair market value unconditionally.

3. Conveyances and acquisition of lands in the Barbers Point Harbor Area described above, other than by a condemnation action, shall be subject to approval of the Probate Court, First Circuit Court, State of Hawaii, Equity No. 2388, the Estate of James Campbell, Deceased ("Probate Court"), and failure of the Probate Court to grant approval of said conveyances and/or acquisition shall discharge and release the

State from performance of its obligation to construct pier facilities or storage areas on the respective 31 acre (parcel 2), 53 acre (parcel 3) and 56.5 acre (parcel 4) land areas on an accelerated basis; provided, however, that in such event, the Estate will still be obligated to convey parcels 1 and 2 to the State under this Document as the Letter Agreement and the Contract to Sell Coral in Place, referenced in said Letter Agreement have been approved by the Probate Court and the ongoing harbor construction meets the requirement of paragraph 3 of the Letter Agreement; and that parcel 3 may be acquired pursuant to paragraph 5 of the Letter Agreement. In the event the Probate Court denies approval, all remaining provisions of the Letter Agreement and all provisions of this Document, excepting paragraphs C.1. and 2. above, shall remain in full force and effect.

4. The State shall:

a. Continue support for and development of Barbers Point Harbor Area including but not limited to initiating construction of the first two piers within two years of Court approval described in paragraph 3 above and further modifications and improvements in order to realize the Harbor's full economic potential.

b. Allow Hawaiian Cement to quarry coral on parcels 2, 3 and 4 in accordance with its current agreement(s) with Estate including, but not limited to, continued payment of

mining proceeds to the Estate through October 31, 2010, and assent to completion of excavation by Hawaiian Cement prior to said date or redevelopment, whichever is earlier.

c. Allow Grace Pacific to process coral on parcels 2, 3 and 4 for \$1 per year in accordance with current agreement with Estate, including but not limited to continued payment of coral proceeds to entitled parties under the agreement, and to allow access to stockpile so long as such remains on State land. The Estate will use its reasonable efforts to require Grace Pacific and Hawaiian Cement to the extent of its ability to do so under the respective agreements to clear their respective areas as expeditiously as possible; otherwise, the State reserves the right to terminate said agreements by condemnation.

d. Cooperate with the Estate in providing to the Estate, its lessees and their respective successors in interest, harbor access to the parcel designated "Estate's 8+ acres" on the map attached hereto as Exhibit A, under such reasonable terms and conditions as the State may impose upon other users in the secured area. Such access shall not jeopardize security of the State's harbor area.

e. Where appropriate, support and recommend approval of applications before the Maritime Administration by users committed to Barbers Point Harbor Area container service,

and to expedite construction of such container facility improvements and harbor modifications.

f. And does agree that this Document Evidencing Petitioner's Commitments satisfies the pre-conditions required by paragraph 9. b. and c. of Decision and Order, whether or not Probate Court approval, referenced in paragraph C.3. above, is obtained.

D. ADDITIONAL GENERAL PROVISIONS

1. All communications hereunder will be in writing and shall be deemed duly communicated when sent by certified or registered mail, postage prepaid, addressed:

If to Estate:

The Estate of James Campbell
828 Fort Street Mall, Suite 500
Honolulu, Hawaii 96813
Attention: Chief Executive Officer

with a copy to:

Carlsmith, Wichman, Case,
Mukai and Ichiki
2200 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Ivan M. Lui-Kwan, Esq.

If to OSP:

Office of State Planning
State of Hawaii
State Capitol, Room 410
Honolulu, Hawaii 96813

If to DOT:

Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

If to DLNR:

Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

with a copy to:

Department of the Attorney General
Land/Transportation Division
465 South King Street, Room 300
Honolulu, Hawaii 96813
Attention: Johnson H. Wong, Esq.

or, in each case, to any address as may hereunder have been designated most recently. Any communications so mailed shall be deemed delivered four (4) business days after mailing.

2. Time is of the essence in this Document.
3. All Exhibits attached hereto are made a part hereof.
4. This Document and the Exhibits attached hereto constitute the entire agreement of the parties and replace any prior written or oral agreement of the parties with respect to the matters set forth herein.
5. Any amendments to this Document shall be in writing and signed by the parties hereto.
6. The use of any pronoun herein shall include any and all pronouns and the singular shall include the plural and

vice versa, as the context may require. Paragraph headings are inserted only for convenience in reference.

7. This Document shall be governed and construed in accordance with the laws of the State of Hawaii.

8. This Document may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

9. No party shall be deemed the drafter of this Document. If this Document is ever construed by a court of law, such court shall not construe this Document or any provisions hereof against any party as drafter.

10. This Document and all of the terms, covenants and conditions hereof shall extend to the benefit of and be binding upon the respective successors in trust and permitted assigns of the parties hereto. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees Under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and not the personal liability of any trustee, corporate officer of a trustee, or employee of the Estate of James Campbell.

11. Each person executing this Document on behalf of a party represents and warrants that such person is duly and

validly authorized to do so on behalf of the entity it purports to so bind and if such party is a partnership, corporation or trustee has full right and authority to enter into this Document and perform all of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Document as of the date first set forth above.

STATE OF HAWAII
OFFICE OF STATE
PLANNING

By *[Signature]*
Its Director

DEPARTMENT OF
TRANSPORTATION

By *[Signature]*
Its Director

DEPARTMENT OF LAND AND
NATURAL RESOURCES

By *[Signature]*
Its Chairman

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their
fiduciary and not in their
individual corporate capacities

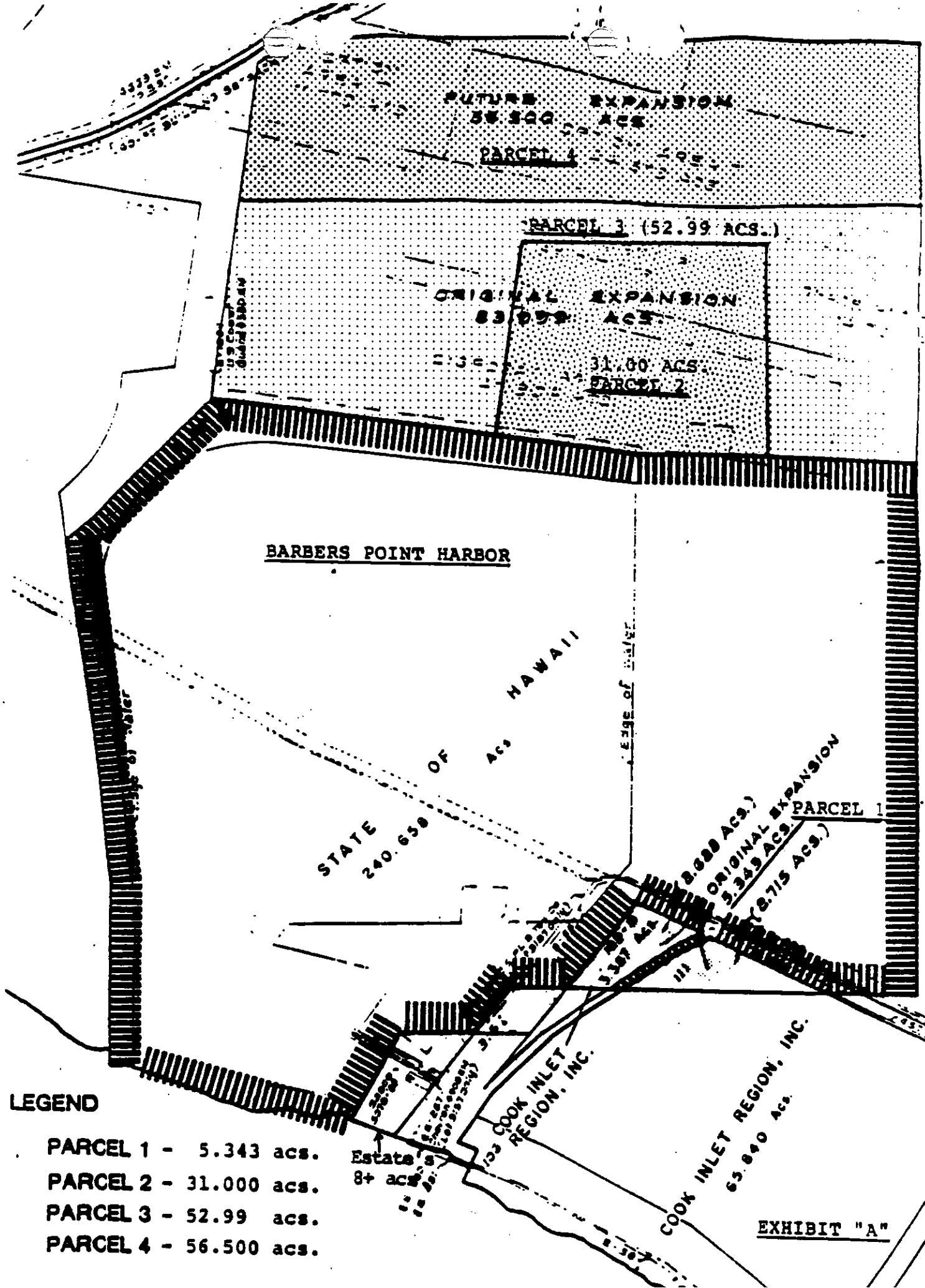
W. H. McVay, Inc.
[Signature]
Its President

P. R. Cassidy, Inc.
[Signature]
Its President
H. C. Cornuelle, Inc.
[Signature]
Its President

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General
Johnson H. Wong, Esq.

[Signature]
CARLSMITH, WICHMAN, CASE,
MUKAI and ICHIKI
Ivan M. Lui-Kwan, Esq.



BARBERS POINT HARBOR

**FUTURE EXPANSION
56.500 ACS.**

PARCEL 4

PARCEL 3 (52.99 ACS.)

**ORIGINAL EXPANSION
83.000 ACS.**

**31.00 ACS.
PARCEL 2**

**STATE OF HAWAII
240.650 ACS.**

**ORIGINAL EXPANSION
5.343 ACS. PARCEL 1**

**COOK INLET REGION, INC.
8+ ACS.**

**COOK INLET REGION, INC.
65.840 ACS.**

LEGEND



- PARCEL 1 - 5.343 acs.
- PARCEL 2 - 31.000 acs.
- PARCEL 3 - 52.99 acs.
- PARCEL 4 - 56.500 acs.

EXHIBIT "A"

⊖ ⊖

THE ESTATE OF JAMES CAMPBELL

August 24, 1981

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

Re: Barber's Point Deep Draft Harbor

Gentlemen:

This letter will summarize certain further agreements between us which are not reflected in the Contract to Sell Coral in Place or other documents prepared in connection with your proposed acquisition of Campbell Estate land for the construction of the Barber's Point Deep Draft Harbor. The subjects covered are: (1) removal of encumbrances; (2) coral storage; (3) the addition of up to and including an additional (31) acres to the 240.658+ acres of land initially taken; (4) the addition of up to and including an additional (1) acres to the harbor land initially taken, consisting of 240.658 acres; and (5) the addition of additional land (up to a maximum of 330 acres in the aggregate, inclusive of the land taken in the initial taking and the land described in (3) and (4) above), to the extent such additional land is needed for harbor back-up facilities.

(1) The following numbered encumbrances shown on Preliminary Title Report prepared by Title Guaranty of Hawaii, Inc. dated July 21, 1981, and on list of unrecorded encumbrances prepared by the Estate, both of which are Exhibits to the Complaint, must be removed by the Estate at no cost to the State of Hawaii soon enough that the existence of such encumbrances will not interfere with or delay harbor construction; and the Estate hereby agrees to effect such removal within such time constraints and to indemnify and hold and save the State of Hawaii harmless from and against any and all cost, damage or liability in connection therewith: Items 3, 5 and 6 through 16, inclusive, of Schedule B to said Preliminary Title Report and encumbrances A through F, inclusive, of said list of unrecorded encumbrances. Without

Exhibit NN

EXHIBIT 'B'

COP

State of Hawaii
Department of Transportation
Page Two

August 24, 1981

limiting the generality of the foregoing, it is specifically understood that the Estate has given notices of termination on all leases and tenancies prior to the Complaint in condemnation being filed in the First Circuit Court, State of Hawaii; and that the State of Hawaii will grant its own leases and tenancies to existing tenants to the extent that their presence will not interfere with or impede the construction of the harbor, or result in any such tenant becoming entitled to the benefits and protections accorded a displaced person under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Further, without limiting the generality of the foregoing, it is understood that the Estate will have the responsibility for and, if necessary, bear the cost of seeing that any pipelines lying within the area in which the harbor is to be constructed are deactivated to the satisfaction of the Corps of Engineers and the State before such time as their continued presence interferes with or impedes the construction of the harbor or results in an oil spill; and, if construction is so interfered with or impeded, the Estate agrees to be responsible for any costs caused thereby or resulting therefrom.

(2) Notwithstanding any contrary provision in the Contract to Sell Coral in Place, it is understood that the coral spoils will be stored both on State land and on Estate land. The only State land on which coral spoils would be stored would be the land which might be added to that originally taken pursuant to the rights of the State, as set forth below. Each year approximately one-half of the material sold will be taken from the State's land and one-half from the Estate's land until such time as all spoils have been removed from the State's land. It is understood that in no event, however, is the presence of such stored spoil to interfere with or impede the construction or operation of the harbor and the Estate consents to less spoils being removed from its land and more spoils being removed from State land to the extent necessary to avoid any such interference or impediment. The State will, at no cost, make available for the storage of spoils that portion of the additional land which may be taken which is not required for harbor development and use, as mutually determined by the State and the Estate.

August 24, 1981

(3) The State shall have the right, upon establishing the need of such land for additional harbor facilities, to take up to and including an additional 31 acres of land without payment of additional compensation to the Estate therefor, which may be taken from the areas shaded in blue on the maps marked Exhibit "A", Alternate I, and Exhibit "A", Alternate II, attached hereto and made a part hereof. This 31 acres of additional land is not related in any way to lands the State may acquire directly from the Federal government or from others. If the State establishes the need for additional lands, up to 31 acres, before December 31, 1995, the Estate shall be obligated to convey such lands owned by it to the State irrespective of lands the State may have acquired or may acquire from others.

(4) It is understood that the approximate 6-acre site shown in red on Alternate I of Exhibit "A" was intended to be acquired by the State of Hawaii at the same time and for the same consideration as the 240.658 acres described in the Complaint, but that it cannot be taken until such time as it has been acquired by the Estate from the Federal government. The Estate agrees to use its best efforts to acquire such land as soon as possible and, upon acquiring it, to convey it to the State of Hawaii at no additional compensation and as if it had been included in the condemnation of the 240.658 acres. If the Estate is not able to acquire the additional 6 acres shown on Alternative I of Exhibit "A" from the Federal Government prior to December 31, 1985, then the Estate will convey a total of 6 acres of other lands contiguous to the harbor back-up area, as shown in red in Alternate II of Exhibit "A", at no additional cost to the State of Hawaii and as if it had been included in the condemnation of the 240.658 acres. In either case, the total area to be conveyed to the State by the Estate at no cost to the State prior to December 31, 1985, shall not be less than 246 acres.

(5) The State has expressed a concern that additional land may be required for expansion of harbor facilities. The Estate and the State have agreed that up to and including a maximum of 330 acres, in the aggregate, inclusive of the 240.658 acres initially taken and the land described in

August 24, 1981

paragraphs (3) and (4) above, may be acquired by the State pursuant to condemnation, at its fair market value less harbor-related benefits to the Estate, at any time and from time to time on or before December 31, 1999. Said additional land, consisting of approximately 52 acres, which may be acquired pursuant to the provisions of the preceding sentence is located within the area outlined in green on Exhibit "A", Alternates I and II. It is understood that portions of the areas shown in green are presently encumbered by a quarry agreement with Cyprus Hawaiian Cement and will be encumbered by portions of the coral spoils stockpile. It is further agreed that the Estate will not encumber the land outlined in green on Exhibit "A", Alternates I and II, with costly improvements which will substantially add to the State's acquisition cost unless the Estate has first obtained the State's consent to the construction of such improvements. The State agrees that it will not unreasonably withhold its consent.

If this letter fairly expresses your understanding of our additional agreement with respect to the Barber's Point Deep Draft Harbor, please so indicate by your acceptance below on a copy of this letter and by your return of such copy to us.

Very truly yours,

THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual or individual corporate capacities

R. C. Eichelberger
R. C. Eichelberger

F. E. TROTTER, INC.

By Fred E. Trotter
Its President

W. H. McVAY, INC.

By W. H. McVay
Its President

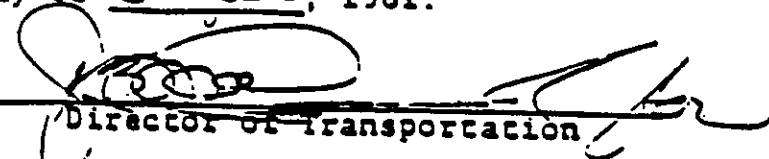
P. R. CASSIDAY, INC.

By P. R. Cassidy
Its President

State of Hawaii
Department of Transportation
Page Five

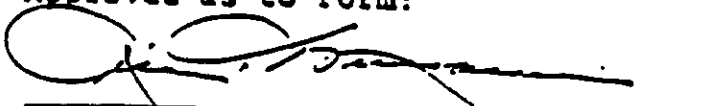
August 24, 1981

Agreed to and accepted this 26
day of August, 1981.



Director of Transportation

Approved as to Form:



Deputy Attorney General

[PAGE 5 OF 5 PAGE LETTER AGREEMENT BETWEEN
THE ESTATE OF JAMES CAMPBELL AND THE
STATE OF HAWAII REGARDING
BARBER'S POINT DEEP DRAFT HARBOR]

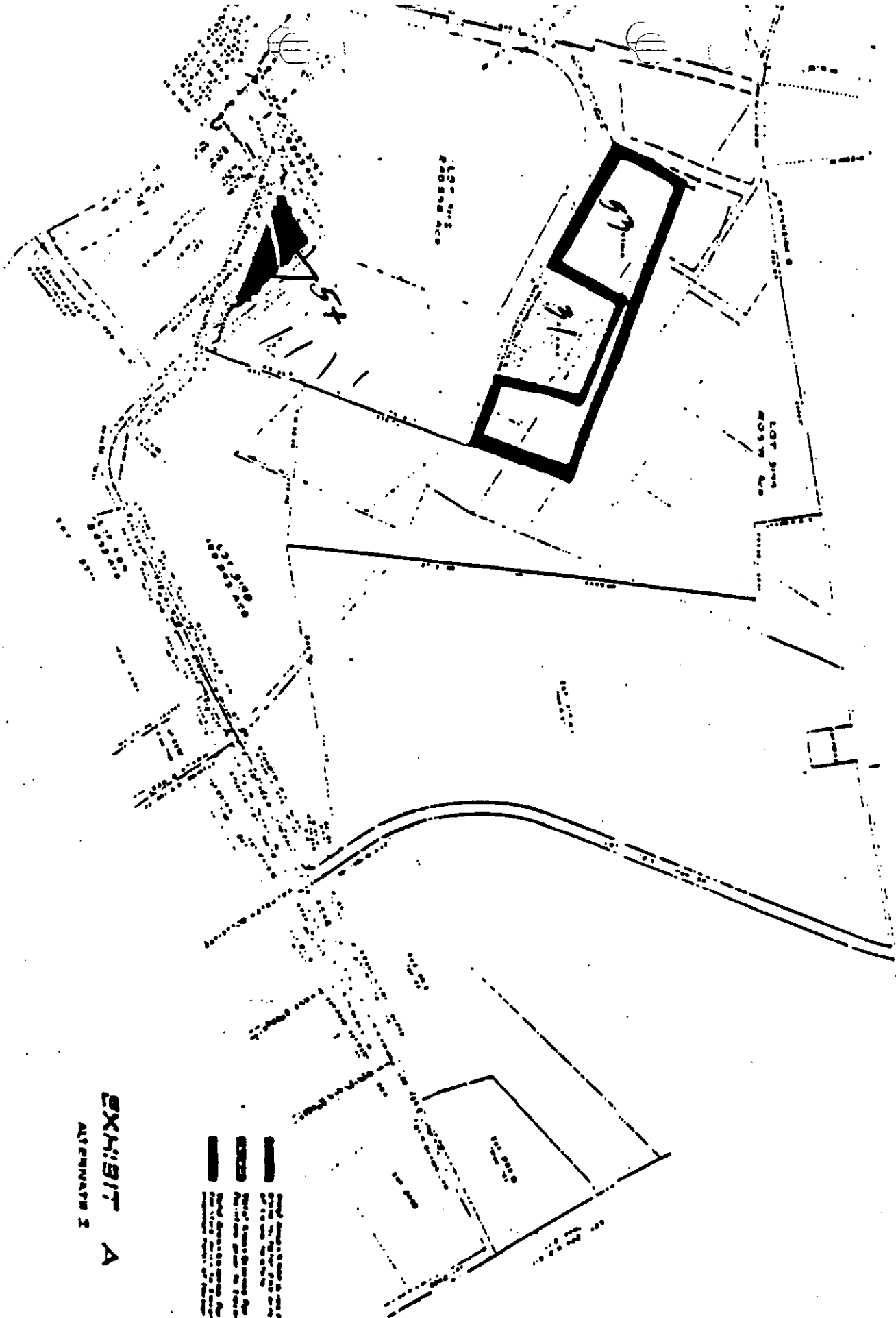
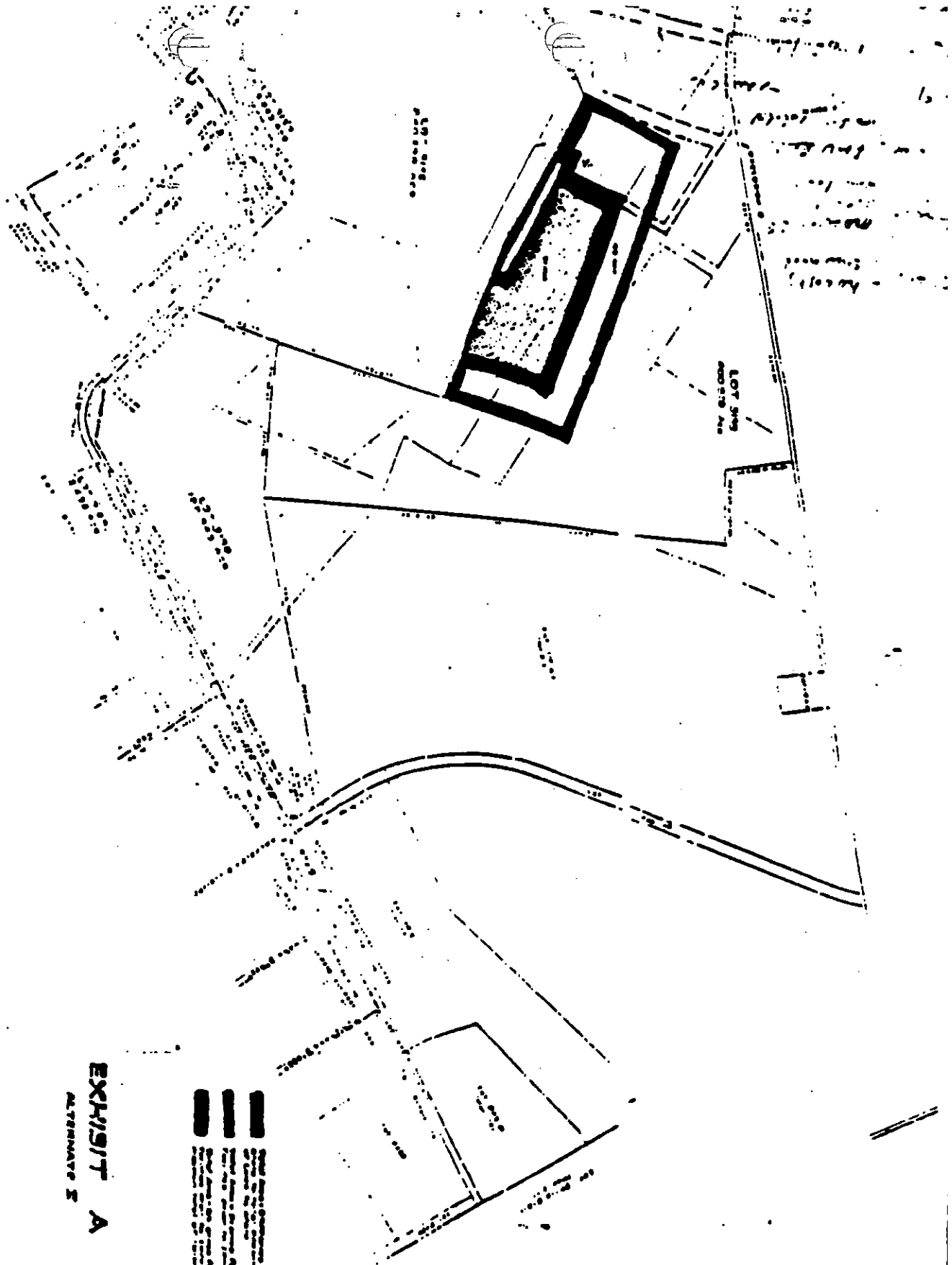


EXHIBIT A
ALTERNATIVE 2

- Proposed Building Footprint
- Proposed Parking Area
- Proposed Driveway
- Proposed Site Boundary
- Proposed Access Road
- Proposed Utility Lines
- Proposed Stormwater Management
- Proposed Landscaping
- Proposed Security Features
- Proposed Other Features

2023



LOT 309
 600 S. 1st Ave

EXHIBIT A
 ALTERNATE 2

- Proposed Building Footprint
- Proposed Building Footprint
- Proposed Building Footprint



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STATE OF HAWAII

LAND USE COMMISSION HEARING

<u>ACTION</u>)	PAGE
A88-624 - THE LUSK COMPANY)	4
A87-613 - THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED)	5
SP89-371 - CHRISTIAN BROADCASTING ASSOCIATION)	18
M074-4 - PUAHALA ENTERPRISES))	33
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<u>HEARING</u>)	
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APR 24 3 05 PM '89
LAND USE COMMISSION
STATE OF HAWAII

Taken on April 14, 1989, commencing at 9:00 a.m. o'clock at
1390 Miller Street, 4th Floor, Queen Liliuokalani Building,
Honolulu, Hawaii.

BEFORE: JEAN MARIE McMANUS, CSR #156
Notary Public, State of Hawaii

EXHIBIT 3

1 MS. MARCINKUS: Mr. Chairman, the city takes note
2 of the actions regarding the satisfaction of the
3 pre-conditions, and has no objection to approval of the
4 motion for a Land Use Commission approval of the executed
5 agreements.

6 MR. CHAIRMAN: State of Hawaii?

7 MR. ANDERSON: Mr. Chairman, as the motion has been
8 modified now to include the satisfaction of the
9 pre-conditions contained in paragraphs 9 A, B and C of the
10 ordinance, or now the amended Decision and Order, the state,
11 as you know, has been intimately involved with the working
12 out of these arrangements, and it has been a long and tedious
13 procedure, but it's been worth it I think, and I think we are
14 going to have a quality product, and the state takes pleasure
15 in joining in the motion at this time.

16 MR. CHAIRMAN: Thank you, anything further? If
17 not, the Chair will entertain a motion to consider
18 petitioner's motion for order approving executed agreements
19 satisfying petitioner's pre-conditions to reclassification.

20 COMMISSIONER HIMENO: Mr. Chairman, I move to
21 approve.

22 MR. CHAIRMAN: Is there any second?

23 COMMISSIONER WHITTEMORE: Second.

24 MR. CHAIRMAN: It's been moved and seconded that
25 the petitioner's motion for approving executed agreement

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
THE TRUSTEES UNDER THE WILL AND)
OF THE ESTATE OF JAMES CAMPBELL,)
DECEASED)

To Amend the Agricultural Land Use)
District Boundary into Urban Land)
Use District for Approximately)
813.02 acres of land at)
Honouliuli, Ewa, Island of Oahu,)
State of Hawaii, Tax Map Key)
Numbers: 9-1-15: Portion of 4;)
9-1-16: Portion of 1, Portion of)
4, 5, 6, Portion of 9, 12, 13,)
Portion of 16, 18, Portion of 24,)
30; 9-2-03 Portion of 2, 12; and)
9-2-19: Portion of 1)

DOCKET NO. A87-613

THE TRUSTEES UNDER THE
WILL AND OF THE ESTATE OF
JAMES CAMPBELL, DECEASED

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

JUN 06 1989

Date

by

Robert L. ...
Executive Officer

JUN 6 10 07 AM '89

LAND USE COMMISSION
STATE OF HAWAII

ORDER APPROVING EXECUTED AGREEMENTS
SATISFYING PETITIONER'S PRE-CONDITIONS TO RECLASSIFICATION

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A87-613
THE TRUSTEES UNDER THE WILL AND)	
OF THE ESTATE OF JAMES CAMPBELL,)	THE TRUSTEES UNDER THE
DECEASED)	WILL AND OF THE ESTATE OF
	JAMES CAMPBELL, DECEASED
To Amend the Agricultural Land Use)	
District Boundary into Urban Land)	
Use District for Approximately)	
813.02 acres of land at)	
Honouliuli, Ewa, Island of Oahu,)	
State of Hawaii, Tax Map Key)	
Numbers: 9-1-15: Portion of 4;)	
9-1-16: Portion of 1, Portion of)	
4, 5, 6, Portion of 9, 12, 13,)	
Portion of 16, 18, Portion of 24,)	
30; 9-2-03 Portion of 2, 12; and)	
9-2-19: Portion of 1)	

ORDER APPROVING EXECUTED AGREEMENTS
SATISFYING PETITIONER'S PRE-CONDITIONS TO RECLASSIFICATION

The Trustees under the Will and of the Estate of James Campbell, Deceased (hereinafter "Petitioner"), filed a Motion For Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions To Reclassification And Department of Health Condition In Decision and Order and supporting memorandum on April 4, 1989, and a Supplemental Memorandum In Support Of Motion For Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions To Reclassification And Department of Health Condition In Decision and Order and Exhibits A and B on April 12, 1989, pursuant to Land Use Commission Rule 15-15-70.

The Land Use Commission (hereinafter the "Commission"), having considered Petitioner's Motion, Memorandum In Support, Supplemental Memorandum In Support, Exhibits A and B, and Petitioner's oral motion to withdraw the portion of its Motion with respect to Petitioner's proposed Exhibit C for the satisfaction of Department of Health Condition Number 3 of the Commission's Decision and Order dated September 23, 1988, at the Commission meeting of April 20, 1989, and there being no objections from the Office of State Planning, State of Hawaii and the Department of General Planning, City and County of Honolulu, hereby

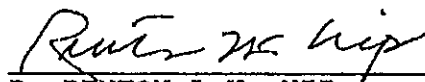
ORDERS that Petitioner's oral motion to withdraw the portion of its Motion with respect to Petitioner's satisfaction of Department of Health Condition Number 3 is granted. Accordingly, that portion of the motion is withdrawn.

THE COMMISSION FURTHER ORDERS that Exhibits A and B, attached to said Supplemental Memorandum filed on April 12, 1989, and identified as "Kapolei Village Condemnation Agreement" and "Document Evidencing Petitioner's Commitments", respectively, are approved and that they satisfy Pre-Conditions 9.a., 9.b., and 9.c. of the Commission's Second Amended Decision and Order dated May 30, 1989, and that the district boundaries are hereby amended accordingly.

IT IS ALSO HEREBY ORDERED that all other conditions of the Commission's Second Amended Decision and Order shall remain in full force and effect.

Done this 6th day of June, 1989, per motion of April 14, 1989 at Honolulu, Hawaii.

LAND USE COMMISSION
STATE OF HAWAII



By RENTON L.K. NIP
Chairman and Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A87-613
THE TRUSTEES UNDER THE WILL AND)	
OF THE ESTATE OF JAMES CAMPBELL,)	THE TRUSTEES UNDER THE
DECEASED)	WILL AND OF THE ESTATE OF
	JAMES CAMPBELL, DECEASED
To Amend the Agricultural Land Use)	
District Boundary into Urban Land)	
Use District for Approximately)	
813.02 acres of land at)	
Honouliuli, Ewa, Island of Oahu,)	
State of Hawaii, Tax Map Key)	
Numbers: 9-1-15: Portion of 4;)	
9-1-16: Portion of 1, Portion of)	
4, 5, 6, Portion of 9, 12, 13,)	
Portion of 16, 18, Portion of 24,)	
30; 9-2-03 Portion of 2, 12; and)	
9-2-19: Portion of 1)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

- HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813
- CERT. DONALD A. CLEGG, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813
- CERT. IVAN LUI-KWAN, ESQ., Attorney for Petitioner
Carlsmith, Wichman, Case, Mukai & Ichiki
P. O. Box 656
Honolulu, Hawaii 96809

DATED: Honolulu, Hawaii this 6th day of June 1989.

Esther Ueda
ESTHER UEDA, Executive Officer

The
City of
Kapolei
A New Direction

September 14, 1994

Agreement No. A00994900

Mr. Robert P. Takushi
State Comptroller
Department of Accounting and
General Services
State of Hawaii
P. O. Box 119
Honolulu, Hawaii 96810

Mr. Keith Ahue
Chairman
Department of Land and
Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Gentlemen:

Re: State/Campbell Estate Agreement
dated April 11, 1989

I am writing to you on behalf of the Estate of James Campbell (the "Estate") with reference to the following:

On September 23, 1988, the State of Hawaii Land Use Commission ("LUC") entered Findings of Fact, Conclusions of Law and Decision and Order ("Decision and Order") which granted the Estate's petition to amend the Land Use District boundary to reclassify approximately 890 acres of land situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii, from the Agricultural District to the Urban District to develop Kapolei. The Decision and Order contained a number of pre-conditions which were more particularly described in that certain Document Evidencing Petitioner's Commitments dated April 11, 1989.

The pre-conditions, among other things, require that the Estate provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations in Kapolei, at no cost, to be used for governmental offices or other public facilities. The State and the Estate have identified the locations of the 40 acres which will satisfy one of the pre-conditions and the purpose of this letter is to set forth the additional agreements we have reached regarding the transfer, development and use of these lands as follows:

X9422011

EXHIBIT 5

Mr. Robert P. Takushi
Mr. Keith Ahue
September 14, 1994
Page 2

1. Designation of State Land. The Estate shall provide forty (40) acres of land to the State in the locations designated as parcels 1, 2, 3, 4, 5 and 6 on Exhibits A-1 and A-2 attached hereto and incorporated herein by reference (individually a "Parcel" or "Parcels 1, 2, 3, 4, 5 or 6" and collectively the "Land") on the terms and conditions more particularly set forth below. Parcel 6 may be divided into two Parcels as mutually agreed to by the Estate and the State.

2. Conveyance of Land. Land will be conveyed incrementally as reasonably required by the State for governmental offices or other public facilities (the "Improvements") either (a) upon the execution by the State of building construction contracts with State funds for Improvements on Parcels 1, 2, 3, 4 and 6 (or the two Parcels created from Parcel 6, if applicable) with a density of not less than 0.5 of the floor area ratio for each of such Parcels and Parcel 5 with a density of not less than 0.28 of the floor area ratio for such Parcel or (b) when the State has entered into a binding commitment with a developer to lease a building to be constructed upon a Parcel meeting such density requirements provided that (i) such developer has met, to the Estate's satisfaction, the construction requirements set forth in Article VI.D of the Ground Lease described in paragraph 6 below and (ii) such building is completed and the State takes occupancy of the building under the lease no later than twenty-four (24) months following the date of said commitment subject to force majeure extensions. It is understood and agreed that the State will use its best efforts to construct Improvements on each Parcel to a floor area ratio of 1.0 at the earliest possible date. Such conveyances shall also be subject to the receipt of rezoning and subdivision approvals from the City and County of Honolulu (including approval of a ninety (90) foot height limitation for each Parcel) and the filing of the required subdivision maps with the Land Court of the State of Hawaii, all of which will be completed by the Estate at the Estate's sole cost and expense.

The parties anticipate that the first conveyance by the Estate to the State will be of Parcel 3 as shown on Exhibit A-3 on or about December 31, 1997. The conveyance of Parcel 3 will be made by means of a limited warranty deed in the form of Exhibit B attached hereto and incorporated herein by reference, subject to (i) the City of Kapolei Declaration of

Mr. Robert P. Takushi
Mr. Keith Ahue
September 14, 1994
Page 3

Protective Covenants, Conditions and Restrictions described in paragraph 5 below, (ii) the City of Kapolei Ground Lease more particularly described in paragraph 6 below, (iii) all liens and encumbrances shown on Exhibit "A" to the limited warranty deed and (iv) encumbrances imposed as the result of the required subdivision and rezoning. A conceptual representation of the pedestrian mall on Parcel 3 adjacent to Road "D" is attached hereto as Exhibit A-4 and incorporated herein by reference. Notwithstanding the foregoing, however, the Estate agrees to delete Easement 148, for waterline purposes, no later than June 30, 1996. The Estate's obligation to make any conveyances of any portion of the Land shall terminate on April 11, 1999 as to any portion of the Land for which the State has not satisfied the requirements of subparagraphs 2(a) or 2(b) above.

3. Parcel 3 Improvements. The Estate presently intends to provide drainage, water and sewer lines and electrical conduits for the Parcels as set forth in the conceptual plan attached hereto as Exhibit C-1 and incorporated herein by reference, which plan may be revised by the Estate. The Estate has provided or will provide, at its own cost and expense, paved access, drainage, water and sewer lines and other utilities for Parcel 3 as more particularly described in Exhibit C-2 attached hereto and incorporated herein by reference.

4. Permitted Uses. The Estate and the State agree that the Land shall be used only for Improvements which are allowed under City and County of Honolulu B-2 Community Business District Zoning (90' height limitation) and for no other purpose without the Estate's prior written consent, which consent may be withheld by the Estate in its sole discretion for any reason. Notwithstanding the foregoing, however, the State, through its Department of Business, Economic Development and Tourism, may lease up to 60,000 usable square feet of space in said building to Motorola, Inc. While the State agrees to use its best efforts to fully occupy the remaining square footage in the first building on Parcel 3 with State agencies, it is understood and agreed by the parties that in order for the State to accomplish an orderly transfer of governmental functions to Kapolei, a transition period may be needed when the first building on Parcel 3 may not be fully occupied by the State when it is ready for State occupancy. As a result, the

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Mr. Keith Ahue
September 14, 1994
Page 4

State, during the first three (3) years from and after the issuance of the certificate of occupancy for the first building constructed on Parcel 3, may also lease up to an additional twenty-five percent (25%) of the usable square feet in said building for other non-governmental purposes. The State may request a two year extension of this period which may be granted or withheld by the Estate in its sole discretion.

5. City of Kapolei Declaration. The Land will be conveyed to the State subject to that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as amended by instrument dated May 12, 1994, filed as Land Court Document No. 2152082, and as the same may be amended from time to time in the future (the "Declaration"). So long as the Land is used solely for the governmental and other purposes set forth in paragraph 4 above, the Land shall not (a) be included within the "Development Land" described in the Declaration and shall enjoy the exemption from the payment of "Assessments" as set forth in Section 9.10 of the Declaration and (b) shall not be subject to the following provisions of the Declaration: Section 10.1, dealing with Water Rights; Section 10.2, dealing with Easements; and Section 10.4, dealing with Air Rights. The State further agrees to use its best efforts to comply with the Signage Guidelines attached as Exhibit G to the Declaration subject to such modifications as are consented to by the Estate, which consent shall not be unreasonably withheld.

6. City of Kapolei Ground Lease. State agrees to take title to Parcel 3 subject to the City of Kapolei Ground Lease generally in the form attached hereto as Exhibit D and incorporated herein by reference (the "Ground Lease"). The Ground Lease contains terms, conditions, covenants, agreements, reservations and restrictions which benefit the Estate (the "Reserved Rights") and provides the State the right to purchase the tenant's interest in Parcel 3 from time to time during the term of the Ground Lease. State agrees that concurrent with the exercise of its option to purchase the Tenant's interest in Parcel 3, and the termination of the Ground Lease by operation of law, that the State will sign a supplemental declaration in form and content reasonably satisfactory to the Estate insuring that the Estate's Reserved Rights, to the extent consistent

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Mr. Keith Ahue
September 14, 1994
Page 5

with this letter agreement, survive the termination of the Ground Lease.

7. City of Kapolei Improvements. As set forth in the limited warranty deed attached hereto as Exhibit B, the Estate has agreed to limit its right to construct improvements within Parcel 3 for the benefit of the City of Kapolei or Parcel 3 to the landscaping easement along Kamokila Boulevard and Haumea Street. The State shall have the right to review and comment on the improvements prior to their construction, and the Estate shall reasonably coordinate the location and construction of said improvements with the State.

8. Landscaping. The State shall be responsible for all landscaping on each Parcel with the exception of (a) the street trees planted by the Estate in accordance with the Street Tree Master Plan shown on page 40 of the Development Guidelines if a landscaping easement is granted by the State for such purpose and (b) the trees in the planting easement(s) shown on the parcel maps, which shall be maintained by the Estate or the City of Kapolei Community Association. The State may not cut down, remove or relocate such street trees without obtaining the Estate's prior written consent. The Estate shall plant such street trees on any Parcel conveyed to the State when requested to do so by the State and an easement is provided by the State. The Estate acknowledges that the State may use St. Augustine grass for ground cover within all areas required to be landscaped by the State.

9. Parking. The State agrees to provide one level of parking under each building on a Parcel, and the remainder of the required parking for each building shall be on-grade asphalt located temporarily on the same Parcel next to each building with appropriate landscaping. Within ten (10) years of occupancy of each building the State shall, subject to funding availability, replace the temporary parking with:

- a. Underground parking facility(s) on Parcels owned by the State, or
- b. Above ground parking structure(s) on Parcels owned by the State, or

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Mr. Keith Ahue
September 14, 1994
Page 6

- c. A remote park and ride facility on other lands owned by the State.

10. Exhibits. All Exhibits referred to in this letter agreement shall be deemed to be incorporated herein by the reference made to them as fully as though the entire Exhibit were set forth within the body of this Agreement itself.

11. Notices. All communications hereunder will be in writing and shall be deemed duly communicated when sent by certified or registered mail, postage prepaid, addressed:

If to the Estate:

The Estate of James Campbell
1001 Kamokila Boulevard
Kapolei, Hawaii 96707
Attention: Chief Executive Officer

with a copy to:

Carlsmith Ball Wichman Murray
Case & Ichiki
2200 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Robert E. Strand, Esq.

if to the State:

Comptroller
Department of Accounting and
General Services
State of Hawaii
1151 Punchbowl Street, Room 410
Honolulu, Hawaii 96813

with copies to:

Chairman
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

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Mr. Keith Ahue
September 14, 1994
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Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Department of the Attorney General
Land/Transportation Division
465 South King Street, Room 300
Honolulu, Hawaii 96813
Attention: Supervising Attorney

or, in each case, to any address as may hereunder have been designated most recently. Any communications so mailed shall be deemed delivered four (4) business days after mailing.

12. No Party Deemed Drafter. No party shall be deemed the drafter of this agreement. If this agreement is ever construed by a court of law, such court shall not construe this agreement or any provisions hereof against any party as drafter.

13. Binding Effect. This agreement and all of the terms, covenants and conditions hereof shall extend to the benefit of and be binding upon the respective successors in trust and permitted assigns of the parties hereto. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees Under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and not the personal liability of any trustee, officer or employee of the Estate of James Campbell.

14. Estate Authority. This agreement is subject to the approval of the Trustees Under the Will and of the Estate of James Campbell, Deceased.

15. Time of the Essence. Time is of the essence of this agreement.

16. Governing Law. This agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

17. Paragraph Headings. The use of any pronoun herein shall include any and all pronouns and the singular

Mr. Robert P. Takushi
Mr. Keith Ahue
September 14, 1994
Page 8

shall include the plural and vice versa, as the context may require. Paragraph headings are inserted only for convenience in reference.

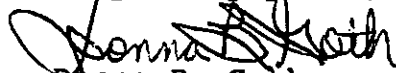
18. Counterparts. This agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

19. Entire Agreement. This agreement and the Exhibits attached hereto are intended to clarify that certain Document Evidencing Petitioner's Commitments dated April 11, 1989 and constitute the entire agreement of the parties with respect to the matters set forth herein.

20. Amendments. Any amendments to this agreement shall be in writing and signed by the parties hereto.

If the foregoing correctly sets forth the agreements we have reached, please sign the enclosed copy of this letter in the space provided below and return it to the undersigned.

Very truly yours,



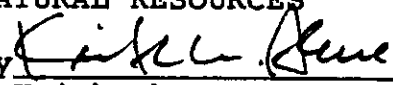
Donna B. Goth
Director, Hawaii Development

Agreed and accepted:

DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By 
Robert P. Takushi
Its Comptroller

BOARD OF LAND AND
NATURAL RESOURCES

By 
Keith Ahue
Its Chairman

APPROVED AS TO FORM:


Deputy Attorney General (2/1/94)

Mr. Robert P. Takushi
Mr. Keith Ahue
September 14, 1994
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APPROVED:

**TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their
fiduciary and not in their
individual capacities**

P. R. Cassiday
P. R. Cassiday
W. H. McVay
W. H. McVay
C. D. Pratt, Jr.
C. D. Pratt, Jr.
C. R. Churchill
C. R. Churchill

Approved as to Form
CARLSMITH BALL WICHMAN MURRAY
CASE & ICHIKI

By Robert Strand

THE CITY OF KAPOLEI

A DEVELOPMENT OF
THE ESTATE OF JAMES CAMPBELL

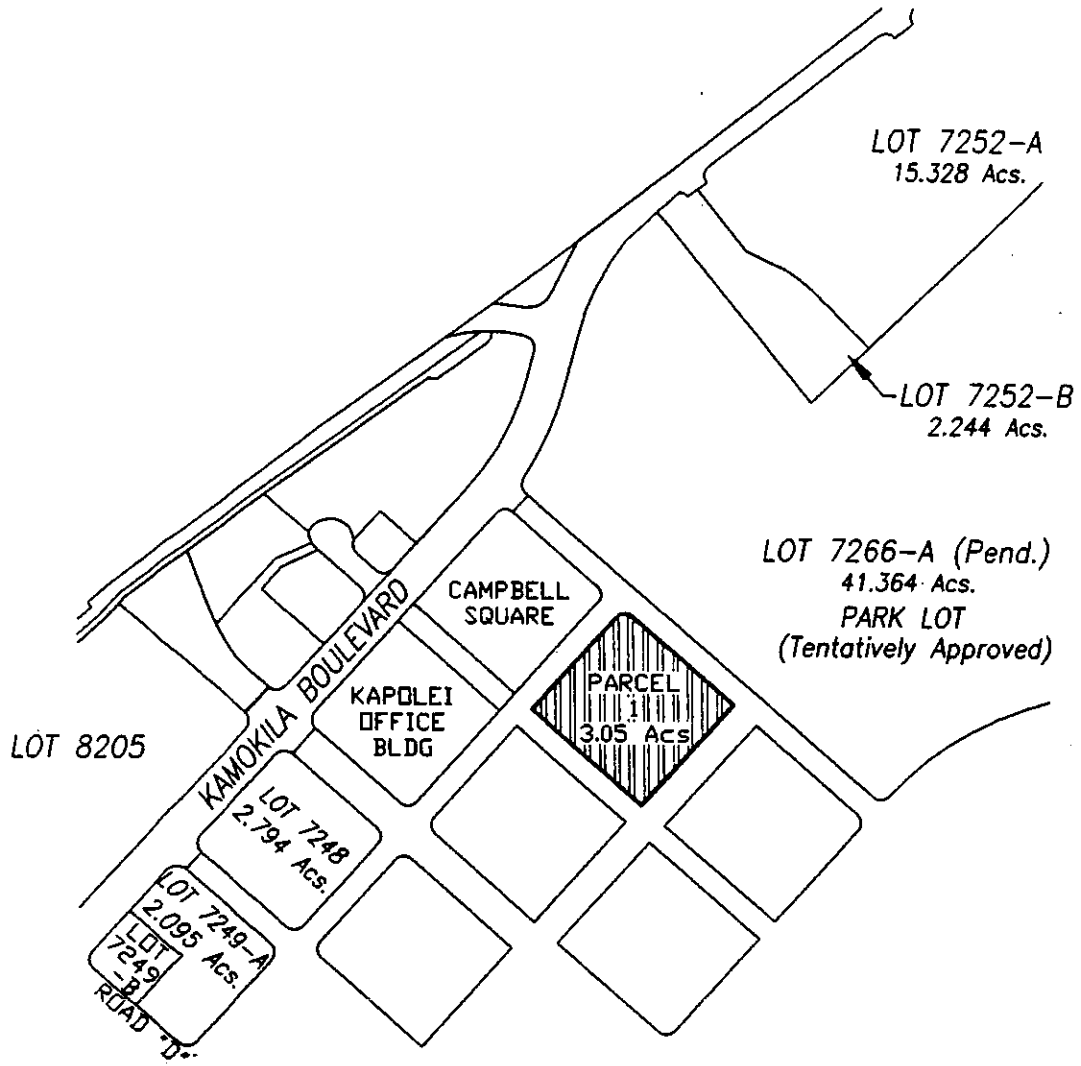


EXHIBIT A-1



THE CITY OF KAPOLEI

A DEVELOPMENT OF

THE ESTATE OF JAMES CAMPBELL

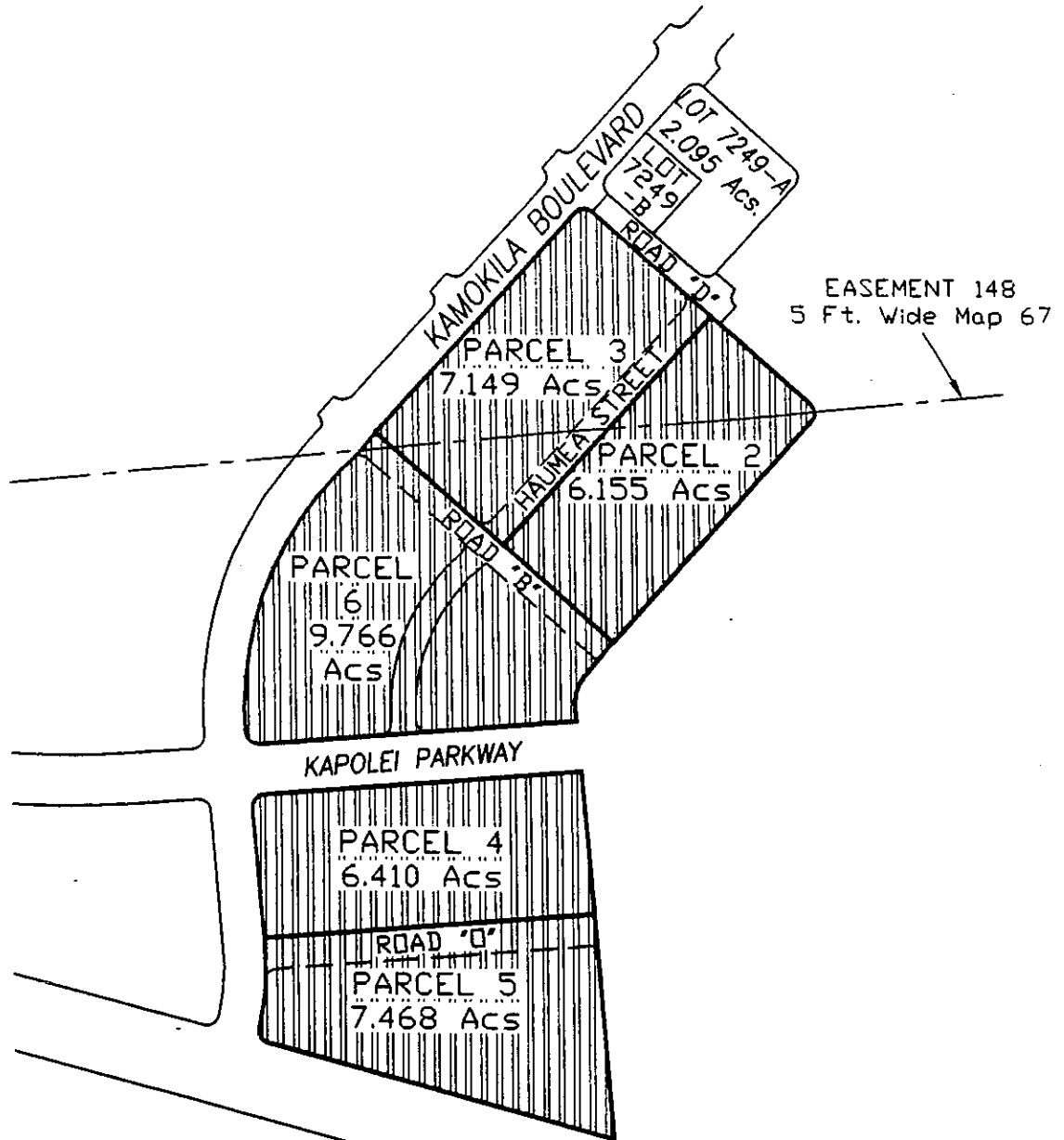


EXHIBIT A-2

THE CITY OF KAPOLEI

A DEVELOPMENT OF

THE ESTATE OF JAMES CAMPBELL

Portions of lots 7250 and 7251

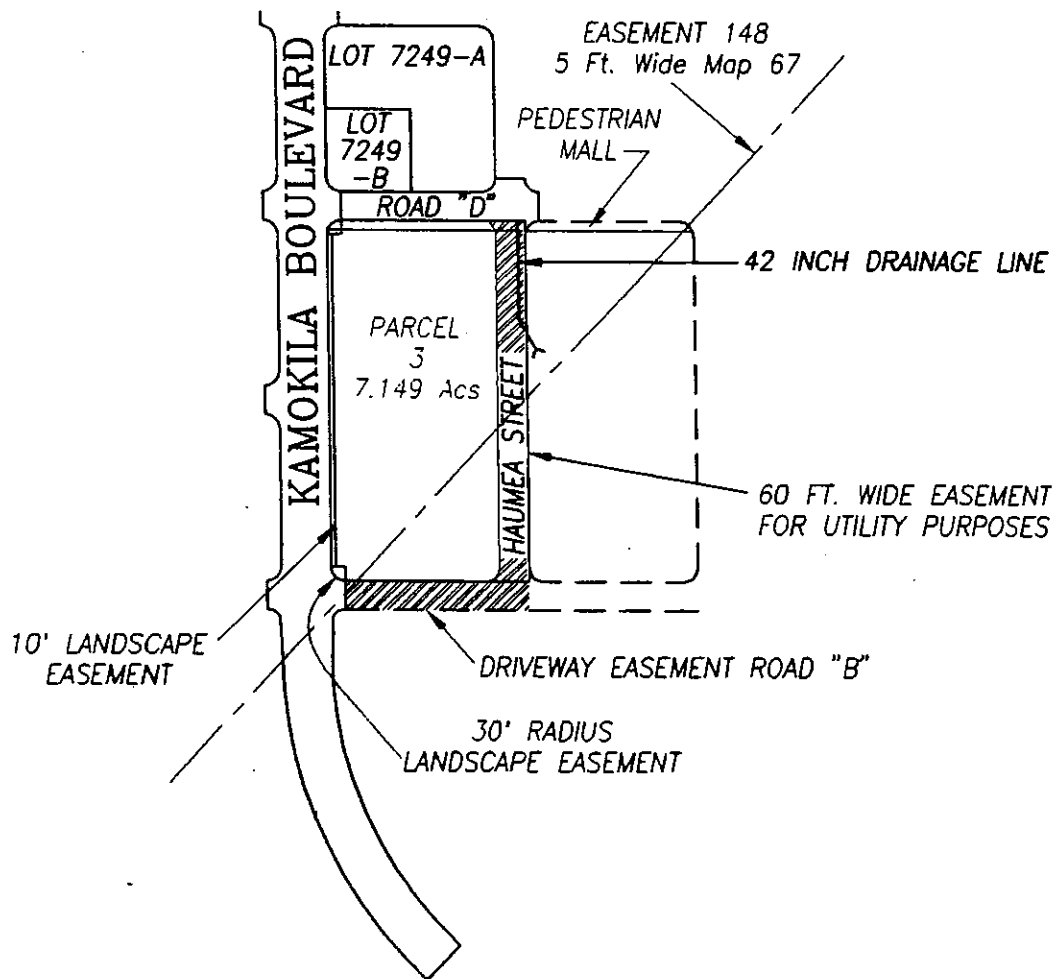
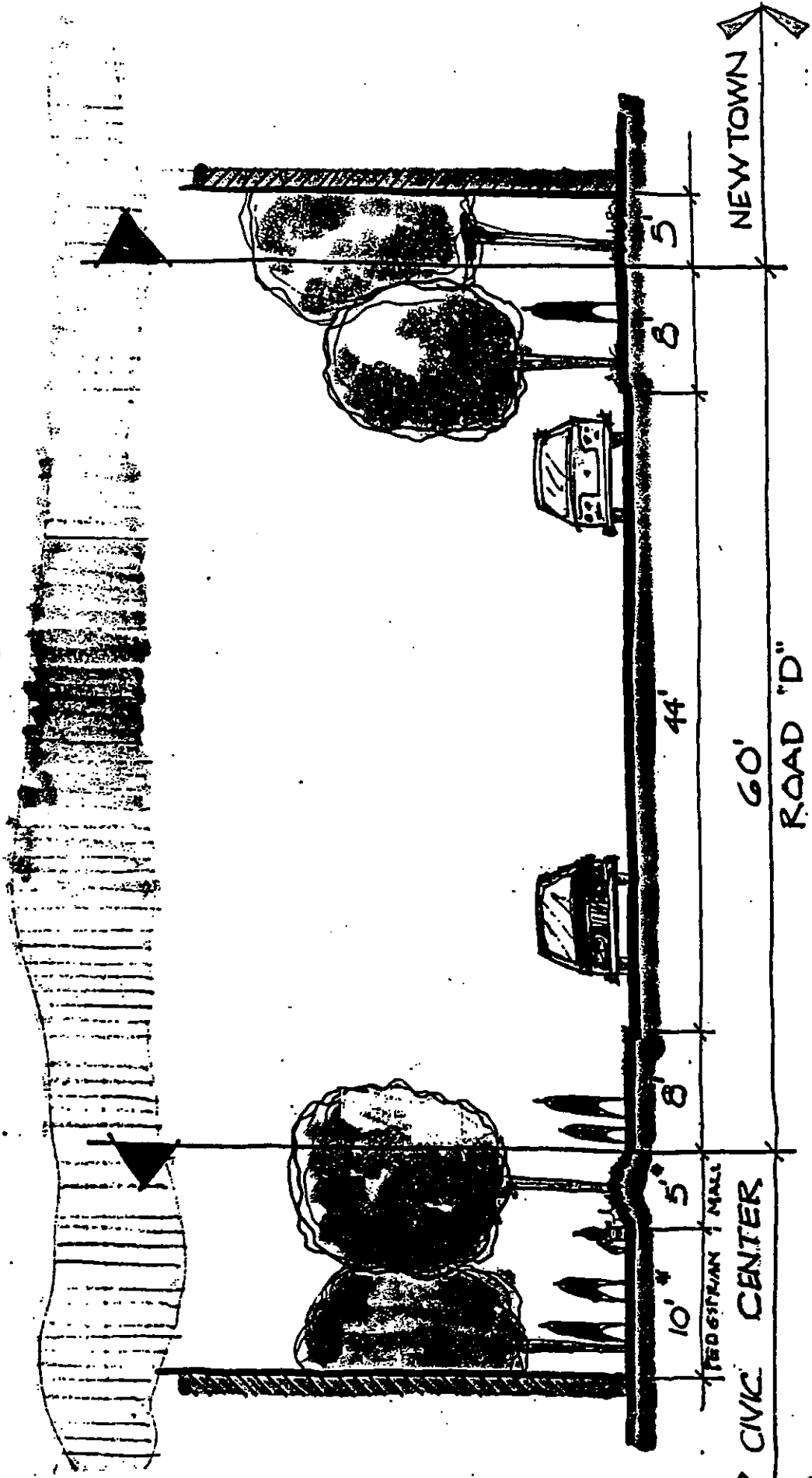


EXHIBIT A-3



CIVIC CENTER/NEW TOWN

EDGE

* NOTE:
 ACTUAL DIMENSIONS &
 LOCATIONS OF PLANTING (MIN. 5')
 & PAVING (MIN. 6') MAY
 VARY. THIS DIAGRAM IS
 PROVIDED TO SHOW A CONCEPTUAL
 REPRESENTATION OF THE PAVING
 & LANDSCAPE IMPROVEMENTS TO BE
 LOCATED WITHIN THE "PEDESTRIAN MALL."

EXHIBIT "A-4"

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup (X) To:

CARLSMITH BALL WICHMAN
MURRAY CASE & ICHIKI
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, Hawaii 96813

Attention: Robert E. Strand, Esq.
Telephone: 523-2500

**KAPOLEI TOWN CENTER LIMITED WARRANTY DEED
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES**

KNOW ALL MEN BY THESE PRESENTS:

THIS INDENTURE, made this ____ day of _____, 19__, by and between the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECREASED, acting in their fiduciary and not in their individual capacities, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei,

EXHIBIT B

Hawaii 96707, hereinafter called the "Grantor", and the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called the "Grantee",

W I T N E S S E T H:

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, the property described in Exhibit "A" attached hereto and made a part hereof, subject to the encumbrances and reservations set forth in said Exhibit "A" and to the covenants, rights, reservations, exceptions, obligations, duties and agreements set forth below (the "Property").

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

TOGETHER WITH a non-exclusive easement for access purposes over and across Easement ____, as shown on Map ____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 (also known as Road "B"), together with the right to construct, reconstruct, install, reinstall, operate, repair and maintain driveway improvements within said Easement ____. Said easement will terminate automatically as to any portion of said

Easement ___ upon Grantor's dedication to and acceptance thereof as a public highway by any governmental authority, Grantor reserving the right to so dedicate the same without notice to or the joinder of Grantee. Notwithstanding the foregoing, said easement shall not terminate earlier than April 11, 1999.

EXPRESSLY EXCEPTING AND RESERVING UNTO GRANTOR, ITS SUCCESSORS, SUCCESSORS IN TRUST AND ASSIGNS, the following:

A. All of the rights excepted and reserved unto Grantor, and its successors, successors in trust and assigns as Declarant under that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as amended by that certain First Amendment to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated May 12, 1994, filed in said Office of the Assistant Registrar as Document No. 2152082, as the same may be amended from time to time (collectively the "Declaration"); provided, however, that so long as the Property is used solely for the governmental and other purposes set forth in paragraph 4 of that certain letter agreement dated September 14, 1994 between the Grantor and the State of Hawaii, the Property shall not (i) be included within the "Development Land" described in the Declaration and shall

be exempt from the payment of "Assessments" as set forth in Section 9.10 of the Declaration, and (ii) shall not be subject to Section 10.1, dealing with Water Rights, Section 10.2, dealing with Easements, and Section 10.4, dealing with Air Rights, of the Declaration. Grantee shall use its best efforts to comply with the Signage Guidelines attached as Exhibit G to the Declaration subject to such modifications as are consented to by the Grantor, which consent shall not be unreasonably withheld.

B. The right of Grantor to grant or relocate in, on, over, under, across and through those portions of the Property designated as Easement ____ (the landscaping easement along Kamokila Boulevard) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance, repair and replacement of rights of way, underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, curbs, pavements and other roadway improvements, upon such terms and conditions as the Grantor may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement ____ will not have a material adverse impact on the design or use of improvements planned for or existing on the Property and (ii) after performing any work in

Easement _____, Grantor or such grantees shall restore the Property to its original condition to the extent that such restoration is reasonably possible. Without limiting the foregoing, the Grantor reserves the right to grant easements within Easement _____ to the Association created under the Declaration for the purpose of landscaping and/or such other purpose as the Grantor deems appropriate. Grantee shall have the right to review and comment on any improvements in Easement _____ prior to the construction thereof, and the Grantor shall reasonably coordinate the location and construction of such improvements with the Grantee.

C. The non-exclusive right of Grantor to grant or relocate under those portions of the Property designated as Easement _____ (also known as Haumea Street) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance and repair and replacement of underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility upon such terms and conditions as the Grantor may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement _____ will not have a material adverse impact on the design or use of improvements planned for or existing on the Property and (ii) after performing any work

in Easement _____, Grantor or such grantees shall return the Property to its original condition to the extent that such restoration is reasonably possible. Grantee shall have the right to review and comment on any improvements in Easement _____ prior to the construction of such improvements and Grantor shall reasonably coordinate the location and construction of such improvements with the Grantee.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the said Grantee, absolutely and in fee simple.

And for the consideration aforesaid, the Grantor, for themselves, their successors and successors in trust, do hereby covenant and agree with the Grantee, its successors and assigns, that the Grantor has done or suffered no act or thing whereby the Property hereby granted is encumbered, except as aforesaid; and that the Property is free and clear of all liens and encumbrances made or suffered by the Grantor; and that the Grantor will and their successors and successors in trust shall, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through and under the Grantor, except as aforesaid.

SUBJECT, HOWEVER, to the following:

1. Grantee does hereby acknowledge that, by the acceptance and recordation of this deed, it (i) is familiar with and has examined the physical conditions of the Property and has agreed to accept title to the Property in "as-is" condition as of the date hereof, and (ii) agrees and covenants to hold and shall hold, convey, encumber, use, occupy and improve the Property subject to the terms, covenants, conditions, reservations and restrictions contained herein, and shall not use or permit the use of the Property in violation thereof.

2. The Property shall be used by Grantee for governmental offices and public facilities only and for no other purpose without the prior written consent of Grantor, which consent may be withheld by the Grantor in its sole discretion for any reason.

3. Grantor shall have the right, without the consent of Grantee, to assign or partially assign any or all of the rights, reservations and exceptions, held by Grantor hereunder, including without limitation, the rights, reservations and exceptions contained in paragraphs A and B above, to the "Declarant" or to the "Association", as these terms are defined in the Declaration.

4. Grantee acknowledges that Grantor is developing nonpotable "caprock" water to irrigate the common areas of the City of Kapolei. The Grantor intends in the future to complete and to turn over a nonpotable water system to the Board of

Water Supply of the City and County of Honolulu ("BWS") or the City of Kapolei Community Association, Inc. ("Association"). This completion and dedication can occur when a source of nonpotable water of reliable quality can be assured to BWS or the Association. The Grantee agrees, whenever nonpotable water is reasonably available, to use its best efforts to use such nonpotable water for all uses for which such water is feasible, including, without limiting the generality of the foregoing, development of a nonpotable water system on the Property and connecting such system to the nonpotable water system for the City of Kapolei within one hundred and twenty (120) days after the later to occur of: (a) receipt of notice from the Grantor of the availability of such system, and (b) the completion of construction of the Grantee's first building on the Property. Any external water features, including but not limited to ponds, streams, fountains and water falls on the Property shall use nonpotable water whenever the same is reasonably available. Grantee's landscaping and ground cover shall at all times comply with the City of Kapolei Development Standards and Guidelines and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources. The Grantee authorizes the Grantor to obtain water consumption records pertaining to the Property from the BWS or any other Governmental Authority or private entities providing water to the Property, and agrees to provide the Grantor written authorization to do so if so required.

5. Any word, term or phrase which begins with initial capitalization and which is not defined in this deed, shall be given the definition of such word, term or phrase in the Declaration.

6. Any liability which may arise as a consequence of the execution of this Indenture by or on behalf of Grantor shall be a liability of the Estate of James Campbell, Deceased, and not the personal liability of any trustee or employee of the Estate of James Campbell.

7. The Grantor and Grantee hereby acknowledge and agree that all of the rights, reservations and exceptions contained in paragraphs A and B above shall be covenants running with the land and shall be binding upon Grantor and Grantee pursuant to paragraph 8 below.

8. The foregoing rights, reservations, exceptions, obligations, duties and agreements of Grantor and Grantee shall be deemed covenants running with the land, binding upon Grantor and Grantee, and their respective successors, successors in trust, and assigns for a period commencing with the filing of this deed in the Office of the Assistant Registrar of the Land Court of the State of and continuing for as long as the Declaration shall be in effect as to the City of Kapolei, all as more fully described in Article 2.2(111) of the

Declaration, the terms of which article are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be duly executed on the day and year first above written.

TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities

Grantor

STATE OF HAWAII, by its Department of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

Date: _____

By _____
Chairperson, Board of Land and Natural Resources

By _____
Member, Board of Land and Natural Resources

State

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

On this _____ day of _____, 19____, before
me personally appeared _____,
_____, _____ and
_____, TRUSTEES UNDER THE WILL AND OF THE ESTATE
OF JAMES CAMPBELL, DECEASED, to me known to be the persons
described in and who severally executed the foregoing
instrument, and severally acknowledged that they executed the
same as their free act and deed as such Trustees.

Notary Public, State of Hawaii

My commission expires: _____

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT _____, area _____ acres, as shown on Map _____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

SUBJECT, HOWEVER, to the following:

1. Designation of Easement "148", as shown on Map 67, as set forth by Land Court Order No. 12401, filed November 19, 1953.
2. Findings of Fact, Conclusions of Law and Decision and Order dated September 23, 1988, as amended by documents dated March 29, 1989 and May 30, 1989 in Docket No. A87-613 before the Land Use Commission of the State of Hawaii, as further amended by Agreement Satisfying Department of Health Condition dated March 9, 1990, by and between State of Hawaii by its Department of Health and the Trustees under the Will and of the Estate of James Campbell, Deceased, and as further amended by Unrecorded Order Granting Motion for Third Amendment to Findings of Fact, Conclusions of Law, and Decision and Order dated June 4, 1993. (Not noted on Certificate of Title referred to herein.)
3. Document Re Petitioner's Commitments dated April 11, 1989 by and between State of Hawaii by its Office of State Planning, Department of Transportation and Department of Land and Natural Resources and the Trustees under the Will and of the Estate of James Campbell, Deceased. (Not noted on Certificate of Title referred to herein.)
4. Agreement dated November 14, 1989, filed as Land Court Document No. 1684751 by the Trustees under the Will and of the Estate of James Campbell, Deceased; Re Amended Document Listing Conditions and Preconditions to Reclassification.
5. Unilateral Agreement and Declaration for Conditional Zoning made by the Trustees under the Will and of the Estate of James Campbell, Deceased dated September 9, 1991 and filed as Land Court Document No. 1849708, as amended by First Amendment to Unilateral Agreement and Declaration for Conditional Zoning made by the Trustees under the Will and of the Estate of James Campbell, Deceased dated September 12, 1991, and filed as Land Court Document No. 1850615.

EXHIBIT A

6. Designation of Easement "3808" (209 square feet), as shown on Map 653, as set forth by Land Court Order No. 113611, filed September 28, 1993.

7. Restriction of vehicular access rights as shown on Map 653, as set forth by Land Court Order No. 113611, filed September 28, 1993.

8. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in Land Court as Document No. 2103428, as amended by that certain First Amendment to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated May 12, 1994, filed in said Office of the Assistant Registrar as Document No. 2152082.

9. Document Listing Conditions to Reclassification dated August 16, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in said Office of the Assistant Registrar as Document No. 2068683.

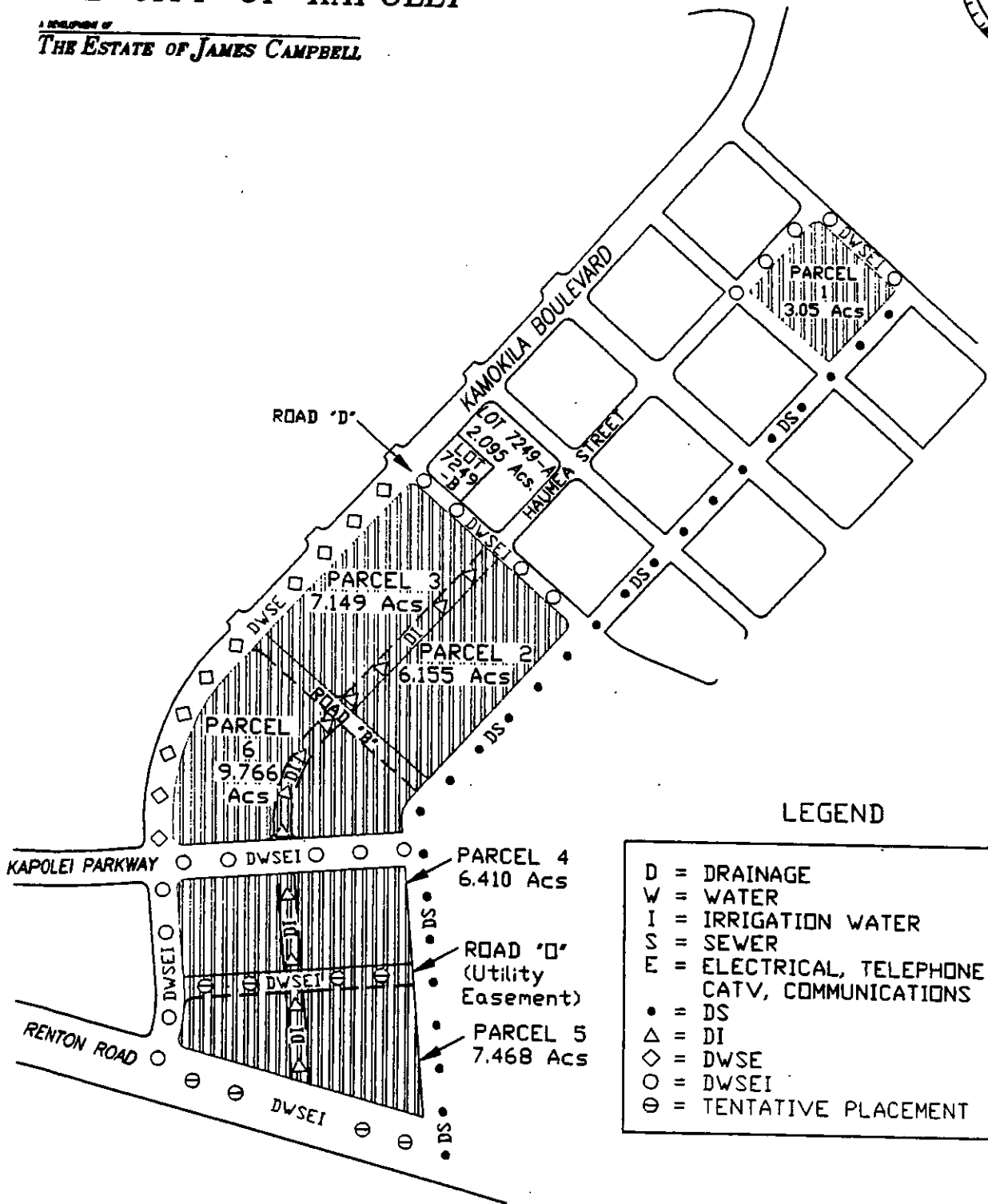
10. Designation of Easement "_____" (_____ square feet) for access and utility purposes, as shown on Map _____, as set forth by Land Court Order No. _____, filed _____.

BEING all of the land described in Certificate of Title No. _____ issued to the Trustees under the Will and of the Estate of James Campbell, Deceased.

End of Exhibit A

THE CITY OF KAPOLEI

A DEVELOPMENT OF
THE ESTATE OF JAMES CAMPBELL



LEGEND

D	=	DRAINAGE
W	=	WATER
I	=	IRRIGATION WATER
S	=	SEWER
E	=	ELECTRICAL, TELEPHONE CATV, COMMUNICATIONS
•	=	DS
△	=	DI
◇	=	DWSE
○	=	DWSEI
⊖	=	TENTATIVE PLACEMENT



EXHIBIT C-1

PARCEL 3 OFF-SITE IMPROVEMENTS

1. Interim Improvement.

Estate shall provide Developer with access to Parcel 3 for use by Developer and its agents sufficient to permit Developer to commence construction of the Planned Improvements. This access may not be of a permanent nature, and Estate reserves the right, from time to time, with reasonable notice to Developer (not less than 15 calendar days), to relocate this temporary access in order to facilitate construction of other improvements in the City of Kapolei.

2. Permanent Improvements.

Estate covenants and agrees to provide the following Estate improvements prior to the date that Developer completes construction of the Planned Improvements, subject to extensions of time for delays in the completion of such improvements caused by force majeure:

a. Paved Access. In order to provide reasonable access to and from Parcel 3, the Estate shall construct Road "D" as shown on Exhibit A-3 to and including the Haumea Street intersection. In addition, the State shall be granted a non-exclusive access easement over Road "B" as shown on Exhibit A-3 and be allowed to construct driveway improvements in Road "B". Said easement shall automatically terminate upon the Estate's completion of construction of Road "B" and its dedication to the City and County of Honolulu. Notwithstanding the foregoing, said easement shall not terminate earlier than April 11, 1999. The Estate has provided curbs, gutters and sidewalks along Kamokila Boulevard and will provide curbs, gutters and sidewalks in the completed portion of Road "D" which fronts onto Parcel 3. State shall be responsible for and shall pay for all curb cuts, driveways and aprons from the paved access to Parcel 3.

b. Drainage. The Estate has provided drainage improvements to serve Parcel 3 in Kamokila Boulevard. Additional drainage improvements specifically serving the first building to be constructed on Parcel 3 will be constructed by the Estate concurrently with the construction of Road "D" as

EXHIBIT C-2

shown on Exhibit A-3 which will include a 42" drain line in Haumea Street. The Estate shall have the right to construct further drainage improvements in the Haumea Street corridor as required for the City of Kapolei provided that such improvements shall be reasonably coordinated with the development of the Planned Improvements by the State. The Estate will incrementally construct improvements in Haumea Street as and when required to accommodate additional buildings on Parcel 3.

c. Potable Water and Sewer Service. The Estate has installed potable water and sewer lines in Kamokila Boulevard adjacent to Parcel 3. The potable water line is connected to the Board of Water Supply's water main. The sewer line is connected to the sewer main of the entity providing sewer service. The Estate will allocate potable water for the first building on Parcel 3 from the Estate's HECO Waiiau source. The allocation is recently estimated at 12,000 gallons per day based on Board of Water Supply standards for a 120,000 usable square foot building. Upon such allocation, the developer of the building will be required to pay to the Estate the Water Facilities charge described in Article X.B3 of the Ground Lease. It shall be State's responsibility to obtain and pay for any other costs associated with the connection to or the provision of potable water or sewer services to Parcel 3.

d. Non-potable Water Line. The Estate is developing nonpotable "caprock" water to irrigate the common areas of the City of Kapolei. The Estate intends in the future to complete and to turn over a nonpotable water system to the Board of Water Supply ("BWS") or the City of Kapolei Community Association, Inc. ("Association"). This completion and dedication can occur when a source of nonpotable water of reliable quality can be assured to BWS or the Association. The State agrees, whenever nonpotable water is reasonably available, to use its best efforts to use such nonpotable water for all uses for which such water is feasible, and to develop a nonpotable water system on Parcel 3 and connect such system to the nonpotable water system for the City of Kapolei within one hundred and twenty (120) days after the later to occur of: (a) receipt of notice from the Estate of the availability of such system, and (b) Completion of Construction of the State's Planned Improvements on Parcel 3. Notwithstanding the foregoing, the State shall not drill for water on Parcel 3 without obtaining the Estate's prior written consent (which may be withheld in the Estate's sole discretion.) Any external water features, including but not limited to ponds, streams, fountains and water falls shall use nonpotable water whenever the same is reasonably available. The State's landscaping and ground cover shall at all times comply with the City of Kapolei Development Standards and Guidelines and shall be chosen with the purpose of minimizing irrigation requirements, especially

from potable water resources. The State authorizes the Estate to obtain water consumption records pertaining to Parcel 3 from the BWS or any other governmental agencies or private entities providing water to Parcel 3, and agrees to provide the Estate written authorization to do so if so required.

e. Other Utilities. Estate has installed in Kamokila Boulevard to the boundary of Parcel 3 a utility conduit system for electrical and telephone and cable television lines. It shall be the State's responsibility to contact the appropriate utility or provider for services in the conduit system to serve Parcel 3 and to pay for such services.

Estate's obligations under this Exhibit C shall only be to provide such improvements as are necessary to service Parcel 3, and nothing herein shall be deemed or construed to require or otherwise obligate Estate to complete such infrastructure to any other portions of the City of Kapolei or to complete any other amenities or facilities of any kind or description in the City of Kapolei prior to the completion of the Planned Improvements on Parcel 3. Without limiting the foregoing, State acknowledges that such infrastructure and other amenities or facilities for the City of Kapolei may not be completed within such time period; may be changed, modified or deleted from time to time in accordance with the provisions of the Declaration; and may not be constructed at all as to any portions of the Estate's lands which are not annexed to the City of Kapolei. State further acknowledges and agrees that Estate's construction of such infrastructure and other amenities or facilities may interfere with State's use and enjoyment of the Land during the periods of such construction.

CITY OF KAPOLEI GROUND LEASE

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CITY OF KAPOLEI GROUND LEASE

This City of Kapolei Ground Lease ("Lease") is made this _____ day of _____, 19____, by and between the **TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED**, acting in their fiduciary and not in their individual capacities, whose address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 ("Landlord"), and _____, whose address is _____ ("Tenant").

SPECIAL LEASE PROVISIONS

The following Special Lease Provisions are an integral part of this Lease. References in the Special Lease Provisions to exhibits and other sections are for convenience and designate some of the exhibits and other sections where Special Lease Provisions are discussed. Each reference in this Lease to any of the Special Lease Provisions shall be construed to incorporate all the terms under each such Special Lease Provision into this Lease. In the event of a conflict between any Special Lease Provision and the Standard Lease Provisions, the Special Lease Provision shall control.

ARTICLE I

SPECIAL LEASE PROVISIONS

A. Land. Lot _____, as shown on Map _____, filed in the Land Court in Application No. _____, being the land covered in Transfer Certificate of Title No. _____ issued to Landlord.

B. Term. The Term shall commence on the date that Landlord notifies Tenant in writing that the Premises are ready for Tenant's occupancy ("Commencement Date"), and shall terminate at midnight on the last day of the month in which the fortieth (40th) anniversary of the Construction Completion Date occurs ("Termination Date").

C. Minimum Rent. Tenant shall pay Landlord Base Rent for the Premises in the manner set forth in Article V below as follows:

1. Base Rent While Sublease in Effect. Notwithstanding anything to the contrary contained in Articles I.C.2 and I.C.3 below, if the State of Hawaii, by and through its Department of Accounting and General Services ("Sublessee") subleases the Premises from Tenant pursuant to

and in accordance with the terms of the Sublease at all times during the term of this Lease, the Base Rent shall be ONE AND NO/100 DOLLARS (\$1.00) per year; provided, however, that Landlord and Tenant agree that, if at any time during the Term of this Lease, the Sublease with the State of Hawaii is no longer in full force and effect, the Base Rent from the date the Sublease terminates until the last day of the twenty-fourth (24th) month immediately following such termination shall be ONE AND NO/100 DOLLARS (\$1.00) per year.

2. Fixed Term. For the Fixed Term of the Lease, the Base Rent shall be as follows:

a. Initial Five Year Period.

(1) For the period from the Commencement Date until the Construction Completion Date, the Base Rent shall be equal to \$1.00 per year;

(2) For each year of the period from the Construction Completion Date until the last day of the month in which the fifth (5th) anniversary of the Construction Completion Date occurs, Base Rent shall be an amount as shall be determined as of the Construction Completion Date by mutual agreement of Landlord and Tenant based upon an eight percent (8%) per annum net return on the value of the Land (the "Fair Market Rental Value") immediately prior to the commencement of this period. For purposes hereof, this five (5) year period shall be deemed to be a "Rental Period" as this term is defined below. In the event that Landlord and Tenant are unable to agree upon the Base Rent (and by definition the Fair Market Rental Value for the Premises) for this period within ninety (90) days after the Construction Completion Date, then the Base Rent shall be determined by appraisal in the manner described in Article V.B. below. All amounts determined by appraisal shall be as of the Construction Completion Date.

b. Remainder of Fixed Term. For the remaining ten (10) years (each five (5) year period being a "Rental Period") of the Fixed Term, the annual Base Rent shall be equal to the sum of (a) the Base Rent for the immediately preceding Rental Period plus (b) an amount equal to the Base Rent for the immediately preceding Rental Period multiplied by the percent of increase in the Current Index over the Price Index in effect at the beginning of the immediately preceding Rental Period. Notwithstanding the foregoing, in no event shall the Base Rent for any Rental Period in the Fixed Term be less than the Base Rent for the immediately preceding Rental Period.

3. Escalation Period. For the remaining twenty-five (25) years (each five (5) year period being a "Rental Period") (collectively the "Escalation Period") of the term of the Lease after the Fixed Term, the annual Base Rent for each Rental Period of the Escalation Period shall be an amount equal to the Fair Market Rental Value for the Land determined by mutual agreement of Landlord and Tenant at least ninety (90) days prior to the first day of the Rental Period in question. In the event that Landlord and Tenant are unable to agree upon the Base Rent (and by definition the Fair Market Rental for the Land) for the Rental Period in question at least ninety (90) days prior to the first day of such Rental Period, then the Base Rent for the Rental Period in question shall be determined by appraisal in the manner described in Article V.B. below. All amounts determined by appraisal shall be as of the date which is ninety (90) days prior to the commencement date of the Rental Period in question. Notwithstanding the foregoing, in no event shall the Base Rent for any Rental Period in the Escalation Period be less than the Base Rent for the immediately preceding year of the Fixed Term, or the immediately preceding Rental Period, as applicable.

D. Required Improvements. The Tenant, at its own cost and expense, shall construct the improvements described on Exhibit E attached hereto and incorporated herein by reference ("Required Improvements") on the Land in accordance with the provisions of Article VI of the Lease. The total Hard Costs for the construction of the Required Improvements and tenant improvements shall not be less than \$27,000,000.

E. Construction Dates. Tenant shall:

(i) Commence construction of the Required Improvements within sixty (60) days ("Construction Commencement Date") of the later of (a) the Commencement Date or (b) the date that is thirty (30) days after Tenant has received written notice from Landlord that Tenant has satisfied all of the requirements of Article VI.D below; provided, however, that in no event, shall Tenant commence construction of the Required Improvements later than December 1, 1995; and

(ii) Diligently and continuously thereafter construct the Required Improvements so as to have the Required Improvements Completed no later than eighteen (18) months from the Construction Commencement Date ("Construction Completion Date"), subject to extensions for Force Majeure as permitted under Article VI.F below. If the Required Improvements are completed in less than eighteen (18) months from the Construction Commencement Date, the Construction Completion

Date shall be the last day of the month during which the Required Improvements are completed.

F. Permitted Use of Premises: Governmental offices and other public facilities. If, at any time during the Term of this Lease, the Sublease with Sublessee is no longer in full force and effect, Tenant may use the Premises for general office use. Notwithstanding the foregoing, however, and provided that Tenant has entered into the Sublease, the Sublessee may (a) lease up to 60,000 usable square feet of space in the Premises to Motorola, Inc., and (b) during the first three (3) years from and after the Construction Completion Date, lease up to an additional twenty-five percent (25%) of the usable square feet in the Premises for other non-governmental purposes. The Sublessee may request a two year extension of this period which may be granted or withheld by the Campbell Estate in its sole discretion. (Article X.H).

G. Landlord's Address:

James Campbell Building
1001 Kamokila Boulevard
Kapolei, Hawaii 96707

H. Tenant's Address:

I. Water Usage. Tenant shall not use more than the lesser of (i) the water usage allocated to the Premises, based upon the Required Improvements and any Other Construction constructed thereon in accordance with this Lease, computed in accordance with Board of Water Supply criteria for potable water usage, or (ii) 12,000 gallons of potable water per day. Tenant shall not use more than the lesser of (i) the water usage allocated to the Premises, based upon the Required Improvements and any Other Construction constructed thereon in accordance with this Lease, computed in accordance with Board of Water Supply criteria for non-potable water usage, or (ii) _____ gallons of non-potable water per day. (Article X.B).

J. Alteration Threshold. \$25,000.00
(Articles VI.D; X.D).

K. Insurance (Article VIII)

1. Minimum Liability Coverage Amounts:

a. Commercial General Liability and Excess or Umbrella Liability:

- (i) \$ 10,000,000 Each Occurrence
- (ii) \$ 10,000,000 General Aggregate
- (iii) \$ 10,000,000 Products & Completed Operations Aggregate
- (iv) \$ 10,000,000 Personal and Advertising Injury
- (v) \$ 100,000 Fire Damage (any one fire)
- (vi) \$ 100,000 Medical Expense (any one person)

b. Commercial Auto Liability and Excess or Umbrella Liability:

- (i) \$ 10,000,000 Any One Accident or Loss

c. Employers Liability and Excess or Umbrella Liability:

- (i) \$ 10,000,000 Bodily Injury by Accident
- (ii) \$ 10,000,000 Bodily Injury by Disease
- (iii) \$ 10,000,000 Bodily Injury by Disease Policy

2. Maximum Deductibles:

a. Commercial General Liability:

- (i) \$ 5,000 Each Loss
- (ii) \$ 25,000 Aggregate

b. Pollution Liability:

- (i) \$ 5,000 Each Discovery

c. **Employers Liability:**

(i) \$ 1,000 Medical Only

d. **Fire and Hazard Insurance:**

(i) \$ 50,000 Hazards other than
Earthquake & Flood (per loss)

(ii) \$ 100,000 Earthquake (each loss)

(iii) \$ 400,000 Flood (each loss)

L. **Security Deposit:** \$100,000.00 (Article V.I.).

M. **Landlord's Failure to Deliver Building Site**

Area: If, for any reason whatsoever, by March 31, 1996, subject to extensions for Force Majeure, Landlord (i) does not notify Tenant that the Premises are ready for Tenant's occupancy or (ii) is unable to demise the Premises subject only to those encumbrances permitted under this Lease, then either party hereto may thereafter cancel and terminate this Lease by giving sixty (60) days written notice to the other, and upon such notice of termination, this Lease shall have no further force and effect and neither party shall thereafter have any further obligation to the other. If neither party elects to terminate this Lease by giving written notice of such election to the other party within such sixty (60) day period, the provisions of this Article I.M shall automatically terminate and be of no further force and effect, and this Lease shall be binding in accordance with its terms (except for this Article I.M).

N. **Assessment.** Tenant acknowledges and agrees that Tenant's pro rata share of the expenses incurred in owning, operating, repairing and maintaining the Area of Common Responsibility shall not be less than \$6,350.00 per month. (Article X.B.2). Notwithstanding the foregoing, Landlord, as Declarant under the Declaration, acknowledges and agrees that so long as the Premises are used solely for the purpose set forth in Article I.F above, the Premises shall not be included in the "Development Land" as defined in the Declaration and shall enjoy the exemption from the payment of "Assessments" as set forth in Section 9.10 of the Declaration.

O. **Sublessee's Options to Purchase Premises.**

Beginning on the tenth (10th) anniversary of the Construction Completion Date, and every five (5) years thereafter, Sublessee shall have the exclusive right and option to purchase the interests of Tenant in the Premises and this Lease for the

amount set forth in the Acquisition Price Schedule attached hereto as Exhibit F and incorporated herein by reference. Sublessee shall exercise its option to purchase by giving written irrevocable notice to Tenant of Sublessee's exercise of said option not later than one hundred eighty (180) days prior to each such anniversary. Closing of such acquisition shall occur on the applicable anniversary of the Construction Completion Date, at which time Tenant shall be paid in cash the amount shown on Exhibit F, this Lease shall automatically terminate and neither Landlord nor Tenant shall have any further obligations to the other under this Lease except for obligations arising prior to such termination. On the closing date, title to the Premises shall vest in Sublessee free and clear of all liens and encumbrances created by, through or under Tenant, and Tenant shall warrant and defend the same unto Sublessee from and against any and all claims and demands arising by, through or under Tenant. Notwithstanding anything contained in this Lease or in any other writing to the contrary, it is expressly understood and agreed by Landlord and Tenant that nothing in this Lease, or by the options hereby granted, shall be construed to be a contract for the purchase and sale of any interest of Tenant in the Premises or this Lease, nor shall this Lease, or the options hereby granted, be construed to grant or transfer to Landlord, Sublessee, or any person or entity claiming by, through or under Landlord, any present right, title or interest in Tenant's interest in the Premises or this Lease.

All terms, covenants and conditions contained in the Standard Lease Provisions and the Exhibits attached hereto are

incorporated herein by reference and made a part of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

**TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their
fiduciary and not in their
individual capacities**

Landlord

(Name of Tenant)

By _____
Name:
Its:

By _____
Name:
Its:

Tenant

STANDARD LEASE PROVISIONS

In consideration of the respective and mutual covenants of Landlord and Tenant and the rent set forth in this Lease, Landlord and Tenant hereby agree to the Special Lease Provisions and to all of the following terms, conditions and covenants ("Standard Lease Provisions"):

ARTICLE II DEFINITIONS

A. Use of Defined Terms. For purposes of construing and interpreting this Lease, the terms defined in this Article II.A when written with initial capital letters in this Lease shall have throughout the Lease the meaning given such terms in the paragraphs below. The terms defined in this Article II.A may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of such terms set forth in the paragraphs below so long as those terms are written in initial capital letters. When such terms are used in this Lease but are written without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade usage meanings, such terms shall be given such legal, technical or trade usage meanings.

1. AAA. "AAA" shall mean the American Arbitration Association.
2. Acceptable Loan Commitment. An "Acceptable Loan Commitment" shall mean a binding commitment to make a loan which is acceptable to the Landlord as to both (i) its form and content and (ii) the identity of the lender making the loan.
3. AIA General Conditions. The "AIA General Conditions" shall mean the American Institute of Architects General Conditions of the Contract for Construction, AIA Document A201 1987 Edition.
4. Alteration Threshold. The "Alteration Threshold" shall mean the amount which is set forth in Article I.J. above.
5. Approved Plans and Specifications. "Approved Plans and Specifications" shall mean substantially completed plans (including working drawings) and specifications (sufficient for building purposes) which have been approved in

writing by Declarant and Landlord, in accordance with Article VI.D.1 below.

6. Area of Common Responsibility. "Area of Common Responsibility" shall have the meaning given to such term in the Declaration.

7. Association. "Association" shall mean the City of Kapolei Community Association, Inc., a Hawaii non-profit corporation, formed pursuant to the Declaration.

8. Base Rent. "Base Rent" shall mean the net annual rent for the Premises, which amount is set forth in Article I.C above.

9. Bureau of Conveyances. "Bureau of Conveyances" means the Bureau of Conveyances of the State of Hawaii.

10. Campbell Estate. "Campbell Estate" shall mean the Trustees Under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual capacities, and their respective successors in trust and assigns.

11. City of Kapolei. The "City of Kapolei" shall mean the property annexed to and encumbered by the Declaration as it exists on the date this Lease is signed and as such property may be modified at any time during the Term after such date.

12. Commencement Date. "Commencement Date" shall mean the date that Landlord notifies Tenant in writing that (i) the portion of the Land upon which the Required Improvements are to be built has received the approval of the City and County of Honolulu to allow construction of the Required Improvements with a ninety (90) foot height limitation, (ii) Landlord has completed the Landlord Improvements listed in part 1. of Exhibit C, and (iii) the Premises are ready for Tenant's occupancy, as set forth in Article I.B above.

13. Commencement of Construction. "Commencement of Construction" shall mean "visible commencement of operations" as that term is defined in Article 507-41 of the Hawaii Revised Statutes in effect on the Effective Date.

14. Commission. "Commission" shall mean the Commission on Water Resource Management of the State of Hawaii.

15. Completed. A structure, improvement or building is "Completed" when a "certificate of occupancy" has been

issued by the appropriate governmental authority. The "Completion" of a structure, improvement, building or room shall mean the issuance of a "certificate of occupancy" by the appropriate governmental agency for such structure, improvement or building.

16. Construction Commencement Date. "Construction Commencement Date" shall mean the date upon which Tenant commences construction of the Required Improvements, as set forth in Article I.E. above.

17. Construction Completion Date. "Construction Completion Date" shall mean the date by which Tenant is required to have Completed construction of the Required Improvements, as set forth in Article I.E. above.

18. Cost of Living Factor. The "Cost of Living Factor" for any date during the Term shall be a fraction whose numerator (the "Current Index") is the index figure stated in the "Consumer Price Index" (the "Price Index") for all items for the "Standard Metropolitan Statistical Area of Honolulu, Hawaii, All Urban Consumers" published by the Bureau of Statistics of the United States Department of Labor (1982-1984 = 100) in effect on such date and whose denominator (the "Base Index") is the Price Index in effect on the Commencement Date of the Lease; provided, however, that for any date for which the relevant Current Index is less than or equal to the Base Index, the Cost of Living Factor shall be one (1). If no separate "Consumer Price Index" for Honolulu is published, the Price Index shall be the "Consumer Price Index" applicable to the area in which Honolulu is included, if any, and otherwise, the national "Consumer Price Index." If the "Consumer Price Index" is discontinued, the Price Index shall be based on comparable statistics on changes in the purchasing power of the consumer dollar for the applicable periods, as published by a responsible financial periodical report of a recognized governmental or private authority.

19. Declarant. "Declarant" shall have the meaning given to such term in the Declaration.

20. Declaration. "Declaration" shall mean that certain City of Kapolei Declaration of Protective Covenants, Conditions, and Restrictions dated November 30, 1993 and Filed in the Land Court as Document No. 2103428, as amended by that certain First Amendment to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated May 12, 1994, filed in said Office of the Assistant Registrar as Document No. 2152082, as that document may be further amended from time to time pursuant to the terms thereof.

21. Design Advisory Board. The "Design Advisory Board" shall mean the board created by Declarant to assist in its review of plans and specifications for proposed construction within the City of Kapolei.

22. Development Guidelines. "Development Guidelines" shall mean the City of Kapolei Development Standards and Guidelines which are attached as an exhibit to the Declaration, as amended from time to time, which govern the design, development, construction, installation, modification and maintenance of any improvements and the overall aesthetic appearance of the City of Kapolei.

23. Electrical Facilities. "Electrical Facilities" shall mean all electrical high voltage transmission and distribution lines, transformers and other facilities now or hereafter located over, on, under and in close proximity to the Premises.

24. Escalation Period. "Escalation Period" shall mean the Term of the Lease remaining after the expiration of the Fixed Term, which period is set forth in Article I.C.3 above.

25. Fair Market Rental Value. "Fair Market Rental Value" shall have the meaning set forth in Article I.C hereof.

26. File. To "File" a document shall mean to file such document with the Assistant Registrar of the Land Court of the State of Hawaii.

27. Fixed Term. "Fixed Term" shall mean the initial period of the Term of the Lease, beginning on the Commencement Date and ending on the last day of the month in which the fifteenth (15th) anniversary of the Construction Completion Date occurs.

28. Force Majeure. "Force Majeure" shall mean any performance or condition required to be completed by a party to this Lease under the terms of this Lease which is delayed by any act of God (tsunamis, earthquakes or other natural disasters), war, strike in the State of Hawaii or on the Island of Oahu, national emergencies or civil disturbances or by general transportation or shipping strikes, or by strikes which affect the delivery of materials critical to construction on the Premises, or by reason of any act of the United States, the State of Hawaii, or the City and County of Honolulu or any department thereof, which conditions are not within such

party's control and could not reasonably be avoided by such party.

29. Governmental Authority. "Governmental Authority" shall mean any governmental or quasi-governmental agency or body now or hereafter constituted with jurisdiction over water resources or development thereof.

30. Hard Costs. "Hard Costs" of construction are defined as the costs of construction materials, equipment and fixtures to be incorporated into the improvements constructed and the costs of labor and administration of such construction, as paid to a contractor or contractors for such construction, and shall not mean or include such "soft" costs as architect's and designer's fees, other professional or consulting fees, any cost to acquire the Lease, finance charges or fees for loan commitments or money borrowed for such construction or the Lease, costs of obtaining government approvals necessary for such construction, and Tenant's overhead and costs of administering such construction and development.

31. Hazardous Materials. "Hazardous Materials" as used herein, whether or not specifically defined or identified by any federal, state or local laws, statutes, ordinances, codes, regulations, rules or governmental guidance documents, shall mean and include, without limitation, oil or petroleum products or their derivatives, solvents, explosive substances, radioactive materials, asbestos, inflammable explosives, organic compounds (including polychlorinated biphenyl), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any other toxic, ignitable, reactive corrosive or related materials and any substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" in the Hazardous Material Laws.

32. Hazardous Materials Laws. "Hazardous Materials Laws" shall mean all laws relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, as the same may be amended from time to time, and any similar federal, Hawaii state (including without limitation Hawaii Revised Statutes Chapters 128D and 342B through 342P,

inclusive) and local laws and ordinances, and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto applying to the Premises or any portion thereof.

33. Land. "Land" shall mean the land defined in Article I.A above, exclusive of any improvements existing at any time on such land, as such area may be adjusted from time to time in accordance with Article III.B.2. below.

34. Land Court. "Land Court" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

35. Landlord. "Landlord" shall mean the Campbell Estate and its successors in trust and assigns.

36. Landlord's Cost of Money. "Landlord's Cost of Money" for any period during the Term shall mean an annual rate of interest equal to the lesser of: (i) five percent (5%) plus the prime interest rate for such period of time, which shall be the interest rate then charged by the largest or the second largest bank (as measured by total assets) in the State of Hawaii, whichever charges the higher rate, to its most responsible commercial borrowers on 90-day unsecured notes; or (ii) the maximum per annum rate of interest permitted to be charged by then applicable law.

37. Landlord's Improvements. "Landlord's Improvements" shall mean the improvements to the Premises set forth in Exhibit C attached hereto and incorporated herein by reference, which Landlord at its expense will construct or furnish to Tenant.

38. Lease. "Lease" means this Lease, together with the Exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions of Article XIII.P below.

39. Lots. "Lots" shall have the meaning given to such term in the Declaration.

40. Other Construction. "Other Construction" is defined as any proposed building, improvement or structure (other than the Required Improvements) or any alteration or addition to the Required Improvements or such other building, improvement or structure.

41. Preconditions for Construction. The "Preconditions for Construction" shall mean all of the

conditions set forth in Paragraphs D.1 through D.7 of Article VI of this Lease.

42. Premises. The "Premises" shall mean the Land, the Required Improvements, the Other Construction, and all buildings, improvements, fixtures, tenements, rights, easements, privileges and appurtenances belonging, attached or appertaining to such Land on the date hereof or at any time thereafter.

43. Record. To "Record" a document shall mean to record such document in the Bureau of Conveyances.

44. Rental Periods. "Rental Periods" shall mean those fixed periods of time described in Article I.C.3 above.

45. Required Improvements. "Required Improvements" shall mean those improvements set forth in Exhibit E hereto, which Tenant, at its own cost and expense, shall construct on that portion of the Land designated on the Site Plan attached hereto as Exhibit E-1 in accordance with the provisions of Article VI below.

46. Setback. "Setback" shall mean the landscaped setback area located along the boundary of the Premises adjacent to any presently existing or future public or private streets or roadways, as more particularly described in the Declaration and the Development Guidelines, as shown on Exhibit D attached hereto.

47. Signage Guidelines. "Signage Guidelines" shall mean the Temporary and Permanent Signage Manuals created by Landlord to govern the type, size number and appearance of all signs to be installed in the City of Kapolei, which are attached as an exhibit to the Declaration, as amended from time to time.

48. Special Lease Provisions. "Special Lease Provisions" shall mean the provisions in Article I of this Lease.

49. Standard Lease Provisions. "Standard Lease Provisions" shall mean the provisions in Articles II through XIII, inclusive, of this Lease.

50. Sublease. "Sublease" shall have the meaning set forth in Article XIII.F.4 hereof.

51. Sublessee. "Sublessee" shall have the meaning set forth in Article I.C hereof.

52. Tenant. "Tenant" is defined on page 1 of this Lease.

53. Tenant's Equity. "Tenant's Equity" shall mean unborrowed, unencumbered equity of the Tenant, in a form approved by the Landlord, available at all times for carrying on any construction on the Premises required to comply with the Preconditions of Construction.

54. Term. "Term" shall mean the period of time during which this Lease is in effect, which period is set forth in Article I.B above.

55. Termination Date. "Termination Date" shall mean the date upon which this Lease shall terminate, unless sooner terminated as provided herein, which date is set forth in Article I.B above.

56. Urban Design Plan. "Urban Design Plan" shall mean the Urban Design Plan which is attached as an exhibit to the Declaration, as amended from time to time.

57. Water Facilities. "Water Facilities" shall mean water facilities including, but not limited to water source, storage and transmission lines which may be developed and constructed for the use and benefit of consumers in the City of Kapolei by or for the Board of Water Supply of the City and County of Honolulu, or by other governmental agencies or private companies and persons, including Landlord.

ARTICLE III PREMISES

A. Demise. Landlord demises and leases to Tenant, and Tenant rents from Landlord for the Term, the Premises, together with and subject to any and all rights and obligations attendant to Tenant's status as "Owner", as that term is defined in the Declaration, subject to (i) the encumbrances listed on Exhibit A attached hereto and incorporated herein by reference, (ii) the rights reserved unto Landlord under Article III.B below, and (iii) the rights reserved into the Campbell Estate under Article III.C below

B. Rights Reserved to Landlord. Landlord hereby expressly excepts and reserves from this Lease and from the rights granted under this Lease, the right, from time to time in its sole discretion, to subdivide any portion of the Land not utilized for the construction of the office building and underground parking portions of the Required Improvements;

provided, however, that if any such portion of the Land has been utilized for the on-grade parking portions of the Required Improvements, Landlord, at its expense, shall replace any such on-grade parking included in the subdivided area with parking meeting all requirements of any Governmental Authority having jurisdiction over the Premises. Tenant, upon request of the Landlord, agrees to join in any and all documents and proceedings necessary to accomplish such subdivisions. Upon the completion of any such subdivision, the subdivided portion of the Land shall be automatically removed from the provisions of this Lease, and Tenant shall not be entitled to any compensation as a result of such subdivision; provided, however, that the Basic Rent and other charges due from Tenant under this Lease shall be adjusted on a pro rata basis in proportion to the area of the Land remaining subject to this Lease, including any land provided by Landlord for the replacement of on-grade parking as set forth above.

C. Rights Reserved to Campbell Estate. Landlord hereby expressly excepts and reserves from this Lease and from the rights granted under this Lease, the following rights of the Campbell Estate:

1. Declaration. All rights of Campbell Estate as Declarant under the Declaration; provided, however, that so long as the Premises are used solely for the governmental and other purposes set forth in paragraph 4 of that certain letter agreement dated September 14, 1994 between the Campbell Estate and the State of Hawaii, the Premises shall not (a) be included within the "Development Land" described in the Declaration and shall enjoy the exemption from the payment of "Assessments" as set forth in Section 9.10 of the Declaration and (b) shall not be subject to the following provisions of the Declaration: Section 10.1, dealing with Water Rights; Section 10.2, dealing with Easements; and Section 10.4, dealing with Air Rights. Tenant further agrees to use its best efforts to comply with the Signage Guidelines attached as Exhibit G to the Declaration subject to such modifications as are consented to by the Campbell Estate, which consent shall not be unreasonably withheld.

2. Easements. The following easement rights:

(i) The right of Campbell Estate to grant or relocate in, on, over, under, across and through those portions of the Premises designated as Easement _____ (the landscaping easement along Kamokila Boulevard) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance, repair and

replacement of rights of way, underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, curbs, pavements and other roadway improvements, upon such terms and conditions as the Campbell Estate may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement _____ will not have a material adverse impact on the design or use of improvements planned for or existing on the Premises and (ii) after performing any work in Easement _____, Campbell Estate or such grantees shall restore the Premises to its original condition to the extent that such restoration is reasonably possible. Without limiting the foregoing, the Campbell Estate reserves the right to grant easements within Easement _____ to the Association created under the Declaration for the purpose of landscaping and/or such other purpose as the Campbell Estate deems appropriate. Tenant shall have the right to review and comment on any improvements in Easement _____ prior to the construction thereof, and the Campbell Estate shall reasonably coordinate the location and construction of such improvements with the Tenant.

(ii) The non-exclusive right of the Campbell Estate to grant or relocate under those portions of the Premises designated as Easement _____ (also known as Haumea Street) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance and repair and replacement of underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility upon such terms and conditions as the Campbell Estate may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement _____ will not have a material adverse impact on the design or use of improvements planned for or existing on the Premises and (ii) after performing any work in Easement _____, Campbell Estate or such grantees shall return the Premises to its original condition to the extent that such restoration is reasonably possible. Campbell Estate shall have the right to review and comment on any improvements in Easement _____ prior to the construction of such improvements and Campbell Estate shall reasonably coordinate the location and construction of such improvements with the Tenant.

3. Water Rights. In order to coordinate and regulate water usage for the benefit of all consumers of water in the City of Kapolei and on surrounding lands owned by the

Campbell Estate, the Campbell Estate has excepted and reserved the sole and exclusive right and power (i) to apply for, receive, hold and own permits and certificates, in its own name alone, issued by or under the authority of the Commission or any Governmental Authority; (ii) to register wells or stream diversion works, if any, and facilities therefor, and to file any reports with the Commission or Governmental Authority in connection therewith; (iii) to make any necessary declarations and reports of water use as may be required by the Commission or Governmental Authority; and (iv) to petition, apply to and appear before the Commission or other Governmental Authority in the Campbell Estate's own name alone or on behalf of the Campbell Estate and Tenant, with respect to all matters pertaining to water use, consumption, and development on or affecting the Premises, or on or affecting other lands owned by the Campbell Estate. Tenant shall not take any of the foregoing actions unless and to the extent specifically authorized to do so in writing by the Campbell Estate. Tenant shall join in any report, declaration, registration, petition, application to or appearance before the Commission or Governmental Authority, if requested by the Campbell Estate. Without limitation to the generality of the foregoing, upon any written request by the Campbell Estate to do so, Tenant shall apply, or join in any application made by the Campbell Estate, to the Commission or Governmental Authority for the transfer of any permit in Tenant's name or in which Tenant may have an interest, to the Campbell Estate or the Campbell Estate's nominee, without payment of any consideration to Tenant therefor. Within five (5) days of Tenant's receipt of same, Tenant covenants to notify the Campbell Estate in writing of all notices Tenant may receive from time to time from the Commission or Governmental Authority regarding any change or proposed change in the rights reserved by the Campbell Estate under this Article III.B.3 or in the amount of water (potable or non-potable) that Tenant is permitted to use on the Premises under this Lease.

D. No Light or Air Easement. Any diminution or shutting off of light or air by any structure now existing or which may be hereafter erected in the City of Kapolei or on lands adjacent to the Premises shall in no way affect this Lease, shall not constitute a constructive eviction or grounds for reduction or abatement of rent, or otherwise impose any liability on Landlord.

E. Quiet Enjoyment. If and so long as Tenant pays the rent and keeps, observes and performs each and every term, covenant and condition of this Lease on the part of Tenant to be kept, observed and performed, Tenant shall peaceably hold and enjoy the Premises for the Term without hindrance or inter-

ruption by Landlord or any other person lawfully claiming through or under Landlord except as in this Lease expressly provided. Tenant acknowledges that the City of Kapolei is a new city and that construction activities on lands surrounding the Premises may from time to time interfere with the operation of Tenant's business or adversely affect the flow of traffic to and from the Premises. Tenant shall not be entitled to any suspension, abatement or reduction of rent, nor to the recovery of any sums for any loss or damage on account of such activities nor for noise, dust or general inconvenience arising out of or attributable to the development of the City of Kapolei.

ARTICLE IV
TERM

A. Lease Term. Subject to earlier termination as herein provided, the Term of this Lease shall be as stated in Article I.B above.

B. Memorandum of Commencement Date. When the Commencement Date has been determined, Tenant shall execute upon Landlord's request a written memorandum in the form attached hereto as Exhibit B, expressly confirming the Commencement Date and other information contained in Exhibit B. Such memorandum shall be deemed incorporated herein. Failure of Tenant to execute and deliver such memorandum shall constitute an acceptance of the Premises; an acknowledgement by Tenant that the statements included in Exhibit B are true and correct without exception; and an authorization to Landlord, as attorney in fact of Tenant coupled with an interest, to execute such memorandum on behalf of Tenant.

ARTICLE V
RENTAL

A. Tenant to Pay Net Base Rent. Throughout the Term, Tenant shall pay to Landlord the annual Base Rent set forth in Article I.C above in the manner set forth in this Article, net and above any and all taxes, rates, assessments, charges, impositions, and expenses payable under this Lease and without deductions of any kind whatsoever. Base Rent shall be paid without prior notice or demand, and without any offset, counterclaim or deduction whatsoever, and shall not be reduced or abated except as expressly provided in this Lease.

B. Appraisal. Whenever this Lease provides that a matter shall be determined by appraisal, the determination by appraisal of such matter shall be done in an arbitration format and shall be binding, final and conclusive on the Landlord and Tenant. Such appraisal shall be made by three (3) impartial

appraisers appointed and constituted as provided in this paragraph, each of whom shall be a member in good standing of the American Institute of Real Estate Appraisers or its successor. Either Landlord or Tenant may give to the other party written notice of its desire to have an appraisal made and appoint one of the appraisers in said notice, whereupon the other party, within fifteen (15) days after the receipt of such notice, shall appoint a second appraiser, and, in case of failure so to do, the party who has already appointed an appraiser may have the second appraiser appointed by a judge of the Circuit Court of the First Judicial Circuit of the State of Hawaii, and the two appraisers so appointed, in either manner, shall appoint the third appraiser, and in the event that the two appraisers so appointed shall, within fifteen (15) days after the appointment of the second appraiser, fail to appoint the third appraiser, either party may have the third appraiser appointed by said judge, and the three (3) appraisers so appointed shall thereupon proceed to make the appraisal in question and the decision of any two of them shall be final, conclusive and binding upon Landlord and Tenant. Landlord and Tenant shall each have an opportunity to present arguments and evidence to support their respective positions regarding the determination of rent or other issues before the appraisers. The appraisers may call such expert or other witnesses as they deem appropriate to assist them in the appraisal process. Each of the parties shall pay the costs and expenses of their respective consultants, as well as the compensation and expenses of the appraiser it appoints. All other costs of the appraisal process shall be shared equally by Landlord and Tenant.

C. Gross Excise Tax. In addition to the rents reserved above, and without in any way limiting the generality of Paragraph A of this Article, Tenant shall pay to Landlord, as additional rent, together with each payment of Base Rent or any other payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such rental or other payment, shall yield to the Landlord, after deduction of all such tax payable by Landlord with respect to all such rent and other payments, a net amount equal to that which Landlord would have realized from such payments had no such tax been imposed.

D. Payment. Tenant shall commence payment of Base Rent on the Commencement Date and such rent shall be paid in equal monthly installments in advance on the first day of each month for which rent occurs under this Lease. If the Commencement Date shall fall on a day other than the first day of a month, then the rental for the first fractional month

shall be computed on a daily basis from the Commencement Date to the end of such calendar month by dividing the monthly installment of Base Rent by thirty (30) and multiplying this amount by the number of days remaining in the fractional month. Notwithstanding the foregoing, however, so long as the Base Rent is \$1.00 per year, the Base Rent shall be paid annually in advance on the Commencement Date and on each anniversary of the Commencement Date during the Term.

E. Disputed Rent. In the event that the parties have failed to agree upon a rental rate for annual Base Rent for any rental period, then pending determination of the rents for such rental period through appraisal or agreement, Tenant shall at the time and in the manner specified herein, continue payment of the Base Rent at the rate in effect during the immediately preceding rental period. Upon determination of the rents for such disputed rental period through appraisal or agreement, Tenant shall immediately pay over to Landlord any additional rents required to make up any increase in rents determined for such period plus interest thereon at Landlord's Cost of Money accruing from the date such payments would have been due until actually paid in full.

F. Currency; Agent. All rent and all other charges payable by Tenant under this Lease shall be paid in lawful currency of the United States of America to Landlord or to such agent as shall be designated by Landlord in written notice to Tenant at least ten (10) days prior to the next ensuing rent payment due date.

G. Late Charges/Dishonored Checks. If the Base Rent payment is not received prior to the tenth (10th) of any month, or within ten (10) days of the beginning of each year during the Term if the Base Rent is paid annually, or any other charge or additional rent due hereunder shall not be received when due, then a late fee in the amount of the greater of \$100.00 or five percent (5%) of the amount due shall be automatically assessed.

H. Other Taxes. Any conveyance tax imposed with respect to this Lease pursuant to Chapter 247, Hawaii Revised Statutes, and any rules and regulations promulgated thereto, shall be payable by Tenant. Landlord shall advise Tenant as to the amount of said tax and said tax shall be due and payable at the time of the execution of this Lease. Further, Tenant shall be responsible for and shall pay before delinquency all municipal, State or County taxes assessed during the term of this Lease against it by reason of the conduct of its business in the Premises or with respect to personal property of any

kind, owned by or placed in, upon or about the Premises by and/or at the expense of Tenant.

I. Security Deposit. Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord the sum designated in Article I.L hereinabove. If the Base Rent set forth in Article I.C increases during the term hereof, then Tenant shall also deposit with Landlord, on or before the date of each such increase, an additional sum equal to the difference between the new monthly Base Rent and the monthly Base Rent for the preceding period. All funds so deposited shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease by said Tenant to be kept and performed during the term hereof. The security deposit may be commingled by Landlord with other funds of the Landlord and shall bear no interest. If, at any time during the term of this Lease, any of the rent herein reserved shall be overdue and unpaid, or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid, then Landlord may, at the option of Landlord (but Landlord shall not be required to) appropriate and apply any portion of said deposit to the payment of any such overdue rent or other sum. In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant, then at the option of Landlord said Landlord may appropriate and apply said entire deposit, or so much thereof as may be necessary, to compensate Landlord for all loss or damage sustained or suffered by Landlord due to such breach on the part of Tenant. Should the entire deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall, upon the written demand of Landlord, forthwith remit to Landlord a sufficient amount in cash to restore said security to the amount held by Landlord prior to such appropriation and application and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a default hereunder entitling Landlord to immediately invoke the remedies set forth in Article XI.B, including the termination of this Lease. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all of the rentals herein provided for as the same fall due, and all other sums payable by Tenant to Landlord hereunder, the said deposit shall be returned in full to Tenant after Tenant shall have vacated the Premises at the end of the term of this Lease or upon the earlier termination of this Lease. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant, the security deposit shall be deemed to be applied first to payment

of any rents and/or other charges due Landlord for all periods prior to the institution of such proceedings, and the balance, if any, of the security deposit may be retained by Landlord in partial liquidation of Landlord's damages. Landlord shall transfer and/or deliver the security, as such, to any purchaser of Landlord's reversionary interest in the event that the reversion be sold, and thereupon Landlord shall be discharged from any further liability in reference thereto.

ARTICLE VI
CONSTRUCTION OF IMPROVEMENTS

A. Landlord Shall Prepare Premises. Landlord's Improvements shall be constructed or furnished substantially in accordance with the requirements set forth in Exhibit "C", and Landlord shall have no other obligation in connection with the construction of improvements on and/or the furnishing of facilities or Premises except as expressly provided therein. If for any reason Landlord abandons construction of the portion of Landlord's Improvements set forth in Part 1 of Exhibit "C" prior to the Commencement Date, Landlord may so notify Tenant and either party may elect to terminate this Lease as provided in Article I.M above. In such event Tenant agrees that Landlord shall not be liable or responsible for any claims, damages or liabilities incurred by Tenant in connection therewith or by reason thereof and agrees to indemnify, defend and hold Landlord harmless with respect thereto. If any of Landlord's Improvements must be relocated to accommodate construction of Tenant's Required Improvements or Other Construction, Tenant shall obtain Landlord's prior written consent to such relocation, which shall be completed at Tenant's sole cost and expense.

B. Acceptance of Landlord's Improvements. Tenant expressly waives any and all patent defects in Landlord's Improvements, except those which Tenant shall bring to the attention of Landlord in writing not later than the earlier of (i) the date such Landlord Improvements have been dedicated to the City and County of Honolulu, or (ii) one (1) year after the date that Landlord notifies Tenant that such work has been completed. Tenant expressly waives any and all latent defects in Landlord's Improvements, except those which Tenant shall bring to the attention of Landlord in writing not later than the earlier of (i) the date such Landlord Improvements have been dedicated to the City and County of Honolulu, or (ii) one (1) year after the date that Tenant knew, or in the exercise of reasonable care should have known, of the existence of such latent defect. Nothing in this Article VI.B shall be deemed or construed to extend or toll the application of any statute of

limitation that would otherwise bar Tenant's claims for such defects.

C. Tenant Shall Construct the Required Improvements. The Tenant shall, at its own expense, and after complying with the provisions of Paragraph D of this Article VI, Commence Construction of the Required Improvements on the Premises no later than the Construction Commencement Date and thereafter shall diligently and continuously construct same so as to have Completed the Required Improvements by the Construction Completion Date set forth in Article I.E above, subject to extensions for Force Majeure as set forth in Article VI.F below. The total Hard Costs of construction and development of the Required Improvements shall be not less than the amount set forth in Article I.D above.

D. Construction Requirements. Prior to Commencement of Construction on the Premises of the Required Improvements or any Other Construction, Tenant shall submit a copy of the plans and specifications and an estimate of the total cost of such construction to Landlord. Tenant shall comply with all of the Preconditions for Construction set forth in Subparagraphs D.1 through D.7 of this Article below for all Required Improvements and for all Other Construction if the cost of such Other Construction exceeds an amount equal to the Alteration Threshold multiplied by the Cost of Living Factor for the date such plans and specifications are received by Landlord. The plans and specifications for all Other Construction costing less than the above threshold which alters the external visual appearance of the Premises shall be subject to the prior written approval of Landlord, which approval shall be limited to confirming that Tenant has complied with the requirements of the Declaration. All construction shall be carried out by Tenant in full compliance with the Approved Plans and Specifications and all applicable laws, ordinances and regulations, including building and fire codes and applicable environmental restrictions. Tenant shall notify the Naval Air Station, Barbers Point, Hawaii 96862-5050 in writing at least thirty (30) days in advance of Tenant's use of any construction equipment and appurtenances which extend thirty (30) feet or more above ground level. The notice shall contain a description of the equipment, its height and its appropriate hazard lighting, and dates of use.

1. Landlord's Approval of Plans and Specifications. Prior to Commencement of Construction of the Required Improvements or any Other Construction, Tenant shall obtain Landlord's approval of the plans and specifications for such improvements as set forth in Subparagraph a or b below. The plans and specifications shall be certified by the architect

referenced in Article VI.D.3 below as being in compliance with any and all governmental regulations of the Premises regarding access of disabled persons, including without limitation Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq. and any similar federal, state or local laws, ordinances and regulations. Tenant agrees that Landlord may require Tenant to remove from the Premises any improvements constructed by Tenant which are not in conformance with Approved Plans and Specifications and to return the Premises to its prior condition, all at Tenant's sole cost and expense.

a. Required Improvements. Within sixty (60) days of the execution of this Lease, Tenant shall prepare, at its sole cost and expense, plans and specifications for the Required Improvements, and shall submit same to Declarant and the Design Advisory Board for approval in accordance with the procedures set forth in the Declaration. Concurrently with each of its submissions, Tenant shall provide a copy of same to Landlord for its review and approval, which approval shall not be unreasonably withheld so long as such submissions are in accordance with (i) the provisions of the Declaration and the Urban Design Plan, Development Guidelines, and Signage Guidelines, all as determined by Landlord; (ii) the requirements set forth in Article I.D above; and (iii) all applicable laws, ordinances and regulations including, without limitation, building and fire codes and applicable environmental restrictions. Tenant shall obtain the written approvals of Declarant and Landlord to the plans and specifications for the Required Improvements prior to the Construction Commencement Date specified in Article I.E above.

b. All Other Construction. Tenant shall obtain Landlord's consent to the construction of the Other Construction if the cost of such construction exceeds the Alteration Threshold multiplied by the Cost of Living Factor for the date such plans and specifications are received by Landlord. Tenant shall then prepare, at its sole cost and expense, plans and specifications for the Other Construction, and shall submit same to Declarant and the Design Advisory Board for approval in accordance with the procedures set forth in the Declaration. Concurrently with each of its submissions, Tenant shall provide a copy of same to Landlord for its review and approval, which approval shall not be unreasonably withheld so long as such submissions (i) are in accordance with the provisions of the Declaration and the Urban Design Plan, Development Guidelines, and Signage Guidelines, all as determined by Landlord and (ii) comply with all applicable laws, ordinances and regulations including, without limitation, building and fire codes and applicable environmental restrictions. Tenant shall obtain the written approvals of

Declarant and Landlord to the plans and specifications for the Other Construction prior to commencing construction of the Other Construction.

2. Architect and Contractor Qualifications. The Tenant shall only use architects and contractors licensed by the State of Hawaii for all construction.

3. Contracts for Architect. Without limiting the terms and conditions to be contained in Tenant's contract with the architect for the design of the Required Improvements or Other Construction, such contract shall require that the architect prepare the Approved Plans and Specifications for the construction and deliver certification to the Landlord upon completion of construction that the construction is in substantial compliance with the Approved Plans and Specifications. Tenant shall provide Landlord with an executed copy of its architect contract at the same time that Tenant submits its initial plans and specifications to Landlord for review and approval under Article VI.D.1 above.

4. Performance and Payment Bonds. Tenant shall deposit with the Landlord certificates or other satisfactory evidence that the contractor has procured one or more bonds for a total amount not less than one hundred percent (100%) of the total construction cost of the Required Improvements or Other Construction, naming Landlord and Tenant as co-obligees, in form and content and with a surety or sureties satisfactory to Landlord, guaranteeing the full and faithful performance of the construction contract for such construction free and clear of all mechanics' and materialmen's liens and the full payment of all subcontractors, labor and materialmen, including without restricting the generality of the foregoing, all architects and interior decorators, except that with respect to architects and interior decorators, no such bond shall be required if Tenant shall deliver to Landlord a waiver of lien and an Acceptable Loan Commitment providing for the full payment of such parties.

5. Governmental Approvals. Tenant shall furnish Landlord with evidence satisfactory to Landlord (which may be in the form of an opinion of counsel satisfactory to Landlord) that all governmental approvals necessary to commence the construction of the Required Improvements or Other Construction have been obtained, including without limitation the issuance of a building permit.

6. Financing Commitments. Tenant shall provide Landlord evidence satisfactory to Landlord that there are funds available and committed to Tenant sufficient to pay for the completion of the Required Improvements or the Other

Construction, including without limitation in the case of the Required Improvements and, if required by Landlord, the Other Construction, one hundred percent (100%) of the total Hard Costs and indirect costs of such construction. Such evidence shall include but not be limited to an executed copy of the building loan agreement or its equivalent, and an executed copy of Acceptable Loan Commitments for interim financing for the construction and any permanent financing necessary to permit Tenant to finance repayment of the interim loan. If the Acceptable Loan Commitments for the interim financing to be secured by a mortgage of this Lease are for an amount to be loaned which is less than one hundred percent (100%) of the costs of such construction, the Tenant shall make funding arrangements not secured by this Lease which are satisfactory to Landlord and/or contribute additional Tenant's Equity so as to insure that the sum of additional funds from such arrangements plus Tenant's Equity when added to the amount to be funded under the Acceptable Loan Commitments for interim financing will equal one hundred percent (100%) of the costs of such construction. The makers of the Acceptable Loan Commitments for interim financing and the providers of other "funding arrangements", as that term is used in the immediately preceding sentence, shall each agree with Tenant that, in the event of Landlord's termination of this Lease upon Tenant's default, such makers and providers shall consent to the assignment of such commitments or funding arrangements by Tenant to Landlord, at Landlord's option, upon the same terms as given to Tenant.

7. Construction Liability Insurance. In addition to the requirements of Article VIII.A.1 and VIII.B below, beginning with the Commencement of Construction and continuing until all construction is Completed, Tenant shall maintain, or cause its contractors to maintain, a comprehensive general liability insurance policy satisfactory in form and content to the Landlord and insuring the Landlord and Tenant against at least all of the following: loss or damage to third parties or their property from excavation, pile driving, loss of subterranean support, boiler explosion as well as all other hazards normally insured against in the construction industry. Prior to the Commencement of Construction, Tenant shall deliver to Landlord certificates of insurance certifying that such insurance is in full force and effect. If Tenant causes its contractors to maintain such insurance, Landlord and Tenant shall be named as additional insureds on such policies, and such policies shall otherwise conform to the requirements of this Article VI.D.7.

E. Change Orders. Throughout the course of any construction for which Tenant is required under this Lease to

comply with the conditions set forth in Subparagraphs D.1 through D.7 above, any proposed variation in construction from the Approved Plans and Specifications which would do any of the following:

- (i) change the size or configuration of the Required Improvements or Other Construction,
- (ii) affect the visual design or external appearance of any construction on the Premises,
- (iii) extend the time of any required performance under Tenant's construction contract beyond the Construction Completion Date,
- (iv) materially change the scope of the work under Tenant's construction contract, or
- (v) result in construction which is not equal to or better than the construction covered by the original Approved Plans and Specifications therefor,

shall be made pursuant to supplemental plans and specifications and "change orders", as that term is defined in the AIA General Conditions. Tenant shall submit copies of any and all such supplemental plans and specifications and proposed change orders to Declarant and the Design Advisory Board in accordance with the approval procedures for minor projects in the Declaration. Concurrently with each submission, Tenant shall provide copies to Landlord for review and approval. Tenant shall obtain such approvals, in writing prior to the carrying out of any construction pursuant to such supplemental plans and specifications or change orders and prior to execution of such change orders by Tenant or its agents. If Tenant proposes to enter into an "additive change order" as that term is used in the AIA General Conditions, which additive change order would have the effect of depleting entirely the amount provided for contingencies in the construction budget, then prior to the execution of such additive change order, Tenant shall make funding arrangements satisfactory to Landlord to fund the additional sums required to cover the amount by which the construction budget, after all contingencies have been depleted, is increased by the additive change order. Failure of Tenant to make such funding arrangements satisfactory to Landlord prior to the execution of any such additive change order shall constitute a default under this Lease.

F. Force Majeure. If an event of Force Majeure occurs, then the time for the completion of such performance or such condition shall be extended by a time period equal to the

duration of such delay. Notwithstanding the foregoing, (i) Tenant's obligations to pay any and all sums due under this Lease, including but not limited to Base Rent, shall not be affected by any such extension for Force Majeure and the time for payment of such sums shall not be so extended; and (ii) in no event shall the Term be extended as a result of the occurrence of an event of Force Majeure.

G. Minimum Interference During Construction.

During that portion of the Term while construction of the Required Improvements or any Other Construction is underway, Tenant shall take all steps and precautions reasonably possible to insure that Tenant's construction activities do not interfere with the operation of the City of Kapolei or result in inconvenience to invitees or other lessees or residents of the City of Kapolei, including but not limited to the following:

(i) Tenant shall obtain Declarant's approval for any anticipated disruption of water, electricity, sewerage, traffic or other utility services at least twenty-one (21) days prior to such disruption. Tenant shall minimize the frequency and duration of such disruptions and shall notify all affected utility users at least fourteen (14) days prior to such disruption.

(ii) If Tenant's construction activities result in damage to water or sewer lines, electrical systems, streets or other utility systems, Tenant shall immediately notify Declarant of such damage. If such damage occurs, Tenant shall immediately commence repairs of such damage, at Tenant's sole expense, and Tenant shall diligently pursue such repairs to completion. If Tenant fails to immediately commence such repairs or to diligently pursue such repairs to completion, Declarant may repair such damage and require that Tenant pay all of Declarant's expenses so incurred pursuant to Article X.F below.

(iii) If piles must be driven during any construction on the Premises, Tenant shall use the quietest pile driving equipment available under the then current state of technology available in the State of Hawaii and shall engage in such activity only between the hours of 8 o'clock a.m. and 4 o'clock p.m.

(iv) Tenant shall institute noise and dust controls at all times during the construction to minimize the emission of noise and dust on or from the Premises.

Tenant shall incorporate appropriate provisions in its construction contract to implement the conditions set forth in subparagraphs (i) through (iv) above, including without limitation a provision requiring that Tenant's contractor comply with Tenant's noise and dust controls. Tenant agrees that Tenant's covenant to indemnify Landlord and Declarant as set forth in Article XIII.H below shall include the indemnification of Landlord and Declarant for any liability or expenses arising from dust, noise, or utility interruptions caused by construction on the Premises.

H. Landlord's Remedy of Completion for Interruption of Construction.

1. Landlord's Right to Assignments of Construction Contracts and Financing. Landlord and Tenant understand that the Required Improvements to be constructed by Tenant will have a significant aesthetic and economic impact on the City of Kapolei and that it is essential to minimize the disturbance and inconvenience resulting from construction of the Required Improvements so as to avoid negative aesthetic and economic effects on the operation of the City of Kapolei. Therefore, as a substantial and material condition to this Lease, Tenant hereby covenants that it will Commence Construction of the Required Improvements upon the Construction Commencement Date and thereafter in good faith diligently, expeditiously and continuously construct the Required Improvements so as to Complete the Required Improvements on or before the Construction Completion Date. In the event that Tenant breaches its covenant set forth in the preceding sentence by (i) not Commencing Construction by the Construction Commencement Date, or (ii) allowing the diligent construction of the Required Improvements to be interrupted for a continuous period of six (6) months or longer, after Commencement of same, subject, in each case, to extensions for Force Majeure, then each such event shall constitute a material and substantial breach of this Lease and shall be deemed an act or event of default under this Lease giving Landlord the right to terminate this Lease after providing any mortgagee of Tenant the notice and opportunity to cure such default as provided for in Article VII.B below. Upon such termination by Landlord, the Premises and all improvements thereon, including the uncompleted Required Improvements, shall revert to Landlord as provided in Article XI.B below and Landlord may, but is not obligated to, complete or cause to be completed the construction of the Required Improvements for its own account. If Landlord elects to complete construction of the Required Improvements, then:

- (i) Tenant shall assign to Landlord (a) all governmental approvals and permits obtained for the

construction to the extent allowed by law, (b) the Tenant's rights under the Tenant's construction contract for the Required Improvements, and (c) the Tenant's rights under Tenant's contract with the architect for the Required Improvements, and Landlord agrees to assume all the obligations of Tenant under the foregoing instrument; and

(ii) Tenant shall assign and quitclaim to Landlord all unadvanced and future sums committed under construction loans for the Required Improvements and the full amount of any unborrowed equity of Tenant in the Required Improvements held by Tenant for construction and development of the Required Improvements.

Nothing in this Article VI.H shall be deemed or construed to limit any other rights that Landlord may have under this Lease upon Tenant's default including, without limitation, the rights of Landlord under Articles XI and XII below.

2. Grant of Power of Attorney to Landlord. If Landlord elects to complete construction of the Required Improvements, then for this purpose, Tenant agrees to and does hereby constitute and appoint Landlord as its lawful attorney-in-fact, with full power of substitution, to complete the construction of the Required Improvements and to empower Landlord as its attorney or attorneys to act as follows on behalf of either one or both of Landlord or Tenant: to use any of the proceeds of the loan which may remain unadvanced for the purpose of completing the construction of the Required Improvements in the manner called for by the Approved Plans and Specifications; to make changes and corrections in such Approved Plans and Specifications as shall be necessary or desirable to complete the construction in substantially the manner contemplated therein; to employ such contractors, subcontractors, agents, watchmen, architects and inspectors as shall be required for completion of construction of the Required Improvements; to pay, settle or compromise all bills and claims which may be or become liens against the Premises, to prosecute and defend all actions and proceedings relating to the construction of the Required Improvements or the Premises on behalf of either or both of Landlord or Tenant; to take such action and require such performance as Landlord deems necessary under the architectural and construction contracts and the performance and payment bonds; and to do any and every other act which Tenant might do in its own behalf. This power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable.

I. Time is of the Essence. Time is of the essence in this Lease.

J. Risk of Obtaining Governmental Approvals for Construction. It is specifically understood and agreed that the risk of obtaining all governmental approvals needed for construction of the Required Improvements, except for obtaining the appropriate zoning for the Required Improvements, shall be borne by Tenant. Failure to obtain such approvals and Tenant's resulting inability to construct the Required Improvements shall in no event terminate Tenant's obligation to make the payments required in this Lease, including but not limited to the obligation for rent, or extend the time for or reduce the amount of any rental or other payment due under the Lease.

K. Delivery of Plans and Specifications Upon Completion. Upon completion of any construction on the Premises required to be made under the conditions set forth in subparagraphs D.1 through D.7 above, Tenant shall provide Landlord, at Tenant's sole expense, with two (2) complete sets of plans and specifications for the entirety of such construction certified by the architect referenced in Article VI.D.3 above (i) as showing the completed construction "as built", and (ii) as being in substantial compliance with the Approved Plans and Specifications, as same may have been modified pursuant to the provisions of Article VI.E above. Landlord agrees to deliver one (1) set of such plans and specifications to the Campbell Estate.

ARTICLE VII MORTGAGES

A. Right to Mortgage. Any provision herein contained to the contrary notwithstanding, Tenant shall have the right without the consent of Landlord to assign all or any portion of Tenant's right, title and interest in, to and under this Lease, by way of mortgage, to any bank, insurance company or other established lending institution or institutions. Any such mortgage may contain, except where particular terms, conditions or maturity are required by this Lease, such terms, conditions and maturity as Tenant may determine. Provided that all requirements of this Lease are at all times complied with, Tenant may enter into any and all such extensions, modifications or amendments of any such mortgage as it may desire. Tenant shall, upon execution of any such mortgage, promptly deliver a true copy of the mortgage to Landlord. The aggregate amount secured by all such mortgages shall not exceed one hundred percent (100%) of the fair market value of this Lease and all buildings and other improvements constructed on the Premises or to be constructed on the Premises during the

Term. The execution and delivery of any such mortgage shall not be deemed to constitute such an assignment or transfer of this Lease as would require the holder or holders thereof, as such, to assume the observation or performance of any of the terms, covenants or conditions on the part of Tenant to be observed or performed hereunder. The mortgagee or mortgagees, and their respective assigns, may enforce such mortgage and may acquire title to the mortgaged leasehold estate of Tenant in any lawful way, and pending foreclosure of such mortgage (or bona fide sale or assignment in lieu of foreclosure) may take possession of and sublease the Premises, or cause any person having the relationship of an independent contractor to the mortgagee to take possession of and sublease the Premises. Upon foreclosure thereof (or any bona fide sale or assignment in lieu of foreclosure) the mortgagee or mortgagees may without further consent of Landlord sell and assign this Lease, by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of Tenant hereunder for so long as it shall retain title to Tenant's interest hereunder. Any such assignee shall have the right to assign all or any portion of its right, title and interest in, to and under this Lease to any bank, insurance company or other established lending institution or institutions, by way of mortgage, upon the same terms and conditions made available in this Lease to Tenant. Any assignee who has acquired title to this Lease by way of foreclosure or deed in lieu thereof may only assign its rights under the Lease, other than by way of mortgage, in compliance with Paragraph F of Article XIII. The mortgagee or its assigns and any independent contractor of the mortgagee shall be liable to perform only the obligations of Tenant hereunder which arose during the period such entity had title to Tenant's interest hereunder.

B. Protection of Mortgagee. In the event that Tenant shall assign this Lease by way of mortgage in compliance with the terms of this Lease, and if Tenant or the mortgagee shall have furnished to Landlord a true copy of such mortgage as provided in Paragraph A of this Article VII, the following provisions shall apply and inure to and for the benefit of the mortgagee therein named, and its successors and assigns, any provision herein contained to the contrary notwithstanding;

(a) This Lease shall not be amended, altered, modified or rescinded by Landlord and Tenant, prior to the expiration of the term of the mortgage, without the prior written consent of the mortgagee. If such a mortgage is in effect, this Lease may be terminated only in accordance with the provisions of this Paragraph B.

(b) Landlord shall, upon serving Tenant any notice of default under the provisions of or with respect to this Lease, at the same time serve a copy of such notice upon the mortgagee, by registered mail, addressed to it at the address shown in the mortgage, and no notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so served upon the mortgagee.

(c) The mortgagee, in the event Tenant shall be in default hereunder, shall have the right (but shall not be obligated) within the same period as is given to Tenant therefor, to remedy such default or to cause the same to be remedied, and Landlord shall accept such performance by or at the instigation of such mortgagee as if the same had been done by Tenant. No default on the part of Tenant in the performance of work required to be performed, or acts to be done or conditions to be remedied, shall be deemed to exist, if in good faith, steps shall have been commenced promptly by Tenant or by the mortgagee to rectify the same and shall be prosecuted to completion with diligence and continuity. If after proper notice of default by Landlord, neither mortgagee nor Tenant cures or commences to cure Tenant's default under this Lease within the time limits set forth in Paragraph A of Article XI, Landlord may terminate this Lease pursuant to such paragraph.

(d) Tenant hereby constitutes and appoints each mortgagee as Tenant's agent and attorney-in-fact with full power, in Tenant's name, place and stead, and at Tenant's cost and expense, to enter upon the Premises and make repairs thereon and therein, maintain the same, remove any violations of law, statutes, ordinances or rule or regulation of governing authorities and to otherwise perform any of the obligations of Tenant under this Lease.

(e) In the event of any default of Tenant hereunder (including those relating to bankruptcy or insolvency) other than a default in the payment of money or a default susceptible of being cured by the payment of money, the Landlord shall not take any action to effect a termination of this Lease, whether by service of a notice of termination or otherwise, due to such default, without allowing the mortgagee (or a receiver appointed at the mortgagee's request or an independent contractor to the mortgagee) a reasonable time within which to either (1) obtain possession of the Premises and the interests of Tenant under this Lease and cure the default, where the default is susceptible of being cured after obtaining such possession by the mortgagee, receiver or independent contractor, or (2) institute and complete foreclosure proceedings or otherwise sell or acquire Tenant's interest in the Premises and in this Lease, and any such default shall be

considered as having been waived by Landlord upon the completion of foreclosure or such sale or acquisition of Tenant's interest, provided that:

(i) the mortgagee shall not be required to continue possession or foreclosure proceedings if the default which would have given cause for such notice shall have been cured; and

(ii) during any period of forbearance the foregoing shall not preclude Landlord from exercising any remedies hereunder relating to any other default of Tenant; and

(iii) such Landlord's waiver of such default, and the waiver of the right to terminate this Lease as a result of such default and any transfer of Tenant's interests under this Lease by way of foreclosure or assignment in lieu thereof shall at all times be explicitly conditioned upon the curing by either mortgagee or the party acquiring Tenant's interest under this Lease by way of foreclosure or assignment in lieu thereof of all then existing defaults hereunder susceptible of cure including, without limiting the generality of the foregoing, the payment of rent and other sums payable hereunder by Tenant, such as attorneys' fees and other expenses of Landlord incurred in connection with such default, such that upon foreclosure or assignment in lieu thereof all payments required from Tenant by the Lease shall have been brought current; and

(iv) on and after the date of such foreclosure, sale or other acquisition and for so long as it shall hold such title, the party holding title to Tenant's interest under this Lease shall observe and perform, or cause to be observed and performed, all of the covenants and agreements on the part of Tenant hereunder to be observed and performed.

If the conditions in clause (iii) of the immediately preceding sentence are not met by the mortgagee (or a receiver appointed at the mortgagee's request or an independent contractor) within thirty (30) days of notice or demand by Landlord, Landlord may terminate this Lease pursuant to Article XI below.

(f) No such mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease, unless and until such time as the mortgagee becomes, and then only for so long as it remains, the owner of the leasehold estate.

(g) In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions of this subsection (g) prior to its stated expiration date, Landlord will enter into a new lease of the Premises with the mortgagee, or, if there be more than one mortgage, then with the mortgagee entitled under Subparagraph (iii) of this subsection (g), for the remainder of the Term, effective as of the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitations contained in this Lease, provided:

(i) such mortgagee makes written request upon Landlord for such new lease within forty (40) days from the date of such termination and such written request is accompanied by payment to Landlord of all amounts then due to Landlord;

(ii) such mortgagee pays to Landlord at the time of the execution and delivery of such new lease any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays any and all expenses, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by Landlord on the Premises subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease; and

(iii) if more than one such mortgagee makes written request upon Landlord in accordance with the provisions of subparagraph (i) of this subsection (g), the new lease shall be delivered to the mortgagee requesting such new lease whose mortgage is prior in lien, and the written request of any mortgagee whose mortgage is subordinate in lien shall be void and of no force or effect.

(h) Upon the execution and delivery of such new lease in accordance with the provisions of subsection (g) of this Article VII.B, all leases and other agreements with subleases which theretofore may have been assigned and transferred to Landlord shall thereupon be assigned and transferred without recourse by Landlord to the mortgagee, as the new lessee.

C. Mortgages on Land.

(a) Landlord covenants that with regard to any mortgage of the Land that (i) is in existence as of the date of the execution of this Lease, or (ii) which is subsequently placed on the Land prior to the Recording or Filing of a short form of this Lease, Landlord shall cause the mortgagee under such mortgage to subordinate its interest under such mortgage to this Lease as and to the extent set forth in Article VII.C(b) below, when the short form of this Lease is Recorded or Filed pursuant to Article XIII.V, so that such mortgage is treated in all respects as if it had been Filed and/or Recorded subsequent to the Recordation or Filing of the short form of this Lease.

(b) Nothing herein contained shall limit Landlord's right to mortgage the Land after a short form of this Lease is Recorded or Filed. In the event that Landlord at any time so places a mortgage on the Land, said mortgage shall be subject to and shall not be a lien on the Land prior to this Lease or any modifications or extensions hereof or any new lease given by Landlord pursuant to the provisions contained in subsection B.(g) of this Article VII or any leasehold mortgage placed thereon and any such mortgage by Landlord shall not be deemed to give any such mortgagee of the Land any greater rights than Landlord hereunder or the right to cancel the Lease or any new lease so made to a leasehold mortgagee unless there is a default on the part of Tenant, uncured by either Tenant or the leasehold mortgagee, which, under the terms of this Lease or such new lease, would enable Landlord to cancel this Lease, and withhold from such leasehold mortgagee a new lease pursuant to the provisions contained in subsection B.(g) of this Article VII.

ARTICLE VIII
INSURANCE

A. Insurance of Buildings.

1. Fire and Hazard Insurance. Tenant shall at its own expense and at all times during the Term keep all buildings, other improvements and fixtures, by whomsoever installed or constructed, existing on the Premises on the Effective Date or at any time thereafter, insured against (a) all of the risks covered by a standard "Special Form" endorsement, with additional coverage for risk of loss by earthquake and flood, (b) such other hazards or risks which a prudent businessman would insure against, and (c) in time of war against war damage, if available at reasonable cost. This

coverage shall be in an amount equal to the full replacement cost of such buildings, improvements and fixtures without deduction for depreciation, shall be written on an "Agreed Value" basis, shall not have deductibles in excess of the amounts shown in Article I.K above, and shall have a further endorsement showing coverage for the loss of rental income and extra expenses incurred after an insured-against occurrence during the period of restoration of the Premises and shall be placed with an insurance company or companies approved by Landlord. The limits of liability with respect to this endorsement for loss of rental income shall be for a period of restoration of not less than two (2) years after the insured against occurrence and this endorsement shall be written on an "Agreed Value" basis.

2. Payment of Insurance Proceeds. Every policy of insurance described in Article VIII.A.1 above shall be issued to cover and insure all the several interests in the buildings, improvements, fixtures and rent required to be insured in Article VIII.A.1 above, of Landlord, Tenant and any mortgagees under any mortgage of this Lease, as their respective interests are defined in this paragraph below, and shall be made payable in case of loss or damage to a trust company authorized by law to exercise corporate trust powers in the State of Hawaii or another impartial third party, as shall be designated by Landlord from time to time as trustee of all proceeds of such insurance, which trustee shall have its principal office in Honolulu. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance, nor to attend to any claim for loss or damage thereunder or the collection of any proceeds thereof, nor to incur any expense therefor, and shall be responsible only for the proper custody and application as provided for in this Article VIII.A of all proceeds of such insurance that shall actually come into its possession, and Tenant shall pay all fees and expenses of such trustee for or in connection with its services. The respective interests of Landlord, Tenant and any mortgagees in any proceeds of the insurance required in Article VIII.A.1 above payable for insured loss or damage shall be fixed and determined as of the date of such loss or damage as follows:

(a) Landlord's Interest. The interest of Landlord in such proceeds shall be a proportionate amount of such insurance proceeds in the ratio which (i) the expired portion of the Term, from the date of the initial Completion of the buildings, improvements or fixtures lost or damaged to the date of such loss or damage, bears to (ii) the portion of the Term from the date of Completion of such buildings, improvements or fixtures to the date of expiration of the Term; provided,

however, that Landlord's interest in any rental loss insurance payments shall be one hundred percent (100%).

(b) Tenant's Interest. The interest of Tenant shall be the balance of such insurance proceeds after first deducting the amount of the interest of Landlord determined as set forth in Article VIII.A.2(a) above.

(c) Mortgagee's Interest. The interest of any mortgagees in such proceeds shall be limited to the amount of, and encumber only, the interest of Tenant in such insurance proceeds as defined in Article VIII.A.2(b) above, to the extent of the then outstanding principal and accrued interest secured under the mortgages of such mortgagees; provided, however, that if the interest of Tenant in such insurance proceeds is insufficient to repay the then outstanding principal and accrued interest secured under the mortgages of such mortgagees, the interest of such mortgagees shall include Landlord's interest as defined in Article VIII.A.2(a) above to the extent necessary to repay such outstanding principal and accrued interest. Any portion of Landlord's interest remaining after the outstanding principal and accrued interest secured by such mortgages is repaid shall remain the sole property of Landlord. The respective interests and rights of two or more mortgagees in and to such interests of Tenant shall be determined between them in accordance with the priority of their respective mortgages of this Lease.

3. Use of Insurance Proceeds. In case the buildings, improvements or fixtures required to be insured in Article VIII.A.1 above or any part thereof shall be destroyed or damaged by fire or such other casualty required to be insured against, then and as often as the same shall happen, all proceeds of such insurance, including the interest therein of Landlord and the balance of the interest therein of Tenant after deducting such amount of the interest of any mortgagees in Tenant's insurance proceeds as provided in Article VIII.A.2(c) above and excluding the proceeds of any rental value, or use and occupancy insurance of Tenant, shall be available for and used with all reasonable dispatch by Tenant in rebuilding, repairing, replacing or otherwise reinstating the buildings, improvements or fixtures so destroyed or damaged in a good and substantial manner according to the plan and elevation thereof, or according to such modified plan for the same or substitute buildings, improvements or fixtures as shall be approved in writing by the Landlord in accordance with Article VI above. If the available insurance proceeds shall be insufficient for rebuilding, repairing, replacing or otherwise reinstating such buildings, improvements or fixtures in the manner provided in this paragraph above,

then Tenant shall provide the balance of all funds required to completely rebuild, repair, replace or otherwise reinstate such buildings, improvements or fixtures.

4. Uninsured Casualty and Abatement of Rent. If a substantial portion of the Required Improvements or other improvements at any time erected on the Premises shall be rendered untenable by casualty not required by this Lease to be insured against, neither party shall have any obligation to rebuild, repair or otherwise reinstate such buildings. If Tenant shall undertake promptly to reinstate the building or buildings, or portions thereof, so destroyed or damaged according to the original plan and elevation thereof or according to such modified plan as shall be approved in writing by Landlord, then from the date of such casualty and during the diligent rebuilding or repair thereof until such buildings shall be fully reinstated, the rent payable under this Lease during such period of rebuilding shall be adjusted in such just and proportionate amount according to the nature and extent of the damage as Landlord and Tenant shall mutually agree upon in writing. In the event the parties cannot mutually arrive at such an agreement, then the matter shall be submitted to and settled by the appraisal process set forth in Article V.B above. If Tenant does not so rebuild, repair or otherwise reinstate such buildings, Tenant will at its own expense promptly remove from the Premises all buildings, improvements and trade fixtures and restore the Land then remaining to good, orderly and sanitary condition and even grade, and upon so doing Tenant may then surrender this Lease and thereby be relieved of further performance under this Lease; provided, however, that nothing contained in this paragraph shall relieve Tenant of its obligation to Complete the Required Improvements on the Premises as provided in Article VI.C above nor permit Tenant's surrender of this Lease prior to such Completion.

B. Liability Insurance.

Tenant shall maintain at its own expense during the Term a policy or policies of "commercial general liability" insurance naming Landlord as an additional insured thereunder in form and with coverage satisfactory to and approved by Landlord, with limits not less than those set forth in Article I.K above, and with deductibles not more than those set forth in Article I.K. The commercial general liability insurance shall specifically cover contractual liability, fire damage liability, liquor liability, personal and advertising liability, medical payments and products/completed operations liability. If required by Landlord, Tenant shall also obtain pollution liability insurance if the same is commercially available. Tenant shall periodically, but not less frequently

than annually, reevaluate the scope of the risks covered and the liability limits of such insurance policies and, if necessary, increase such coverage or liability limits in order to provide coverage of risks and liability limits which a prudent businessman would provide under similar circumstances. Tenant shall also increase the liability limits or the scope of the risks covered by such insurance policies to such higher levels or such broader scope of risks as Landlord may from time to time reasonably specify. The coverage required hereunder shall state that Tenant's insurance shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of the insurer's liability. If Tenant's liability policy or policies cover locations other than the Premises, such policy or policies shall contain an endorsement stating that "general aggregate" limits of liability apply separately to the Premises. If such insurance shall become reduced to fifty percent (50%) or less of the limits of liability set forth in Article I.K above, Tenant shall immediately at its own expense purchase insurance to reinstate the limits of liability required by this Lease.

C. Worker's Compensation and Employer's Liability Insurance. Tenant shall maintain at its own expense during the Term a policy or policies of "worker's compensation" insurance with minimum limits as required by Hawaii Revised Statutes Title 21, Labor and Industrial Relations, and the rules and regulations promulgated thereunder, and a policy or policies of "employer's liability" insurance with per accident and per disease limits not less than set forth in Article I.K above. Both policies shall be in form and with coverages satisfactory to and approved by Landlord. Tenant shall increase the liability limits or the scope of the risks covered by such insurance policies to such higher levels or such broader scope of risks as Landlord may from time to time reasonably specify.

D. Auto Liability Insurance. Tenant shall maintain at its own expense during the Term a policy or policies of "commercial auto liability" insurance naming Landlord as an additional insured thereunder, in form and with coverage satisfactory to and approved by Landlord, with a combined single limit for bodily injury and property damage not less than that set forth in Article I.K above and with a deductible not more than that set forth in Article I.K above. The automobile liability insurance shall specifically cover all automobiles used by Tenant in connection with its operations at the Premises, whether owned or non-owned, leased, rented, borrowed or hired.

E. General Insurance Requirements.

1. Policy Provisions. Each policy of insurance required in Paragraphs A, B, C and D of this Article VIII and in Paragraph D.7 of Article VI above shall:

(a) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any other insurance obtained by or for Landlord, Tenant, or any person claiming by, through, or under any of them;

(b) contain no provision relieving the insurer from liability for loss occurring while the hazard to buildings, improvements and fixtures is increased, whether or not within the knowledge or control of, or because of any breach of warranty or condition or any other act or neglect by Landlord, Tenant, or any person claiming by, through, or under any of them;

(c) provide that such policy may not be cancelled, whether or not requested by Tenant, except upon the insurer giving at least sixty (60) days' prior written notice thereof to Landlord, Tenant, every mortgagee of any interest in the Premises, Declarant, and every other person in interest who has requested such notice of the insurer;

(d) contain a waiver by the insurer of any right of subrogation to any right of Landlord or Tenant against any of them or any person claiming by, through, or under any of them;

(e) in the case of hazard insurance, contain a standard mortgagee clause which shall:

(i) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any interests in the Premises, in their respective order and preference as provided in their respective mortgages;

(ii) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of Landlord, Tenant or any person claiming by, through, or under any of them; and

(iii) waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee or Landlord, Tenant, or any person claiming by, through,

or under any of them to notify the insurer of any hazardous use or vacancy, any requirement that any mortgagee pay any premium thereon, or any contribution clause;

(f) be written by an insurance company rated A or better, Class size XII or better, by the Best's Key Rating Guide, based upon the rating system in effect on the date this Lease is signed, and approved in writing by Landlord. In the event that Best's changes its rating system or ceases to provide ratings at some later date, then such insurance company shall have a rating from Best (or some other comparable rating service if Best's ceases to provide ratings) comparable to the "A or better, Class XII or better" requirement of the immediately preceding sentence; and

(g) be written as primary policies, not contributing with and not in excess with any coverage that Landlord may carry.

2. Certificates of Insurance. Tenant shall deposit with Landlord current certificates of insurance issued by the insurance carriers certifying that Tenant has in effect all the insurance required in Paragraphs A, B, C and D of this Article VIII and Article VI.D.7, if applicable. Tenant shall also deposit current copies of all insurance policies and endorsements required by said Paragraphs.

ARTICLE IX CONDEMNATION

A. Partial Termination and Reduction of Base Rent. In the event at any time or times during the Term all or any part of the Premises shall be taken or condemned by any authority having the power of eminent domain, and neither of the events described in Article IX.D below occur, then and in every such case the estate and interest of Tenant in any part of the Premises so taken or condemned shall at once cease and terminate, and the Base Rent provided for in this Lease shall be reduced for and during the unexpired balance of the Term, effective as of the date when Tenant shall by reason of such taking or condemnation lose the right to possession of such part of the Premises, to a sum to be set by agreement of Landlord and Tenant. If Landlord and Tenant are unable to agree upon such Base Rent on or before the date ninety (90) days prior to the effective date of Tenant's loss of possession as set forth in the first sentence of this paragraph, then Tenant shall continue to pay the Base Rent then in effect, and the new Base Rent shall be set by the appraisal process set forth in Article V.B above according to the formula provided

for in the immediately following two sentences. The appraisal shall determine the economic value of the Premises immediately prior to the taking and the economic value of the Premises immediately after the taking, based on the respective then allowable highest and best use of the Premises. The new Base Rent for the period of the Term commencing on the effective date of Tenant's loss of possession as set forth in the first sentence of this paragraph shall be the Base Rent which would have been in effect for such period under the Lease if no condemnation had occurred, multiplied by a fraction, the numerator of which is the economic value of the Premises after the taking and the denominator of which is the economic value of the Premises before the taking, and the Base Rent for the remainder of the Term shall be adjusted accordingly. Following the determination of the new Base Rent, any Base Rent paid by Tenant to Landlord in addition to the amount Tenant should have paid shall be retained by Landlord and applied to the monthly installment of Base Rent next coming due.

B. Compensation and Damages.

1. Land and Improvements on Land at Commencement of Term. In every case of taking or condemnation of all or any part of the Premises, all compensation and damages payable for or on account of the taking of all or any part of the Land or any buildings and other improvements existing on the Land at the commencement of the Term shall be payable to and be the sole property of Landlord, and neither Tenant nor any mortgagee of Tenant's interest under this Lease shall have any interest or claim to such compensation or damages or any part thereof whatsoever.

2. Improvements Erected During Term. All compensation and damages payable for or on account of the taking of all or any part of any buildings and other improvements erected on the Land during the Term and any plans and other preparations therefor shall be payable to Landlord, Tenant and any mortgagee of Tenant's interest under this Lease, in accordance with their respective interests as set forth in the following sentence. The respective interests of Landlord, Tenant and any mortgagee of Tenant's interest under this Lease in such compensation and damages payable for or on account of any such buildings or other improvements shall be determined as of the date when Tenant by reason of such taking or condemnation loses the right to possession of such part of the Premises so taken or condemned and the respective interests in such compensation and damages shall be as follows:

(i) Landlord's Interest. The interest of Landlord shall be a proportionate amount of such

compensation and damages in the ratio which (a) the expired portion of the Term, from the date of original Completion of such building or improvement taken or condemned to the effective date of such taking or condemnation, bears to (b) the portion of the Term from the date of original Completion of the building or improvement taken or condemned to the date of expiration of the Term less the Stipulated Value set forth on Exhibit F attached hereto and incorporated herein by reference as of the first day of the month immediately preceding the date such condemnation proceedings are commenced;

(ii) Tenant's Interest. Tenant's interest shall be the balance of such compensation and damages after first deducting the amount of Landlord's interest as defined in subparagraph (i) above; and

(iii) Mortgagee's Interest. The mortgagee's interest shall be limited to Tenant's interest under subparagraph (ii) immediately above, to the extent of the then outstanding principal and accrued interest secured under the mortgages of such mortgagees; provided, however, that if such Tenant's interest is not sufficient to repay the then outstanding principal and accrued interest secured under the mortgages of such mortgagees, then such mortgagee's interest shall include Landlord's interest under subparagraph (i) above to the extent necessary to repay such outstanding principal and accrued interest. Any portion of Landlord's interest remaining after the outstanding principal and accrued interest secured by such mortgages is repaid shall remain the sole property of Landlord. In no event shall such mortgagee be deemed to have any interest in any compensation or damages payable for or on account of the taking of all or part of the Land or any buildings or other improvements existing on the Land at the commencement of the term, which amounts shall be the sole property of Landlord. The interests and rights of two or more mortgagees in and to the interest of Tenant shall be determined in turn according to the respective priorities of their mortgages.

C. Partial Taking of Improvements. In the event only part of any building or other improvement now or hereafter built on the Premises shall be so taken or condemned, then and in every such case, notwithstanding the foregoing provisions of this Article IX, all compensation and damages payable for or on account of such portion of such building or improvements so taken or condemned, including both the interest of Landlord therein and the balance of Tenant's interest in such com-

compensation and damages after deducting the amount of the interest of any mortgagees in such compensation and damages as set forth in Subparagraph B.2 above, shall be paid to a trust company authorized by law to exercise corporate trust powers in the State of Hawaii or another impartial third party, which corporate trustee or third party shall have its principal office in Honolulu and shall be designated by Landlord from time to time as trustee of all such compensation and damages, and all such amounts held by such trustee shall be available for and used with all reasonable dispatch by Tenant in rebuilding, repairing or otherwise reinstating or replacing such portion of such building or improvement taken or condemned on the balance of the Land not taken or condemned, in a good and substantial manner according to such plan as shall be approved in writing by Landlord. If an economically viable building used for the uses permitted under this Lease can then be built and operated on the balance of the Land then remaining by combination of new construction and rebuilding of the taken or condemned portions of the improvements, and if the funds held by such trustee are insufficient to carry out such new construction and rebuilding, Tenant shall provide the balance of the funds required for such new construction or rebuilding in order to complete such a building on the Premises pursuant to the requirements for construction on the Premises set forth in Article VI above. The trustee of the condemnation compensation and damages shall have no obligation whatsoever to attend to any claim for such compensation or damages or the collection thereof, nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such compensation and damages that shall actually come into its possession. Tenant shall pay all fees and expenses of such trustee for or in connection with such trustee's services. The provisions of this paragraph relate only to the handling of condemnation proceeds attributable to the partial taking of any building or improvements and do not in any way alter the provisions of paragraph B.1 of this Article IX with respect to condemnation proceeds paid for the taking of all or any portion of the Land.

D. Termination of Lease. In the event only part of the Premises shall be so taken or condemned, and either:

(a) Landlord and Tenant shall agree in writing that the balance of the Premises is unsuitable for construction and operation of an economically viable building used for purposes permitted under this Lease, or

(b) all of the Required Improvements on the Premises shall be taken or condemned,

Tenant shall remove all buildings and other improvements then remaining on the Premises and restore the Land then remaining to good and orderly condition and even grade, and upon such removal and restoration and in every such case, Tenant shall have the right at its option, by giving prior written notice thereof to Landlord within seventy-five (75) days after completing such removal and restoration, to terminate this Lease. Upon such termination, Tenant shall be relieved of all further obligations under this Lease, Landlord shall refund to Tenant any unearned portion of the Base Rent paid in advance prior to the effective date of such termination and all compensation and damages payable for or on account of such taking shall be payable to Landlord, Tenant and any mortgagee of Tenant's interest under this Lease in accordance with their respective interests as set forth above.

E. Condemnation of Leasehold Interest. In the event at any time or times during the Term a leasehold interest in the Premises or any part of such interest shall be taken or condemned, then and in every such case, notwithstanding the foregoing provisions of this Article IX, such taking or condemnation shall not result in any reduction in Base Rent under this Lease, nor give Tenant any right to terminate this Lease with respect to any part of the Premises, nor excuse Tenant from the full and faithful performance of any or all of its covenants and obligations under this Lease for the payment of money, nor excuse or relieve Tenant from the performance of its covenants and obligations under this Lease except to the extent that, and for so long as, the performance of such covenants and obligations shall be rendered impossible by reason of the loss by Tenant of possession of such part of the Premises subject to such taking or condemnation. In every such case of taking or condemnation of all or a part of Tenant's interest, Tenant shall be entitled to claim and recover from the condemning authority its damages sustained by reason of such taking, and all compensation and damages payable for or on account of such taking or condemnation of any part of such leasehold interest shall be payable to and be the sole property of Tenant.

F. Loss of Business Damages. Notwithstanding the foregoing provisions of this Article IX, if and only if such claim for damages is not adverse to any interest of Landlord, Tenant shall have the right to claim and recover from the condemning authority but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in its own right on account of any and all damage to its business by reason of any condemnation and for or on account of any cost or loss of Tenant in removing its furnishings and equipment.

G. Conveyance as Condemnation. The term "condemnation" as used in this Lease shall include any conveyance made under threat or imminence of condemnation by any public or private authority having the power of eminent domain.

ARTICLE X
MAINTENANCE AND USE OF PREMISES

A. Taxes and Assessments. Tenant shall pay throughout the Term, beginning as of the Commencement Date, directly to the appropriate taxing or other applicable authority at least ten (10) days before the same become delinquent, all real property taxes and assessments of every description attributable to the Premises or any part thereof or improvement thereon, or for which Landlord or Tenant in respect thereof, are now or may during the Term be assessed or become liable, whether assessed to or payable by Landlord or Tenant; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Tenant shall be required to pay only such installments of principal and interest as shall become due and payable during the Term. Tenant's covenant for the payment of the taxes set forth in the preceding sentence shall include the payment of any new tax (except federal or state net income taxes) which supplements or replaces either the real property tax or increases the real property taxes and is assessed upon the Premises or any part thereof or upon the rents received under this Lease by Landlord or upon Landlord in respect of any of the preceding items. Notwithstanding the foregoing, Tenant shall pay all such taxes directly to Landlord or such other party designated by Landlord at least ten (10) days before the same become due until such time as Tenant receives written notice from Landlord that such taxes shall be paid directly to the appropriate taxing or other applicable authority. Subject to all of the conditions set forth in this sentence, Tenant may contest in good faith at Tenant's sole expense by appropriate proceedings, as may be allowed by law, the validity or amount of any tax or assessment required in this paragraph to be paid by Tenant, which conditions are as follows: (a) such actions must be commenced before any such tax or assessment becomes delinquent, (b) the action commenced by Tenant must be an action which either stays the collectibility of such tax or prevents the sale of the Premises in satisfaction of such tax or assessment or lien securing such tax or assessment, or in the alternative to the previous two types of actions, an action in which Tenant pays such tax or assessment while such action ensues, (c) Tenant complies with all requirements of such action, including but not limited to the posting of bond or payment of such tax or assessment while such action ensues,

(d) Tenant gives notice to Landlord of Tenant's intention to contest such tax or assessment not less than ten (10) days before such taxes or assessments become delinquent, and (e) prior to undertaking such action, Tenant gives security to Landlord, satisfactory to Landlord in both quality and quantity, for payment of such taxes; provided, however, that notwithstanding the foregoing, Tenant shall pay all such taxes, rates, assessments or charges, together with all interest, penalties or fines accrued thereon or imposed in connection therewith, immediately upon the commencement of proceedings to foreclose any lien which attached to the Premises or any part thereof as security for such taxes, rates, assessments or charges. If Tenant shall fail to pay any taxes or assessments as provided in this paragraph, Landlord may at any time thereafter pay the same, together with any interest, penalties, fines and costs accrued thereon or imposed in connection therewith, and Tenant shall repay to Landlord upon demand therefor the full amount so paid by Landlord, together with interest at Landlord's Cost of Money accruing from the date such payments were due until Landlord is reimbursed for such payments by Tenant.

B. Rates and Other Charges.

1. Tenant to Pay All Rates and Charges. Tenant shall pay directly before such charges and rates become delinquent, all utility charges, water and sewer rates, garbage rates, hook-up fees and other charges and outgoings of every description attributable to the Premises or any part thereof or improvement thereon, or for which Landlord or Tenant in respect thereof may during the Term be assessed or become liable, whether assessed to or payable by Landlord or Tenant and whether such charges and rates are imposed by governmental authority, public or private utility or Landlord. Tenant shall retain all receipts or other evidence of payment of all such utility charges, water and sewer rates, garbage rates, hook up-fees and other charges attributable to the Premises or any part thereof or improvement thereon for three (3) years from the date paid, and shall provide copies of the same to Landlord upon request.

2. Declaration.

a. Commencing upon the Commencement Date and terminating upon the month Tenant receives written notice from the Association that an assessment is due to the Association pursuant to the terms of the Declaration, Tenant shall pay to the Campbell Estate or an entity formed by the Campbell Estate for the purposes described below, monthly in advance on or before the first day of each month of such period, Tenant's pro

rata share of the expenses incurred by the Campbell Estate or such entity in owning, operating, repairing and maintaining the Area of Common Responsibility, which amount shall be calculated as set forth in the Declaration, and shall not be less than the amount set forth in Article I.N above.

b. Commencing upon the month Tenant receives written notice from the Association that an assessment is due and terminating upon the end of the Term, Tenant shall pay to the Association, in the manner set forth in the Declaration, all assessments and other charges payable by the Owner of the Premises under the Declaration, and in addition thereto Tenant shall make an initial contribution to the Association in an amount equal to two (2) monthly installments of the current annual general assessment attributable to such Lot.

c. Notwithstanding the provision of subparagraphs 2.a and 2.b above, so long as the Premises are used solely for the purposes set forth in Article I.F hereof, the Premises shall not be included in the "Development Land" as defined in the Declaration and shall enjoy the exemption from the payment of "Assessments" as set forth in Section 9.10 of the Declaration.

3. Water Consumption and Development. Tenant covenants and agrees to consume less than: (i) an average (calculated and based upon the normal Board of Water Supply billing cycle) of the number of gallons of potable water per day as shown in Article I.I above; and (ii) an average (calculated and based upon the normal Board of Water Supply billing cycle or such other billing cycle or measure of consumption as may be established by the appropriate authority to monitor the consumption of and/or bill for the use of non-potable water) of the number of gallons of non-potable water per day shown in Article I.I above. Tenant further covenants and agrees to install potable and, if required by the Campbell Estate, non-potable water meters. These covenants are, in part, for the purpose of enabling the Campbell Estate to program and coordinate water consumption in City of Kapolei for the mutual benefit of all consumers in City of Kapolei. Any failure to abide by these covenants shall be considered a material breach of this Lease. Tenant further agrees, as a material condition of this Lease, whenever non-potable water is reasonably available, to use its best efforts to use such non-potable water for all uses for which such water is feasible, including, without limiting the generality of the foregoing, development of a non-potable water system on the Premises, approved by the Campbell Estate for such uses in accordance with the requirements of Article VI.D above, and connecting such system to the non-potable water system for the City of Kapolei within

thirty (30) days after the later to occur of: (a) receipt of notice from the Campbell Estate of the availability of such system, and (b) Completion of Construction of the Required Improvements. Notwithstanding the foregoing, Tenant shall not drill for water on the Premises without obtaining the prior written consent of the Campbell Estate, which may be withheld in the Campbell Estate's sole discretion. Any external water features, including but not limited to ponds, streams, fountains and waterfalls shall use non-potable water whenever the same is reasonably available. Tenant's landscaping and ground cover shall at all times comply with the Development Guidelines and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources. Tenant agrees (i) to pay its pro rata share of the cost of such Facilities, through payment of Board of Water Supply Facilities charges, improvement district assessments, Facilities charges imposed by the Campbell Estate, or compliance with such other methods as may be devised to recover said costs from tenants whose premises are served by such Facilities, upon connection of Tenant's water meter to such Facilities or such other date as may be set by the Campbell Estate, and (ii) to support the Campbell Estate in any and all procedures and proceedings necessary or convenient to the implementation of the means selected. Tenant agrees to supply whatever water consumption data is kept by Tenant to the Campbell Estate upon written request of the Campbell Estate. By its execution hereof, Tenant authorizes the Campbell Estate to obtain water consumption records pertaining to the Premises from the Board of Water Supply or any other governmental agencies or private entities providing water to the Premises, and agrees to provide any written authorization to do so if so required.

C. Improvements Required by Law. Tenant shall at its own expense during the whole of the Term of this Lease make, build, maintain and repair all fences, roads, curbs, sidewalks, sewers, drains, parkways and parking areas and other improvements which may be required by law or the Declaration to be made, built, maintained or repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof. Without limiting the foregoing sentence, Tenant agrees that all such improvements shall be subject to Landlord's right of approval as provided in Article VI.D above.

D. Repair and Maintenance. Tenant will at its own expense keep the Premises, all landscaping, all structural and non-structural portions of all buildings and other improvements existing on the Premises at any time during the Term, in good order, condition, maintenance and repair, reasonable wear and tear from normal usage excepted. In furtherance of Tenant's

obligation, Tenant agrees to comply with the maintenance standards set forth on Exhibit G attached hereto and incorporated herein by reference. In addition, Tenant's maintenance obligation shall extend beyond the boundary of the Premises to the curb on any side of the Premises with roadway frontage. Repairs which will exceed a cost equal to the Alteration Threshold multiplied by the Cost of Living Factor, and only such repairs, shall be subject to the requirements of Subparagraphs D.1 through D.7 of Article VI above. All repairs or maintenance which alter the external visual appearance of the Premises (including any change in paint color) shall be subject to the prior written approval of Landlord, which approval shall be limited to confirming that Tenant has complied with the requirements of the Declaration. Repairs or maintenance which return the Premises to their original condition and aesthetic appearance (including color) as shown in plans and specifications previously approved by Landlord shall not require Landlord's prior consent as set forth in the preceding sentence, but shall meet the requirements of Subparagraphs D.1 through D.7 of Article VI if they exceed the Alteration Threshold multiplied by the Cost of Living Factor.

E. Observance of Laws. Tenant shall during the Term (i) observe and perform all requirements imposed on the Premises under the Declaration or any rules or regulations promulgated thereunder; (ii) keep the Premises in a strictly clean and sanitary condition; (iii) observe and perform all laws, ordinances, rules and regulations whether now or hereafter made by any governmental authority for the time being applicable to the Premises or the use thereof, including but not limited to Title III of the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, et. seq. and any similar federal, state or local laws, ordinances and regulations; and (iv) indemnify, defend and hold Landlord harmless against all actions, suits, claims and damages (including reasonable attorney's fees) by whomsoever brought or made by reason of the nonobservance or nonperformance of such requirements, laws, ordinances, rules and regulations or this covenant. If at any time hereafter, Landlord, Declarant or any governmental authority having jurisdiction shall require any parties at the City of Kapolei to pre-sort, recycle, segregate or otherwise prepare trash and garbage for disposition, Tenant at no cost to Landlord will cooperate fully in such efforts and shall provide on the Premises any and all receptacles, containers and holding areas reasonably necessary to accommodate the trash and garbage generated at the Premises by Tenant and others.

F. Inspection of Premises. Tenant shall permit Landlord and Declarant and their respective agents at all reasonable times during the Term to enter and examine the state

of repair and condition of the Premises. If any defects come to Landlord's or Declarant's attention, Landlord and Declarant may give notice of such defects to Tenant and within sixty (60) days after such notice, Tenant shall repair and make good all defects required by the terms of this Lease to be repaired by Tenant; provided, however, that if such repair or correction may be made within a reasonable period of time but cannot reasonably be made within sixty (60) days, then such repair or correction shall be deemed to be made if begun within the sixty (60) day period and thereafter continuously and diligently undertaken to completion by Tenant; provided, further, however, that if such defect poses a threat to health or safety, then Tenant shall undertake such repairs immediately and complete them as soon as reasonably possible. If Tenant shall refuse or neglect to commence and complete such repairs within the time period provided in the preceding sentence, Landlord or Declarant may make such repairs or cause the same to be made and shall not be responsible to Tenant or any persons claiming by or through Tenant for any loss or damage that may be caused to the property or business of Tenant or such persons claiming by or through Tenant by reason of such repairs, and if Landlord and Declarant shall make such repairs or cause the same to be made, Tenant shall pay forthwith on demand to Landlord or Declarant, as the case may be, the cost of such repairs, with interest thereon computed at Landlord's Cost of Money.

G. Waste and Unlawful Use; Disposal of Wastes.

Tenant will not make or suffer any strip or waste or unlawful, improper or offensive use of the Premises or any part thereof. Without limiting the generality of the foregoing, Tenant shall take all necessary steps to eliminate any nuisance and remedy any environmental pollution in violation of Hazardous Materials Laws. For purposes hereof, any non-compliance with Hazardous Materials Laws or the requirements of prudent Hazardous Materials management shall constitute "waste". Tenant agrees that anything produced or brought onto the Premises which is or becomes a Hazardous Material shall only be handled, kept, utilized and stored in accordance with all applicable Hazardous Materials Laws. Tenant further agrees, at its cost and expense, to dispose of all waste whether hazardous or non-hazardous, solid, liquid or gaseous, in accordance with the requirements of all applicable laws. Tenant shall take all such measures as shall be necessary to preclude the burial in or disposal or release on the Premises or any adjacent or other lands by Tenant or the discharge or disposal or release by Tenant into the sea, sea fisheries, surface waters, the underlying aquifer, or the air, or any other part of the environment, of any Hazardous Material, whether liquid, gaseous, solid, radioactive or otherwise. Should any Hazardous Materials be buried in the Premises or any adjacent or other

lands, or discharged into the sea, surface waters, underlying aquifer or the air, either intentionally or inadvertently, by Tenant or anyone claiming by or through Tenant, Tenant shall at its sole cost and expense, if required to do so by Landlord or any governmental authority having jurisdiction thereof, promptly remove any such Hazardous Material as may remain and so much of any removable substance as shall have become contaminated in a manner approved by law and replace it to the original level with an uncontaminated material of the same character as existed prior to the contamination.

H. Use of Premises.

1. Operation of Required Improvements. Tenant will use the Premises only for the use permitted under Article I.F above operated by Tenant or its permitted subleases; provided, however, that any operations on the Premises, whether conducted by Tenant or a permitted sublessee, involving any noisy, dangerous or obnoxious activities or the leasing or rental of noisy, dangerous or obnoxious equipment, shall require the prior written approval of Landlord and Landlord may unreasonably withhold such approval or require the termination of any such commercial operations then in existence on the Premises. Failure of Tenant to use the Premises for the purpose set forth in the preceding sentence shall give Landlord the right to terminate this Lease. Tenant covenants that it will in good faith diligently and continuously operate, or cause to be operated, the Premises in accordance with reasonable business practices. Tenant shall not use the Premises or permit any sublessee or other person to use the Premises for the storage, display and/or sale of any pornographic materials, books, magazines, movies or peep-shows, for the conducting of any dating service or brokerage, massage parlor, fortune-telling or palm reading business, photographic salon or studio devoted to nude photography or display of such photographs, nudist club, or club, room or den where narcotics or illegal drugs or marijuana are illegally offered, sold, used, stored or otherwise made available, or for the operation of such machines or any device, arrangement or activity for the purpose of gambling, social or otherwise.

2. Nuisance. At all times during the Term, Tenant covenants that it will prevent the escape from the Premises of loud noises, bright lights, odors, dust, smoke or other noxious agents which could disrupt the quiet, sleep and peaceful enjoyment of the City of Kapolei by invitees of other businesses or other residents of the City of Kapolei.

I. Liens. Tenant shall keep the Premises at all times free and clear of all liens, charges and encumbrances of

every nature, other than such mortgages as may be permitted under this Lease, and will indemnify, defend and hold Landlord harmless from all loss, cost and expenses (including reasonable attorney's fees) with respect to any such liens, charges and encumbrances, unless such liens, charges and encumbrances (i) exist on the Commencement Date, (ii) are created by Landlord or persons claiming by, through or under Landlord, (iii) are in the nature of tenant space leases permitted under the terms of this Lease, (iv) are liens for taxes and assessments not yet due and payable or (v) are liens being contested in a manner permitted by this Lease.

ARTICLE XI
DEFEASANCE

A. Events of Default. Tenant shall be in default under this Lease (herein a "Default") if:

1. Failure to Pay Rent. Tenant shall fail to make full payment of any payment of Base Rent or any other payments required under this Lease within ten (10) days of the date that such payment is due, whether such payment shall or shall not have been otherwise demanded; or

2. Breach of Covenant. Tenant shall fail to observe or perform any of the covenants contained in this Lease and on the part of Tenant to be observed and performed, and such failure shall continue for a period of thirty (30) days after written notice of such failure given by Landlord to Tenant without substantial action having been initiated by Tenant within such period and diligently and continuously continued to remedy such failure; or

3. Abandonment. Tenant shall vacate or abandon the Premises; or

4. Bankruptcy or Insolvency. Tenant shall become bankrupt or insolvent, or seek protection under any provision of any bankruptcy or insolvency law, or any similar law providing for the relief of debtors or if any assignment be made of Tenant's property for the benefit of creditors; or

5. Liens. If this Lease or any estate or interest of Tenant hereunder shall become subject to any attachment or judgment, or to any lien, charge or encumbrance not consented to by Landlord pursuant to the provisions of this Lease and the same shall not be released within thirty (30) days thereafter.

B. Landlord's Remedies. In the event of any Default by Tenant under this Lease:

1. Right of Re-entry. Landlord may, with or without termination, at once re-enter the Premises or any part thereof in the name of the whole and, upon or without such entry, at its option, expel and remove from the Premises Tenant and any persons claiming under Tenant and its and their property without service of notice or resort to legal process or being deemed guilty of any trespass or becoming liable for any loss or damage occasioned thereby, and without prejudice to any other right or remedy of action, including summary possession, which Landlord may have for rent or any other indebtedness owing by Tenant hereunder, whether theretofore or thereafter accruing or to accrue, or damages for any preceding or other breach of contract.

2. Summary Possession. Whether or not Landlord shall have taken any action above permitted, Landlord may bring an action for summary possession in case of such Default, and in any such action, service of prior notice or demand is hereby expressly waived. Landlord may, at its option, assert its claim for unpaid rent in such action or may institute a separate action for the recovery of rent.

3. Removal of Persons or Property. In the event of such resumption of possession under this Lease, whether by summary proceedings or by any other means, Landlord, or any receiver appointed by a court having jurisdiction, may dispossess and remove all persons and property from the Premises, and any property so removed may be stored in any public warehouse or elsewhere at the cost of and for the account of Tenant, and Landlord shall not be responsible for the care or safekeeping thereof, and Tenant hereby waives any and all loss, destruction, and/or damages or injury which may be occasioned in the exercise of any of the aforesaid acts.

4. Damages, Attorneys' Fees and Costs. Landlord may recover from Tenant all damages, attorneys' fees and costs which may have been incurred by Landlord as a result of any default of Tenant hereunder.

5. Right to Re-let. Should Landlord elect to re-enter for Tenant's Default, as provided hereinabove, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may either terminate this Lease or from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises, and re-let said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in

its sole discretion may deem advisable; upon each such re-letting all rental received by Landlord from such re-letting shall be applied, first, to the payment of any indebtedness other than Base Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such re-letting and of any necessary alterations and repairs; third, to the payment of Base Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Base Rent and other payments as the same may become due and payable hereunder. If such rentals received from such re-letting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Termination may, but need not necessarily, be made effective by the giving of written notice to Tenant of intention to end the Term of this Lease, specifying a day not earlier than five days thereafter, and upon the giving of such notice, the Term of this Lease and all right, title and interest of Tenant hereunder shall expire as fully and completely on the day so specified as if that day were the date herein specifically fixed for the expiration of the Term. No re-entry or taking of possession of said Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous Default. Should Landlord at any time terminate this Lease for Tenant's Default, in addition to any other remedies it may have, Landlord may recover from Tenant all damages it may incur by reason of such Default, including the cost of recovering the Premises, reasonable attorney's fees, and the worth at the time of such termination of the excess, if any, of the amount of Base Rent and other charges equivalent to rent reserved in this Lease for the remainder of the stated Term over the then reasonable rental value of the Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable from Tenant to Landlord.

C. Non-waiver; Remedies Cumulative. The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent or any other payment hereunder by Landlord or the subsequent acceptance of payment by Tenant shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Lease, other than the failure of the party to pay the par-

ticular rental or other payment so accepted, regardless of such party's knowledge of such preceding breach at the time of acceptance of such rent or other payment. Each and all the remedies given to Landlord and Tenant hereunder are cumulative, and the exercise of one right or remedy by Landlord or Tenant shall not impair Landlord's or Tenant's right to any other remedy.

D. No Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Base Rent or other payments herein stipulated shall be deemed to be other than on account of the earliest stipulated Base Rent or other payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Base Rent or other payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Base Rent or other payment or pursue any other remedy provided in this Lease.

ARTICLE XII SURRENDER

A. Surrender. Subject to the terms of Article VIII.A.4 above, dealing with termination of the Lease in the event of an uninsured casualty, and Article IX.D above, dealing with termination of the Lease in the event of condemnation under certain conditions, and subject further to Landlord's options set forth in this Article XII.B below, at the end of the Term or sooner termination of this Lease, Tenant shall peaceably deliver to Landlord possession of the Premises, which shall include all buildings and other improvements, equipment, furnishings and trade fixtures by whomever made located on the Land as of the time of surrender, in good repair, order and condition.

B. Removal and Restoration. Notwithstanding the provisions of Article XII.A above, upon surrender Landlord may in its sole discretion require that Tenant at its sole expense remove any or all buildings or improvements by whomsoever made then on the Premises, all debris from such demolition and removal and restore the Land to good and even grade.

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ARTICLE XIII
GENERAL PROVISIONS

A. Assumption of Risk. Tenant shall and does hereby assume all risk of loss or damage to furnishings, furniture, fixtures, supplies, merchandise and other property, by whomsoever owned, stored, placed or affixed in the Premises and does hereby agree that Landlord shall not be responsible for loss or damage to any such property, and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any and all claims for such loss or damage, including reasonable attorney's fees.

B. Holding Over. If Tenant shall, with the consent of Landlord, remain in possession of the Premises after the expiration of the Term without executing any extension or renewal of this Lease, Tenant shall be deemed to occupy the Premises as a tenant from month-to-month subject to all of the terms and conditions of the Lease, to the extent such terms and conditions are applicable to a month-to-month tenancy except that each month's Base Rent shall be one-twelfth (1/12) of three hundred percent (300%) of the Fair Market Rental Value of the Premises.

C. Acceptance of Premises and of Nearby or Adjacent Land Use.

1. Premises in "As Is, Where Is" Condition. It is expressly understood and agreed that Landlord has not made any representation or warranty, express or implied, regarding any aspect of the Premises including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value, and Landlord hereby disclaims any and all liability for any and all such representations and warranties. Tenant agrees that it has examined and investigated the Premises prior to the execution of this Lease and that Tenant has relied solely upon such examinations and investigations in leasing the Premises. Without limiting the generality of the foregoing, Tenant acknowledges that (i) it has made all inspections, investigations and analyses deemed necessary or appropriate to determine compliance by the Premises with all Hazardous Materials Laws that may apply to the Premises, (ii) Landlord has made no representation or warranty, express or implied, concerning the Premises' compliance with Hazardous Materials Laws, and (iii) Electrical Facilities are located over, on, under and in close proximity to the Premises. Tenant acknowledges and agrees that it is leasing the Premises in its "as is, where is" condition, with all faults, if any, and that Tenant has assumed all risks regarding all aspects of the

Premises, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Premises including, without limitation, the existence of any Hazardous Materials, the existence of any soils conditions, or the existence of archeological or historical conditions on the Premises; (ii) the risk of any damage or loss to the Premises caused by any means including, without limitation, tsunami, flood, earthquake or volcanic eruption; (iii) the risk of any adverse health or environmental consequences caused by the Electrical Facilities, including without limitation any electromagnetic field or pulse energy; and (iv) the risk of use, zoning, habitability, merchantability or quality of the Premises or the suitability of the Premises for its present use or future development. Tenant expressly releases Landlord from any and all liability and claims that it may have against Landlord, its successors in trust and assigns with regard to Electrical Facilities or Hazardous Materials presently existing or hereafter placed on the Premises, and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any and all claims and demands for loss or damage, including claims for personal injury, property damage or wrongful death, arising out of or in connection with the existence of Electrical Facilities or Hazardous Materials located on the Premises as of the date of the execution of this Lease or subsequently placed on or near the Premises at any time during the Term, and Tenant shall reimburse Landlord for all costs and expenses, including reasonable attorney's fees, paid or incurred by Landlord in connection with the defense of such claims including, but not limited to all costs of Landlord's defense to any such claim or in any such action as well as costs for research regarding settlement or other preventative measures which Landlord may take prior to the filing of such action or to attempt to prevent the filing of such action. The provisions of this Article XIII.C.1 shall survive the assignment and termination of this Lease.

2. Adjacent and Nearby Property Uses. Tenant, for itself and any person or entity claiming by, through or under it, understands and acknowledges that the Premises are adjacent to or nearby other lands owned by Landlord or others, and that the activities of Landlord and its lessees, licensees, invitees, or others on such lands include or may include, without limitation, commercial activities, golf courses and other resort related activities, housing development, quarrying activities, cement manufacturing, refinery, power plant, or industrial park operations, the operation of a sugar plantation or other agriculture related activities, the burning of sugarcane, milling, and other activities incidental to the operation of a sugar plantation or other agricultural activities, the development and operation of aquaculture

activities, the operation of airports, the storage of munitions and explosives, military activities, harbor activities, coal unloading, storage and refining activities, sanitary landfill operations, underground fires, and such other uses as may be permitted by law on said lands, and that Tenant desired and sought the Premises with the understanding that the Premises may be affected by nuisance or hazards to persons and property from such operations and related activities. Tenant covenants and agrees for itself, its permitted assigns, transferees, and any other party claiming by, through or under it that it assumes all such risks associated with such location and that it shall defend and hold Landlord harmless from any liability, claims or expenses, including attorneys' fees, property damage, personal injury, or wrongful death arising from such operations and activities, only with regard to liabilities, claims or expenses including attorney's fees, incurred by or related to Tenant, its permitted assigns, transferees and any other party claiming by, through or under Tenant, and further covenants and agrees that Landlord or any other party shall have the right, in the nature of an easement, to perpetually discharge, emit, diffuse, and inflict over and upon the Premises noise, smoke, soot, dust, lights, noxious vapors, odors, and other nuisances of every description arising from or incidental to the operation of the foregoing and other activities, subject only to zoning and other legal restrictions on use.

D. Notices. Any notice or demand to be given to or served upon either Landlord or Tenant in connection with this Lease shall be in writing and shall be deemed to have been sufficiently given or served for all purposes by being sent by certified mail, postage prepaid, return receipt requested, addressed to such party at its post office address specified above or at such other post office address as such party may from time to time designate in writing to the other party, or by being delivered personally to any officer of such party within the State of Hawaii, and any such notice or demand shall be deemed conclusively to have been given or served on the date indicated on the return receipt of delivery or upon the date of such personal delivery; provided, however, that if such party refuses to accept delivery of such notice or demand, then delivery will be deemed conclusively to have been given or served on the date of such refusal. If, at any time during the Term of this Lease, Landlord shall dissolve or otherwise change its legal form, Landlord shall designate and thereafter maintain during the term of this Lease a person or entity to act as the sole and exclusive agent of Landlord, with full authority to receive all notices and Base Rent, additional rent and other sums due hereunder and to act on behalf of Landlord on any and all matters concerning this Lease, including,

without limitation, the interpretation and implementation of the same.

E. Article and Paragraph Headings. The Article and Paragraph headings in this Lease are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Lease.

F. Assignments and Subleases.

1. In General. Except by way of mortgages permitted by Article VII above, and subleases permitted by Article XIII.F.4 below, Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein or sublet the Premises in whole or in part or otherwise part with possession of the whole or any part of the Premises, without the prior written consent of Landlord, which consent will not be unreasonably withheld, and any such purported transfer without consent shall be void and shall at the option of Landlord, constitute a default; PROVIDED, HOWEVER, that Landlord will not require the payment of any money for any such consent other than such reasonable costs and expenses as may be incurred by Landlord in connection with such consent. Each assignee, other than Landlord, shall assume and be deemed to have assumed this Lease and shall become and remain liable jointly and severally with Tenant for the payment of the Base Rent and other payments due hereunder, and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease. No assignment shall be binding on Landlord unless such assignee or Tenant shall deliver to Landlord a counterpart of such assignment and an instrument in recordable form, acceptable in form and content to Landlord, which contains a covenant of assumption by the assignee, but the failure or refusal of the assignee to execute such instrument of assumption shall not release or discharge the assignee from its liability as set forth above. Landlord's consent to any such transfer shall in no event release Tenant from its continuing liability hereunder unless such release is expressly set forth in a writing signed by Landlord. Unless so released, Tenant's liability hereunder shall continue notwithstanding any other or further assignment of this Lease or subsequent amendment or revision hereof; Tenant hereby expressly consenting to all such amendments and revisions and waiving notice thereof. Tenant's continuing liability hereunder shall be direct, primary and absolute and not secondary or conditional.

2. Transfers During Construction Period. Notwithstanding Article XIII.F.1 above, Tenant shall not

assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, or sublet the Premises in whole or in part, or otherwise part with possession of the whole or any part of the Premises from the date this Lease is signed until the construction of the Required Improvements has been Completed, and any such purposed transfer shall be void; PROVIDED, HOWEVER, that nothing herein shall prohibit Tenant from (i) entering into subleases as authorized by Article XIII.F.4 below during this period; or (ii) entering into mortgages as permitted by Article VII above.

3. Transfers After Construction Period. Without limiting Landlord's consent rights under Article XIII.F.1 above, it shall be reasonable for Landlord to withhold its consent to any assignment of this Lease or to a sublease of all or any substantial part of the Premises after construction of the Required Improvements has been completed if Landlord determines, in its reasonable discretion, that:

(i) the proposed assignee or sublessee lacks the credit-worthiness or financial capabilities required to perform all of Tenant's covenants under this Lease;

(ii) the proposed assignee or sublessee lacks the experience necessary to perform all of Tenant's obligations under Lease;

(iii) the proposed assignee or sublessee's proposed use of the Premises (a) is not in compliance with the uses permitted under Article X.H above, (b) will adversely impact traffic or parking on the Premises or the areas surrounding the Premises, or (c) will overburden the sewer system or exceed the limitations on water usage set forth in Article X.B.3 above; or

(iv) the proposed assignee or sublessee or their affiliates have an unfavorable business reputation or character.

4. Subleases. Tenant may, without first securing Landlord's consent, enter into (i) at any time, a sublease of the entire Premises to the Sublessee in the form attached hereto as Exhibit H and incorporated herein by reference (the "Sublease"), and (ii) if Sublessee does not exercise its option to enter into the Sublease, subleases with sublessees to use and occupy portions of the buildings constructed on the Premises during the Term of this Lease, provided that the total amount of the floor area subleased individually to any one sublessee or in the aggregate to any group of affiliated subleases shall not exceed seventy-five percent (75%) of the

floor area of the buildings constructed on the Premises without Landlord's prior written consent. Any other sublease of all or any portion of the Premises shall be subject to Landlord's prior written consent, which consent may be withheld by Landlord in Landlord's sole discretion for any reason or no reason.

5. Transfers by Partnerships. If Tenant is a general or limited partnership, then (i) any sale or transfer of a general partnership interest therein, or (ii) any admission, withdrawal or retirement of a general partner in such partnership, or (iii) one or more sales or transfers, by operation of law or otherwise, by which an aggregate of fifty percent (50%) or more of the beneficial interest in such partnership shall be vested in a party or parties who are not partners as of the date such partnership became a Tenant, shall each be deemed to constitute an assignment of this Lease.

6. Transfers by Corporate Entities. If Tenant is a corporate entity and if such corporate entity is not a corporation whose stock is listed on a recognized stock exchange (or a corporation of at least eighty percent (80%) of the stock of which is owned by a corporation whose stock is listed on a recognized exchange), then an assignment, within the meaning of this Article XIII.F shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock, by which an aggregate of fifty percent (50%) or more of Tenant's stock shall be vested in a party or parties who are nonstockholders as of the date such corporate entity became Tenant. For all purposes of this Article XIII.F, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1986, as amended from time to time.

7. Transfers by Partnerships with Corporate Entities as Partners. If Tenant is a general or limited partnership having a corporate entity as one of its constituent partners and if such corporate entity is not a corporation whose stock is listed on a recognized stock exchange (or a corporation at least eighty percent (80%) of the stock of which is owned by a corporation whose stock is listed on a recognized exchange), then an assignment of said corporation's partnership interest, for the purposes of Article XIII.F.5 above, shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock, by which an aggregate of fifty percent (50%) or more of such corporation's stock shall be vested in a party or parties who are nonstockholders as of the date such corporation became a constituent partner of Tenant.

8. Transfers by Constituent Partnerships. If Tenant is a general or limited partnership having another general or limited partnership (the "Constituent Partnership") as one of its constituent partners, then (i) any sale or transfer (or series of sales or transfers) of partnership interests in the Constituent Partnership by which a fifty percent (50%) or greater beneficial interest in the Constituent Partnership is acquired by persons or entities not originally the constituent partners in the Constituent Partnership or (ii) any admission, withdrawal or retirement of a general partner in the Constituent Partnership's interest, shall be deemed to be a sale or transfer of a partnership interest in such partnership for purposes of Article XII.F.5 above.

G. Costs and Expenses of Landlord. Tenant shall pay to Landlord all costs and expenses, including without limitation reasonable architects' and attorneys' fees, incurred or paid by Landlord in reviewing documents for which Landlord's consent is required, in preparing and processing consents, in enforcing any of the covenants and conditions contained in this Lease, in recovering possession of the Premises or any part thereof or in collecting any delinquent Base Rent, taxes or other charges payable under this Lease by Tenant, or incurred by or imposed upon Landlord by or in connection with any litigation commenced by or against Tenant (other than condemnation proceedings) to which Landlord shall, without fault, be made a party. All payments required of Tenant under this Article XIII.G shall be subject to interest as provided in Article XIII.K below.

H. Indemnity. Tenant shall indemnify, defend and hold Landlord and Campbell Estate harmless from and against any and all claims and demands for loss or damage, including claims for property damage, personal injury or wrongful death, arising out of or in connection with the use or occupancy of the Premises by Tenant or any other person claiming by, through or under Tenant, or any accident or fire on the Premises, or any nuisance made or suffered thereon, or any failure of Tenant to maintain the Premises in a safe condition, and Tenant shall reimburse Landlord and Campbell Estate for all costs and expenses, including reasonable attorneys' fees, paid or incurred by Landlord and Campbell Estate in connection with defense of any such claims, including but not limited to all costs of Landlord's and Campbell Estate's defense to any such claim or in any such action as well as all costs for research regarding settlement or other preventive measures which Landlord may take prior to the filing of such action or to attempt to prevent the filing of such an action.

I. Multiple Tenants. In the event that more than one Tenant is entering into this Lease, then all such Tenants shall be jointly and severally bound by the Tenant's covenants in this Lease and any notice given to any one such Tenant by Landlord shall be deemed to be notice upon all such Tenants.

J. No Increase of Tenant's Estate. Tenant hereby waives and relinquishes any and all rights given to a lessee under Chapter 516 of the Hawaii Revised Statutes (1968), as amended from time to time, or any similar law which may be enacted at any time during the Term giving Tenant the right to expand Tenant's leasehold estate under this Lease, which Tenant would not have under the terms of this Lease in the absence of such chapter or such law, it being understood and agreed by and between Landlord and Tenant that the provisions of such chapter or such law shall not apply to this Lease. Any attempt by Tenant or any person claiming by or through Tenant to expand its estate under this Lease pursuant to such chapter or such law shall be a breach of this Lease.

K. Interest on All Late Payments. All payments required to be made by Tenant to Landlord under this Lease which are not paid within thirty (30) days of the due date for such payments required in the Lease shall bear interest at a rate equal to Landlord's Cost of Money accruing from the due date until such overdue payments are paid in full.

L. Neither Landlord nor Tenant Deemed Drafter. All provisions of this Lease have been negotiated by Landlord and Tenant at "arm's length" and with full opportunity for representation by their respective legal counsel and Landlord and Tenant agree that neither party shall be deemed to be the drafter of this Lease and in the event this Lease is ever construed by a court of law, such court shall not construe this Lease against either party drafter of this Lease.

M. Landlord's Right to Transfer Fee. Tenant agrees that nothing in this Lease shall be construed to prevent Landlord from selling, assigning or otherwise transferring all or any part of Landlord's fee simple interest in the Premises subject to this Lease. In the event of Landlord's transfer of all of Landlord's fee simple interest in the Premises subject to this Lease, Tenant agrees that any and all obligations of Landlord under this Lease not then accrued shall terminate upon the effective date of such transfer and Tenant hereby releases Landlord from any obligations or covenants under this Lease which have not accrued prior to such effective date; provided, however, that nothing herein shall be deemed or construed to release the transferee of Landlord's interest from the obligation to perform all of the obligations and covenants of

Landlord under this Lease which accrue from and after the effective date of such transfer. Following any such transfer, the provisions of Articles I.D, I.E, I.F, I.I, I.N, I.O, II, III.C, III.D, VI, X.B.2, X.B.3, X.C, X.F, X.G, X.H and XIII of this Lease shall continue to inure to the benefit of Campbell Estate and be binding upon Tenant, and Campbell Estate shall have all rights and remedies given to Landlord under this Lease and any other remedy allowed by law and in equity to enforce the same against Tenant. In any litigation commenced by Campbell Estate to enforce any of such provisions, the prevailing party shall be entitled to recover all costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs.

N. Entire Agreement. This Lease together with the Exhibits attached hereto constitutes the full and complete agreement of Landlord and Tenant and all other prior oral and written agreements shall be deemed to have merged into this Lease and have no further force or effect.

O. Consent. Where the consent or approval of Landlord or Tenant is required by any provision of this Lease, all such approvals or consents shall be in writing and unless expressly so provided to the contrary, such consent shall not be unreasonably withheld or delayed unless otherwise specifically provided.

P. Amendment. This Lease may only be amended in writing, executed by both Landlord and Tenant; provided, however, that no amendment of this Lease affecting the rights of Declarant or Campbell Estate shall be made without the prior written consent of the Declarant and Campbell Estate, as the case may be, which consent may be withheld in their sole discretion for any reason or no reason, and any such amendment made without such consents shall be void.

Q. Estoppel Certificates. Within ten (10) days' of written notice from either party, the other party shall execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Base Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to certifying party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

R. Attorneys' Fees. If either party hereto institutes any action or proceeding in court to enforce any provision hereof or for damages or other relief by reason of any alleged breach of any provision hereof, the prevailing party shall be entitled to receive from the losing party all costs, including reasonable attorneys' fees. If any litigation or legal expense incurred by either party hereto in connection with any litigation commenced by or against the other party (other than condemnation proceedings) in which it shall without fault be made a party, then it will be entitled to recover against the opposite party all of its costs including reasonable attorneys' fees.

S. Expenditures By Landlord. Whenever under any provision of this Lease Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required, Landlord shall be entitled but shall not be obligated to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant, and in such event the amount thereof, together with interest computed at Landlord's Cost of Money, shall be deemed additional rent hereunder and shall be added to and deemed a part of the next installment of Base Rent thereafter becoming due.

T. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

U. Time of Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.

V. Recordation. This Lease shall not be Recorded or Filed, but the parties shall execute and deliver a memorandum hereof, in recordable form, sufficient to give constructive notice of the leasehold estate hereby created, and said memorandum shall be Filed in the Land Court and/or Recorded in the Bureau of Conveyance, as appropriate. Tenant agrees, at Tenant's expense, once the Lease is terminated, to execute a recordable instrument evidencing such termination. Tenant hereby appoints Landlord as Tenant's attorney-in-fact for the purpose of executing any instrument evidencing termination of this Lease, such appointment being coupled with

an interest irrevocable and not affected by specific revocation, death, incompetence or other cause.

W. Successors and Assigns; Exculpation. All the terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the successors and assigns of Landlord and (subject to the restrictions on assignment herein contained) the heirs, devisees, personal representatives, successors and permitted assigns of Tenant to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon Landlord and Tenant, respectively.

X. Grammar; Governing Law. The necessary grammatical changes required to make the provision of this Lease apply in the plural sense where there is more than one Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. The laws of the State of Hawaii shall govern the validity, performance and enforcement of this Lease.

Y. Arbitration of Disputes. Except for those matters under this Lease which are to be determined by appraisal under Article V.B above as expressly provided for herein, any dispute or controversy arising under, out of, in connection with, or in relation to this Lease or any breach hereof shall be determined and settled by arbitration to be held in Honolulu, Hawaii, in accordance with the commercial arbitration rules of the AAA then in effect. Disputes shall be heard by a panel of three (3) arbitrators, which panel shall be selected as follows: the party requesting or desiring arbitration shall give written notice to that effect to the other party. The notice shall designate an individual person as an arbitrator. Within ten (10) days after the notice is given, the other party shall give notice to the party requesting the arbitration, and its notice shall designate a second individual person as an arbitrator. If the second party shall fail to designate an arbitrator within the ten (10) day period, the first arbitrator shall elect a second individual person as an arbitrator. When two arbitrators are designated in accordance with the foregoing provisions, they shall designate a third individual person as an arbitrator as promptly as possible. If, within ten (10) days after the appointment of the second arbitrator, the two arbitrators so designated do not agree upon the designation of a third arbitrator, they shall give notice of their failure to agree to the parties. If the parties do not agree upon the selection of a third arbitrator within five days after that notice, either party may apply to the AAA for the appointment of the third

arbitrator within ten (10) days thereafter. All decisions of a majority of the arbitrators shall be final, conclusive and binding on the parties. All proper costs and expenses of such arbitration including, without limitation, witnesses' fees, attorneys' fees and the fees of the arbitrators, shall be charged to a party or parties in such amounts as the arbitrators shall decide at the time of the award. In the event of the failure, inability or refusal of any arbitrator to act within thirty (30) days of the appointment of the panel, a new arbitrator shall be appointed in his stead by the AAA. An award so rendered shall be final and binding in all aspects upon the parties and judgment may be rendered upon the award by the courts of the State of Hawaii and the parties consent to the jurisdiction of such courts. The parties agree that any process or notice of motion or other application to any of the courts and any paper in connection with arbitration may be served by certified mail, return receipt requested, or by personal service or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal, provided a reasonable time for appearances is allowed, and shall be subject to the provisions of Chapter 658, Hawaii Revised Statutes, as the same may be amended from time to time. In the resolution of any dispute or controversy as set forth in this Article XIII.Y, each party irrevocably waives any right and claim to exemplary or punitive damages.

EXHIBIT A

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT _____, area _____ acres, as shown on Map _____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

TOGETHER WITH a non-exclusive easement for temporary access purposes over and across Easement _____, as shown on Map _____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 (also known as Road "B"), together with the right to construct, reconstruct, install, reinstall, operate, repair and maintain temporary driveway improvements within said Easement _____. Said easement will terminate automatically on the Construction Completion Date or earlier as to any portion of said Easement _____ upon the dedication to and acceptance thereof as a public highway by any governmental authority, Landlord reserving the right to so dedicate the same without notice to or the joinder of Tenant.

SUBJECT, HOWEVER, to the following:

1. Designation of Easement "148", as shown on Map 67, as set forth by Land Court Order No. 12401, filed November 19, 1953.
2. Findings of Fact, Conclusions of Law and Decision and Order dated September 23, 1988, as amended by documents dated March 29, 1989 and May 30, 1989 in Docket No. A87-613 before the Land Use Commission of the State of Hawaii; as further amended by Agreement Satisfying Department of Health Condition dated March 9, 1990, by and between State of Hawaii by its Department of Health and the Trustees under the Will and of the Estate of James Campbell, Deceased, and as further amended by Unrecorded Order Granting Motion for Third Amendment to Findings of Fact, Conclusions of Law, and Decision and Order dated June 4, 1993. (Not noted on Certificate of Title referred to herein.)
3. Document Re Petitioner's Commitments dated April 11, 1989 by and between State of Hawaii by its Office of State Planning, Department of Transportation and Department of Land and Natural Resources and the Trustees under the Will and

of the Estate of James Campbell, Deceased. (Not noted on Certificate of Title referred to herein.)

4. Agreement dated November 14, 1989, filed as Land Court Document No. 1684751 by the Trustees under the Will and of the Estate of James Campbell, Deceased; Re Amended Document Listing Conditions and Preconditions to Reclassification.

5. Unilateral Agreement and Declaration for Conditional Zoning made by the Trustees under the Will and of the Estate of James Campbell, Deceased dated September 9, 1991 and filed as Land Court Document No. 1849708, as amended by First Amendment to Unilateral Agreement and Declaration for Conditional Zoning made by the Trustees under the Will and of the Estate of James Campbell, Deceased dated September 12, 1991, and filed as Land Court Document No. 1850615.

6. Designation of Easement "3808" (209 square feet), as shown on Map 653, as set forth by Land Court Order No. 113611, filed September 28, 1993.

7. Restriction of vehicular access rights as shown on Map 653, as set forth by Land Court Order No. 113611, filed September 28, 1993.

8. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in Land Court as Document No. 2103428, as amended by that certain First Amendment to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated May 12, 1994, filed in said Office of the Assistant Registrar as Document No. 2152082.

9. Document Listing Conditions to Reclassification dated August 16, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in said Office of the Assistant Registrar as Document No. 2068683.

10. Designation of Easement "_____" (_____ square feet) for access and utility purposes, as shown on Map _____, as set forth by Land Court Order No. _____, filed _____.

BEING all of the land described in Certificate of Title No. _____ issued to the Trustees under the Will and of the Estate of James Campbell, Deceased.

End of Exhibit A

EXHIBIT B

MEMORANDUM OF COMMENCEMENT DATE

THIS MEMORANDUM OF COMMENCEMENT DATE, dated as of the _____ day of _____, 19____ by and between the **TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED**, acting in their fiduciary and not their individual capacities (herein called "Landlord"), and _____ (herein called "Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant have entered into that certain unrecorded City of Kapolei Ground Lease dated _____, 19____ (the "Lease") demising and leasing that certain property located in the City of Kapolei, Honouliuli, Hawaii, identified as Lot No. _____, as shown on Map No. _____, filed with Land Court Application _____ (herein called "Premises"); and

WHEREAS, Article I.B of the Lease contains a term for a period of forty (40) years with no commencement date; and

WHEREAS, said commencement date has now been determined and Landlord desires the confirmation of the same;

NOW, THEREFORE, in consideration of the premises, Landlord and Tenant hereby agree that the date of commencement of said Lease is _____, 19____ (the "Commencement Date") and the date of termination is _____, (the "Termination Date").

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum the day and year first above written.

TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not their individual capacities

(Name of Tenant) _____

By _____
Name:
Its:

By _____
Name:
Its:

Tenant

EXHIBIT C

LANDLORD IMPROVEMENTS

PART 1. Landlord Improvement to be Completed Prior to Commencement Date.

Landlord covenants and agrees that, prior to the Commencement Date, Landlord shall provide Tenant with access to the Premises for use by Tenant and its agents sufficient to permit Tenant to Commence Construction of the Required Improvements. This access may not be of a permanent nature, and Landlord reserves the right, from time to time, without notice to Tenant, to relocate this temporary access to the Premises in order to facilitate construction of other improvements in the City of Kapolei.

PART 2. Landlord Improvements to be Completed After the Commencement Date.

Landlord covenants and agrees to provide the following Landlord Improvements after the Commencement Date but prior to the date that Tenant is obligated under the Lease to Complete Construction of its Required Improvements, subject to extensions of time for delays in the completion of such Landlord Improvements caused by Force Majeure:

a. Paved Access. In order to provide reasonable access to and from the Premises, Landlord shall construct Road "D" as shown on Exhibit C-1 to and including the Haumea Street intersection. In addition, Tenant shall be granted a non-exclusive access easement over Road "B" as shown on Exhibit C-1 and be allowed to construct driveway improvements in Road "B". Said easement shall automatically terminate upon Landlord's completion of construction of Road "B" and its dedication to the City and County of Honolulu. Notwithstanding the foregoing, said easement shall not terminate earlier than April 11, 1999. Landlord has provided curbs, gutters and sidewalks along Kamokila Boulevard and will provide curbs, gutters and sidewalks in the completed portion of Road "D" which fronts onto the Premises. Tenant shall be responsible for and shall pay for all curb cuts, driveways and aprons from the paved access to the Premises. Tenant shall be responsible for all landscaping on the Premises, with the exception of the street trees planted in accordance with the Street Tree Master Plan in the Development Guidelines if a landscaping easement is granted for such purpose pursuant to Article III B.2 of the Lease. Tenant may not cut down, remove or relocate such street trees without obtaining Landlord's prior written consent.

b. Drainage. Landlord has provided drainage improvements to serve the Premises in Kamokila Boulevard. Additional drainage improvements specifically serving the Required Improvements will be constructed by Landlord concurrently with the construction of Road "D" as shown on Exhibit C-1 which will include a 42" drain line in Haumea street. It shall be Tenant's responsibility to connect the on-site drainage facilities to the facilities provided by Landlord.

c. Potable Water and Sewer Service. Landlord has installed potable water and sewer lines in Kamokila Boulevard adjacent to the Premises. The potable water line is connected to the Board of Water Supply's water main. The sewer line is connected to the sewer main of the entity providing sewer service. Landlord will allocate potable water for the Required Improvements from the Campbell Estate's HECO Waiiau source. The allocation is recently estimated at 12,000 gallons per day based on Board of Water Supply standards for a 120,000 usable square foot building. Upon such allocation, Tenant shall pay to Campbell Estate the Water Facilities charge described in Article X.B.3 of the Ground Lease. It shall be Tenant's responsibility to obtain and pay for any other costs associated with the connection to or the provision of potable water or sewer services to the Premises.

d. Non-potable Water Line. Campbell Estate is developing nonpotable "caprock" water to irrigate the common areas of the City of Kapolei. The Campbell Estate intends in the future to complete and to turn over a nonpotable water system to the Board of Water Supply or the Association. This completion and dedication can occur only when a source of nonpotable water of reliable quality can be assured to BWS or the Association. Tenant agrees, whenever nonpotable water is reasonably available, to use its best efforts to use such nonpotable water for all uses for which such water is feasible, including, without limiting the generality of the foregoing, development of a nonpotable water system on the Premises and connecting such system to the nonpotable water system for the City of Kapolei within one hundred and twenty (120) days after the later to occur of: (a) receipt of notice from the Campbell Estate of the availability of such system, and (b) Completion of Construction of the Required Improvements. Notwithstanding the foregoing, the Tenant shall not drill for water on the Premises without obtaining the Campbell Estate's prior written consent, which consent may be withheld in the Campbell Estate's sole discretion. Any external water features, including but not limited to ponds, streams, fountains and water falls, shall use nonpotable water whenever the same is reasonably available. Tenant's landscaping and ground cover shall at all times comply

with the City of Kapolei Development Standards and Guidelines and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources. Tenant authorizes the Campbell Estate to obtain water consumption records pertaining to the Premises from the BWS or any other governmental agencies or private entities providing water to the Premises, and agrees to provide the Campbell Estate written authorization to do so if so required.

e. Other Utilities. Landlord has installed in Kamokila Boulevard to the boundary of the Premises a utility conduit system for electrical and telephone and cable television lines. It shall be the Tenant's responsibility to contact the appropriate utility or provider for services in the conduit system to serve the Premises and to pay for such services.

Landlord's obligations under this Exhibit C shall only be to provide such Landlord Improvements as are necessary to service the Premises, and nothing herein shall be deemed or construed to require or otherwise obligate Landlord to complete such infrastructure to any other portions of the City of Kapolei or to complete any other amenities or facilities of any kind or description in the City of Kapolei prior to either (i) the Commencement Date or (ii) the date that Tenant is required to Complete Construction of its Required Improvements under the Lease. Without limiting the foregoing, Tenant acknowledges that such infrastructure and other amenities or facilities for the City of Kapolei may not be completed within such time periods; may be changed, modified or deleted from time to time in accordance with the provisions of the Declaration; and may not be constructed at all as to any portions of the Benefited Land which is not annexed to the City of Kapolei. Tenant further acknowledges and agrees that Landlord's construction of such infrastructure and other amenities or facilities may interfere with Tenant's use and enjoyment of the Premises and the provisions of Article III.B of the Lease are incorporated herein by reference.

THE CITY OF KAPOLEI

A DEVELOPMENT OF

THE ESTATE OF JAMES CAMPBELL

Portions of lots 7250 and 7251



SETBACKS

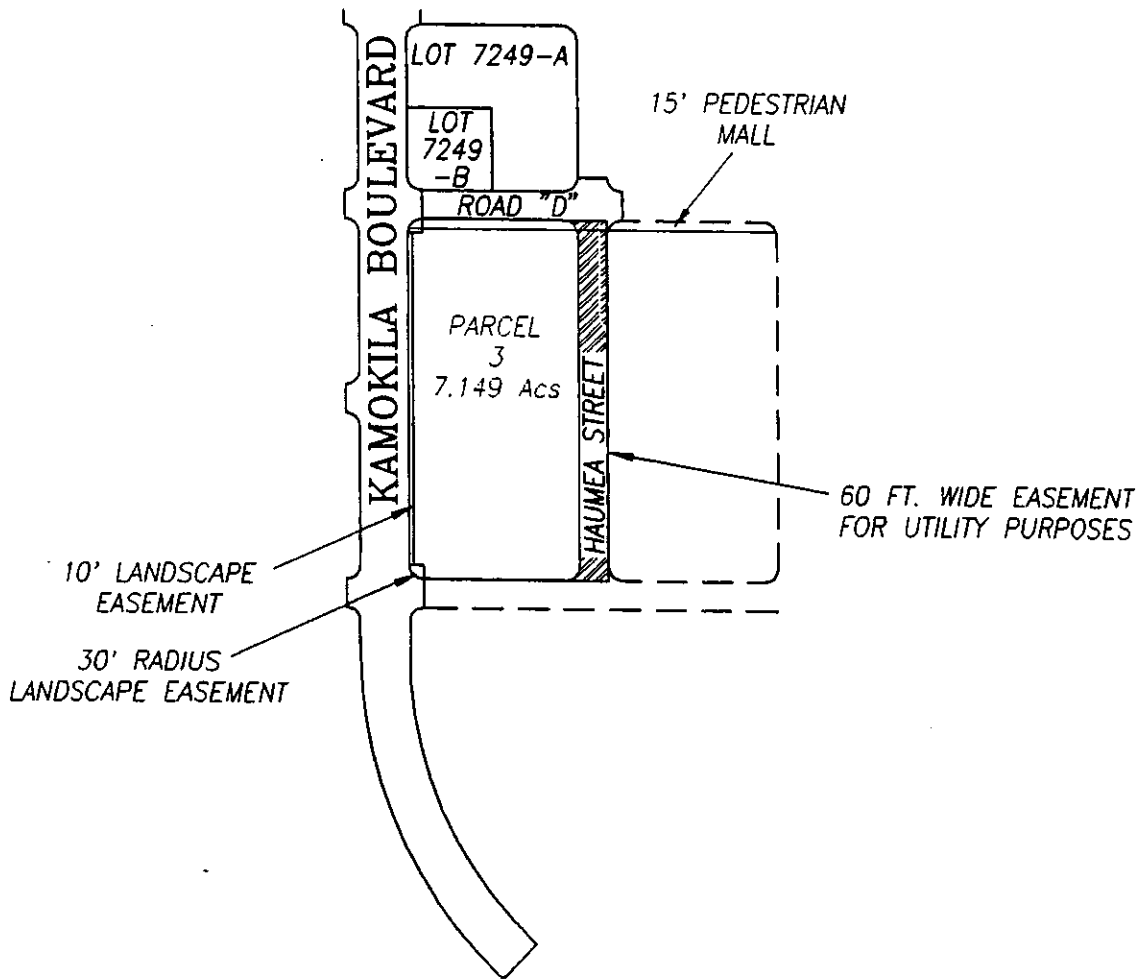


EXHIBIT D

EXHIBIT E

REQUIRED IMPROVEMENTS

[To be taken from Volume II of the
Request for Proposals and inserted.]

THE CITY OF KAPOLEI

A DEVELOPMENT OF

THE ESTATE OF JAMES CAMPBELL



PARCEL 3 (Portions of lots
7250 and 7251)

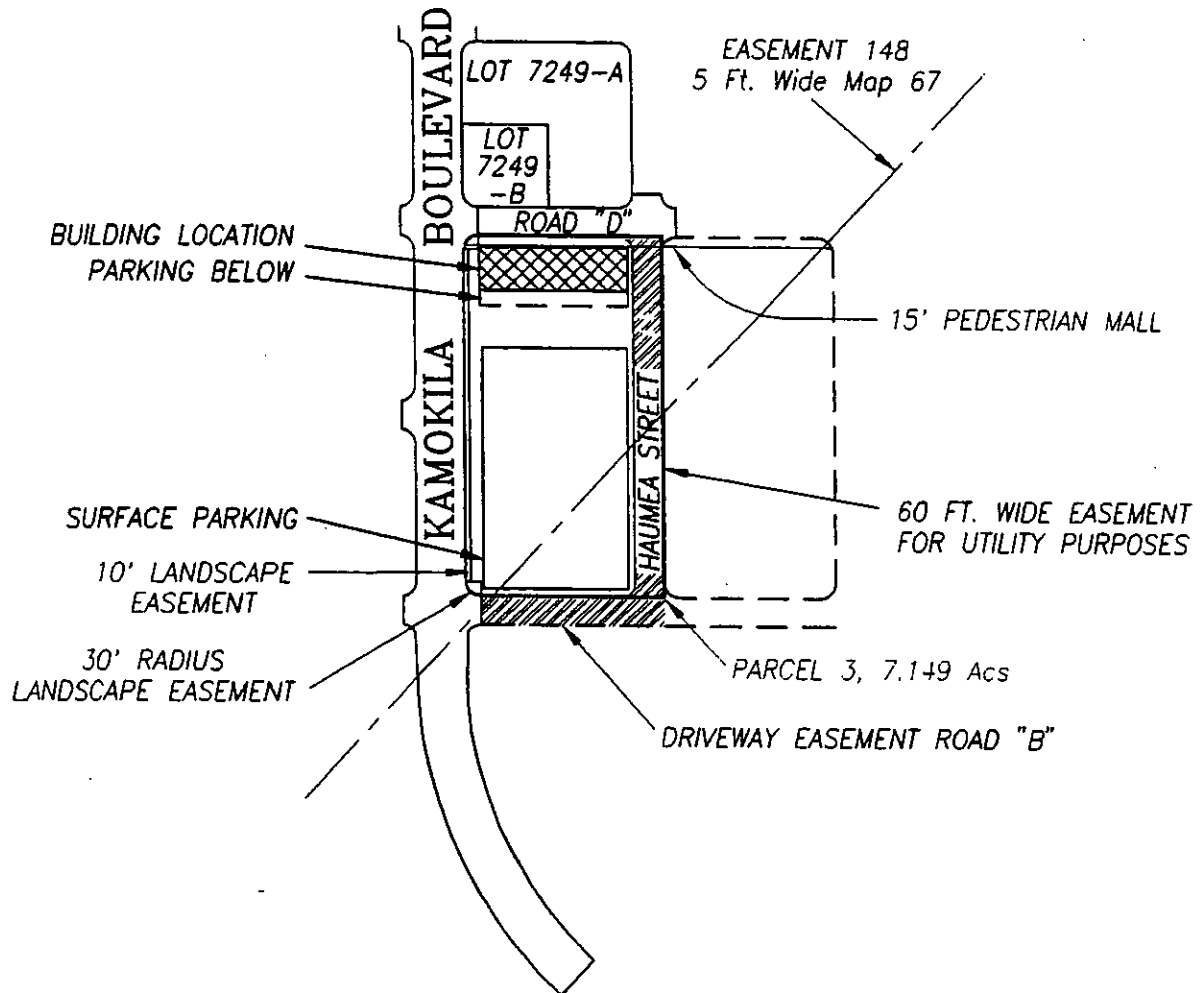


EXHIBIT E-1

EXHIBIT F

ACQUISITION PRICE SCHEDULE

[To be taken from Developer's Proposal.]

After the 10th year: \$ _____
After the 15th year: \$ _____
After the 20th year: \$ _____
After the 25th year: \$ _____
After the 30th year: \$ _____
After the 35th year: \$ _____

EXHIBIT G
MAINTENANCE STANDARD FOR
KAPOLEI SOB AND EXTERIOR PARKING

BUILDING

Roofing

Metal Roofing - Paint one-time in first 20-year period.

Built-up Roofing - Replace one-time in first 20-year period; replace insulation as required.

Painting

Repaint all exterior painted surfaces one time in first 20-year period.

Repaint all interior painted surfaces one time in first 20-year period.

Interior Ceilings

Replace only as a result of discoloration due to water damage.

Interior Floors

Repair only damaged tile.

Doors

Replace or repair only damaged doors.

Hardware

Replace or repair only damaged hardware.

Restrooms

Replace or repair only damaged plumbing fixtures, lavs, toilet partitions.

Lighting

Repair and replace only damaged fixtures.

Replace burned out lamps.

Exterior Painting

Resurface and restripe one time in first 20-year period.

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail () Pickup () To:

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBLEASE AGREEMENT No. _____

between

Sublessor

and

STATE OF HAWAII
by its
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
Sublessee

covering

_____ Usable Square Feet of Office Space

located at

Kapolei, Hawaii 96707

EXHIBIT H

E

E

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SUBLEASE AGREEMENT

THIS INDENTURE OF SUBLEASE made on _____ by and between _____, a _____ corporation, whose business and post address is _____ hereinafter called "Sublessor," and the STATE OF HAWAII, hereinafter called "Sublessee", by its Department of Accounting and General Services, pursuant to Section 171-30, Hawaii Revised Statutes, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, for the use by the various departments of the State of Hawaii.

W I T N E S S E T H:

ARTICLE I

DEMISE

Section 1.1 Premises. The Sublessor, in consideration of the rent hereinafter reserved and of the covenants by Sublessee herein contained, does hereby demise and sublease unto the Sublessee the parcel of land described as Lot _____, as shown on Map _____, filed in the Land Court in Application No. 1069 and consisting of approximately 7.149 acres in Kapolei, Hawaii and shown on the attached Exhibit A (the "Land"), and also leases unto the Sublessee the structure comprising 120,000 usable square feet (the "Improvements").

Section 1.2 Term. The term of this sublease and Sublessee's obligations to pay the rent hereunder shall be for forty (40) years. However, that said term shall be contingent upon the availability of public funds as appropriated by the Legislature, every two (2) years, to pay such rent. The Legislature approves a lump sum amount to fund all leases under DAGS office leasing program budget. The funding is not specific to each lease. To date, DAGS has only canceled a lease due to the termination of a program or withdrawal of federal funds and not for lack of funding for office lease rents. DAGS will not consider terminating the Sublease until such time as its current lump sum leasing budget has been reduced by twenty percent (20%). DAGS will commence, upon execution of the Intent to Sublease, to renew its expiring private space leases with an expiration date of September 30, 1997.

Section 1.3 Sublease Commencement. This sublease will commence following acceptance by Sublessee of the building and all tenant improvements, and after issuance of a certificate of occupancy to the Sublessor. The Sublessor shall provide written notification of the Commencement Date to Sublessee.

Section 1.4 Option to Cancel. Sublessee shall have the right to cancel this sublease should Sublessee's public funding be substantially cut, subject to the following conditions:

1. Sublessee must give Sublessor written notice of its intent to cancel no later than six (6) months prior to the effective date of cancellation;
2. Sublessee shall provide Sublessor with proof of such funding cut at the time it exercises its right to cancel.

It is further understood that once the Sublessee has exercised its right to cancel, said notice is irrevocable.

Section 1.5 Quiet Enjoyment. Upon payment by Sublessee of the rent hereinafter reserved and upon observance and performance of the terms, covenants and conditions herein contained and to be observed and performed by Sublessee, Sublessee shall peaceably hold and enjoy the Premises for the term and any extensions thereof without hindrance or interruption by Sublessor or any other person lawfully or equitably claiming by, through or under the Sublessor, except as herein otherwise expressly provided.

ARTICLE II

RENT AND OTHER CHARGES

Section 2.1 Rent. In consideration of this sublease, the Sublessee agrees to pay the Sublessor rent for the Premises inclusive of 4.167% general excise tax. It is understood that the rent cannot be increased more frequently than every twenty-four (24) months. The Sublessor shall provide Sublessee with two (2) months free rent from the Lease Commencement Date as referred to in Section 1.3 of this sublease. The monthly rent shall be paid as follows:

in legal tender of the United States of America, payable monthly in advance on the first day of each month at _____, or at any other place the Sublessor in writing may designate, on the days and in the manner aforesaid without any deduction and without notice or demand; and that if any installment of rent shall not be promptly paid when due or within thirty (30) days thereafter, rent shall bear simple interest at the rate of ten percent (10%) per annum from said due date until paid. However, the first month's rent shall not be payable any sooner than forty-five (45) days after sublease execution.

Section 2.2 Tenant Improvement Allowance. The Sublessor shall provide Sublessee with an allowance of SEVEN MILLION AND 00/100 DOLLARS (\$7,000,000.00) for construction of tenant improvements. Sublessor shall construct such improvements in accordance with plans and specifications as determined and approved by the Sublessee. Sublessor shall provide tenant programming, space planning and design at Sublessor's sole cost and shall not include this as part of the \$7,000,000.00 allowance. Should the actual expenditure of funds exceed or is less than the \$7,000,000.00 Tenant Allowance, the monthly rental to be paid by the State shall be increased or decreased respectively by \$ _____ for each \$10,000.00 increase or decrease over the first ten (10) years of the sublease agreement. Additions requested by the Estate of James Campbell as a result of the Estate Advisory Board Reviews will not be paid from the Tenant Allowance.

Section 2.3 Parking. At the commencement of the term, Sublessor shall provide Sublessee with a minimum of 400 parking stalls located on the property (a minimum of 60 underground and the balance on grade) at no additional cost to Sublessee.

Section 2.4 Security Deposit. No security deposit of any kind shall be required to be paid by Sublessee.

Section 2.5 Real Property Tax. Sublessee shall pay throughout the term, beginning as of the sublease commencement date, directly to the appropriate taxing or other applicable authority at least ten (10) days before the same become delinquent, all real property taxes and assessments of every description attributable to the Premises or any part thereof or improvement thereon, or for which Sublessor or Sublessee in respect thereof, are now or may during the term be assessed or become liable, whether assessed to or payable by Sublessee or Sublessor; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Sublessor shall be required to pay only such installments of principal and interest as shall become due and payable during the term. Sublessor's covenant for the payment of the taxes set forth in the preceding sentence shall include the payment of any new tax (except Federal or State net income taxes) which supplements or replaces either the real property tax or increases the real property taxes and is assessed upon the Premises or any part thereof or upon the rents received under this sublease by Sublessor or upon Sublessor in respect of any of the preceding items.

Notwithstanding the foregoing, Sublessee shall pay all such taxes directly to Sublessor or such other party designated by Sublessor at least ten (10) days before the same becomes due until such time as Sublessee receives written notice from Sublessor that such taxes shall be paid directly to the

appropriate taxing or other applicable authority.

It is understood that the Sublessee may obtain an exemption from real property taxes under Hawaii Revised Statutes, Section 246-36(2) or any other applicable statute. Upon the effective date of the exemption, Sublessee's responsibility for payment of real property taxes shall be reduced by the amount of the exemption granted.

Section 2.6 General Excise Taxes. The Sublessee shall pay to the Sublessor, together with each payment of rent or any other payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as the same may be amended, and all other similar taxes that may be imposed on the Sublessor in regard to the rent or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding Federal or State of Hawaii net income taxes), whether imposed by the United States of America, the State of Hawaii, the City and County of Honolulu, or any other duly authorized taxing body, an amount which, when added to the rent or other payment, shall yield to the Sublessor, after deduction of all taxes payable by the Sublessor with respect to all payments of taxes, a net amount equal to that which the Sublessor would have realized from the payments had no taxes been imposed.

Section 2.7 Operating Costs and Utilities. Sublessee shall be solely responsible for the total operating costs of the Property and Premises which shall include, without limitation, all costs of any kind, paid or incurred in operating and maintaining the Premises and Property, including utility service costs, real property tax, cleaning, equipping, protecting, and for the repair and replacement of all machinery and equipment such as air conditioning, elevator, lighting, etc. Maintenance standards for the building and exterior parking facility shall be performed by Sublessee in accordance with the attached Exhibit "B."

Section 2.8 Conveyance Tax. Sublessee forthwith shall reimburse to Sublessor, upon Sublessee's receipt of a billing from Sublessor, any State of Hawaii conveyance tax which shall be or become payable by Sublessor as a result of this sublease.

ARTICLE III

USE

Section 3.1 Use of Premises. The Premises shall be occupied and used for government offices or other public facilities which are allowed under the City and County of Honolulu B-2 Community Business District.

Section 3.2 Observance of Laws. Sublessee shall at all times during the term observe and comply with all laws, ordinances, and rules and regulations now or hereinafter made by any governmental authority and applicable to the occupancy or use of the Property and Premises or the conduct of any business therein or to the use of the common areas.

Section 3.3 Rules and Regulations. The City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993 attached as Exhibit "C", shall apply to the sublease of the Premises. Such provisions allow that if the Land is used solely for governmental and other purposes allowed in that City of Kapolei Ground Lease dated _____ between the Estate of James Campbell as Landlord and (Developer) as Tenant, the Land shall not: (a) be included within the "Developmental Land" described in the Declaration and shall enjoy the exemption from the payment of "Assessments" as set forth in Section 9.10 of the Declaration and: (b) shall not be subject to the following provisions of the Declaration: Section 10.1, dealing with Water Rights; Section 10.2 dealing with Easements; and Section 10.4 dealing with Air Rights. The Sublessee will further agree to use its best efforts to comply with the Signage Guidelines of the Declaration, subject to such modifications as are consented to by the Estate of James Campbell, which consent shall not be unreasonably withheld.

Section 3.4 Waste, Nuisance or Unlawful Activity. Sublessee agrees that it will not commit or permit any waste on the Property and the Premises, or maintain or permit to be maintained a nuisance thereon, or use or permit the Property and Premises to be used in an unlawful manner.

Section 3.5 Subletting and/or Assignment. The Sublessee may sub-sublease up to 60,000 usable square feet of space in the building to Motorola, Inc. Also, during the first three (3) years from and after the issuance of the certificate of occupancy for the building, Sublessee may sub-sublease up to an additional twenty-five percent (25%) of the usable square feet in the building for other non-governmental purposes. Sublessee must obtain Campbell Estate's prior consent to extend the sub-sublease period, which consent will be at Campbell Estate's sole discretion.

ARTICLE IV

HAZARDOUS MATERIALS

Section 4.1 Sublessee's Covenants. Sublessee shall not cause or permit the escape, disposal or release of any hazardous materials. Sublessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of

such materials, nor allow to be brought into the Property or the Premises any such materials except to use in the ordinary course of Sublessee's business, and then only after written notice is given to Sublessor of the identity of such materials. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Sublessee, then the reasonable costs thereof shall be reimbursed by Sublessee to Sublessor upon demand as additional charges if such requirement applies to the Property and the Premises. In addition, Sublessee shall execute affidavits, representations and the like from time to time at Sublessor's request concerning Sublessee's best knowledge and belief regarding the presence of hazardous materials on the Property and Premises placed or released by Sublessee.

Section 4.2 Sublessor's Representations, Warranties and Obligations. Sublessor represents and warrants to Sublessee that Sublessor has no liability under, has never violated, and is presently in compliance with all environmental laws regarding hazardous materials applicable to the Premises and the Property, and to the best of Sublessor's knowledge, there does not now exist or has ever existed any environmental condition relating to hazardous materials on the Premises or Property.

Sublessor agrees to indemnify and hold Sublessee harmless from any damages or claims from any environmental condition or violation of any environmental laws resulting from the use or placement of hazardous materials on the Premises or Property prior to the sublease commencement date even if not discovered until after the sublease has commenced. This indemnity shall survive the sublease termination date and shall be in addition to Sublessor's obligations for breach of the above representations and warranties.

Section 4.3 Asbestos Containing Materials. Sublessor certifies that all improvements constructed or installed on the Premises (Land & Improvements) by Sublessor, is completely free of asbestos containing materials.

Section 4.4 Definitions. For the purpose of this sublease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

ARTICLE V

MAINTENANCE, REPAIRS AND ALTERATIONS

Section 5.1 Sublessee's Maintenance and Repair of the Premises and the Property. The Sublessee will at its own cost during the term of this sublease and any extensions thereof keep the Property and Premises in a good and safe condition, reasonable use and wear and tear and unavoidable casualty excepted. Sublessee's obligations under this section do not include structural repairs and natural wear, decay, or damage by the elements or other casualty (occurring without fault of the Sublessee or other persons permitted by the Sublessee to occupy or enter the Premises or any part thereof). Maintenance and repair of all glass, both exterior and interior, of the Premises is the sole responsibility of the Sublessee and any glass broken during the term of this sublease is to be promptly replaced by and at the expense of the Sublessee with glass of the same size, kind and quality, unless caused by the negligent act or omission of the Sublessor or its authorized representatives.

Section 5.2 Sublessor's Right of Entry. The Sublessee will allow the Sublessor and the agents of the Sublessor, at reasonable times and upon prior notice, to enter upon the Property.

Section 5.3 Alterations. Sublessee will not make any alterations or additions whatsoever on the Property or to the Premises without first obtaining Sublessor's written approval of the plans and specifications thereof, which approval shall not be unreasonably withheld.

ARTICLE VI

LIABILITY, INDEMNITY AND INSURANCE

Section 6.1 Liability of the State. Sublessee shall, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Suits by and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act), be liable in the same manner and to the same extent as a private individual under like circumstances, for all claims and demands for property damage, loss, personal injury or death on the Property or Premises caused by the negligent or wrongful act or omission of any officer and employee of Sublessee while acting within the scope of that person's office or employment, or persons acting for Sublessee in an official capacity, temporarily, whether with or without compensation.

Section 6.2 Liability of Sublessor. The Sublessor shall not be liable to the Sublessee for damage to person or property arising for any reason, except that the Sublessor shall be liable to the Sublessee for damage to the Sublessee resulting from the negligent act or omission of the Sublessor, representatives or invitees, or its authorized representatives.

Section 6.3 Indemnity. The Sublessee, subject to Chapters 661 and 662, Hawaii Revised Statutes, shall indemnify, defend and hold the Sublessor harmless from all damages arising out of any damage to any person or property occurring in, on, or about the Premises and Property, except that the Sublessor shall be liable to the Sublessee for damage resulting from the negligent act or omission of the Sublessor or its authorized representatives.

Section 6.4 Insurance. Under the Sublessee's insurance program, the Sublessee shall provide and maintain its own general liability insurance and property damage insurance to cover the Premises.

ARTICLE VII

PROPERTY OF SUBLESSEE

Section 7.1 Property of Sublessee. All personal property of any kind or description whatsoever on the Property or Premises shall be at the Sublessee's sole risk, and the Sublessor shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of the Sublessee arising from or caused in any manner whatsoever unless caused by the negligent act or omission of Sublessor or its authorized representatives.

ARTICLE VIII

CONDEMNATION

Section 8.1 Condemnation. In the event during the term of this sublease or any extensions thereof, the Property or Premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in such event, this sublease shall cease and terminate as of the date Sublessee is required to vacate the Premises, and the rent reserved shall be apportioned and paid up to that date. All compensation and damages payable for or on account of the Premises and common areas and the Property thereof, except for improvements constructed or owned by the Sublessee, shall be payable to and be the sole property of the Sublessor. Sublessee shall be compensated for all improvements constructed or owned by the Sublessee. The Sublessee shall not be entitled to any claim against the Sublessor for condemnation of or indemnity for the leasehold interest of the Sublessee.

Sublessee will not condemn the Premises within the first ten (10) years of the term of the sublease. Sublessee may condemn after the tenth year at the price reflected in the Acquisition Price Schedule set forth in Exhibit "F" to the Ground Lease described in Section 13.2 below. For years when no acquisition price is given, the condemnation price will be determined by a linear interpolation between the acquisition prices for the two closest years shown on the Acquisition Price Schedule.

Section 8.2 Partial Taking. In case only part of the Premises shall be so taken or condemned, the rent thereafter payable for the unexpired remainder of the term shall be reduced in the same proportion that the area of the Premises so taken or condemned bears to the total area of the Premises hereby demised; PROVIDED, HOWEVER, either party has the right to terminate this sublease at its option in the event of a partial taking of at least 25% of the Premises without further obligation under this sublease. The Sublessee shall not condemn less than the entire Premises.

ARTICLE IX

CASUALTY

Section 9.1 Casualty. The Sublessee shall in case of fire or other casualty give immediate notice thereof to the Sublessor. In case the Premises or other improvements are damaged as aforesaid so as to render the Premises or other improvements partially inaccessible or unusable or untenable, there shall be an equitable abatement of the basic rent specified in Section 2.1 hereof during the period the Premises or other improvements are partially inaccessible or unusable or untenable. In the event of a fire or other casualty requiring the Sublessee to vacate the Premises, the Sublessee will be responsible for temporary space lease and relocation expenses. The Sublessee will reoccupy the Premises provided repairs are satisfactorily completed by the Sublessor within twenty-four (24) months or a mutually agreed upon time period. Rent and other charges due from the Sublessee under the Sublease will not be payable for periods when the Sublessee does not occupy the Premises. If Sublessor so desires, it may provide its own business interruption insurance to cover the loss of Sublease payments.

If the Premises is rendered untenable by fire or other casualty which cannot be satisfactorily repaired within twenty-four (24) months or a mutually agreed upon time period, then either the Sublessor or Sublessee may cancel this sublease. Written notice of cancellation shall be given within thirty (30) days after a determination that such repairs cannot be completed within twenty-four (24) months.

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ARTICLE X

DEFAULT

Section 10.1 Remedies on Sublessee's Default. This sublease is upon the express condition that, if Sublessee shall fail to pay the rent herein reserved or any part thereof as the same becomes due, or shall fail to faithfully observe and perform any other term, covenant or condition of this sublease, or shall abandon the Property or Premises, or shall suffer this sublease or any estate or interest hereunder to be taken on execution, or shall suffer any mechanic's or materialmen's lien to attach said Premises, and shall fail to secure the discharge or release thereof within a reasonable time after the entry of any judgment or order of a court of competent jurisdiction for the foreclosure or other endorsement of the lien and the breach or default shall continue for a period of thirty (30) days after delivery of a written notice of any such breach or default by personal service, registered mail or certified mail, then in that event, Sublessor may at once re-enter the Property and Premises and, upon or without the entry, at its option, terminate this sublease without any further service or notice or legal process, and may expel and remove from the Property or Premises, Sublessee and those claiming under it and its effects and Sublessor may store, remove and dispose of any of Sublessee's improvements or personal property at Sublessee's expense, and may then or at any time before or thereafter bring an action for summary possession of said Property and Premises, all without prejudice to any other remedy or right of action which Sublessor may have for arrears of rent or other breach of contract; provided however, that if the nature of the default, other than non-payment of rent is such that the same cannot be reasonably cured within a thirty-day period, Sublessee shall not be deemed to be in default if Sublessee shall, within the period, commence a cure and thereafter diligently prosecute the same to completion.

Section 10.2 Nonwaiver. The acceptance of rent by Sublessor or its agent shall not be deemed to be a waiver by it of any breach by Sublessee of any covenant contained herein or of Sublessor's right to re-enter for breach of condition.

ARTICLE XI

SURRENDER, HOLDING OVER

Section 11.1 Surrender of Premises. In the event the Sublessee must terminate this sublease due to a lack of funding by the Legislature, the Sublessee will peaceably deliver up to Sublessor possession of the demised Premises together with all improvements thereon by whomsoever made, except those improvements that can be reasonably removed by the Sublessee, in good repair, order and condition, reasonable wear and tear and

unavoidable casualty excepted.

The Sublessee will allow the Sublessor during the last month of the term hereof to affix to or keep on the Property and Premises a "For Rent" notice, and will allow the Sublessor to show the Premises during business hours to prospective lessees upon advance notice.

If the Sublessee fails to remove any and all of Sublessee's improvements and/or personal property from the Property and Premises, after thirty (30) days written notice by Sublessor, the Sublessor may remove any and all improvements and/or personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Sublessee, and the Sublessee does agree to pay all costs and expenses for disposal, removal, or storage of the improvements and/or personal property.

Section 11.2 Holding Over. If Sublessee shall remain in possession of the Property or Premises after the early termination of the sublease, Sublessee shall be deemed to occupy the Premises as a tenant from month to month at the rent herein reserved, subject to all the other terms, covenants, and conditions herein contained insofar as the same are applicable to a month-to-month tenancy.

ARTICLE XII

NOTICE

Section 12.1 Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

To the Sublessor at:

To the Sublessee at: State of Hawaii
Department of Accounting and
General Services, Public Works
1151 Punchbowl Street, Suite 429
Honolulu, Hawaii 96813

ARTICLE XIII

SUBORDINATION, ESTOPPEL, ATTORNMENT

Section 13.1 Sublease Subordinate to Mortgages. This sublease shall be subject and subordinate to the lien of any mortgage in any amount or amounts whatsoever now existing or hereafter placed on the building without the necessity of any other instrument or act on the part of the Sublessee to effectuate the subordination, provided the mortgagee named in any mortgage shall agree that in the event of foreclosure it will not join the Sublessee as a party defendant in the foreclosure action and will not take any action to terminate this sublease so long as the Sublessee is not in default hereunder. The Sublessee covenants and agrees to execute and deliver upon demand a further instrument or instruments evidencing the subordination of this sublease to the lien of any mortgage or mortgages as may be required by the Sublessor.

Section 13.2 Sublease Subject to Ground Lease. This sublease shall be subject to the terms, covenants and conditions contained in that certain City of Kapolei Ground Lease dated _____ entered into by (Developer) as Tenant and the Estate of James Campbell as Landlord (the "Ground Lease"). Should there be any conflict between this Sublease and the Ground Lease, the latter shall prevail. Notwithstanding any provisions of this Sublease to the contrary, where the Ground Lease obligates Sublessor to certain conditions, responsibilities or burdens with respect to the Premises which are or may be more strict or higher than the corresponding obligations of the Sublessee to Sublessor or others under this Sublease, the more strict or higher obligations of the Sublessor under the Ground Lease shall be applicable equally to Sublessee with respect to Sublessor and shall replace the obligations otherwise stated in this Sublease.

Section 13.3 Attornment. Sublessee agrees to attorn to the assignee, transferee, or purchaser of Sublessor's interest from and after the date of notice to Sublessee of any assignment, transfer or sale, in the same manner and with the same force and effect as though this sublease were made, in the first instance, by and between Sublessee and the assignee, transferee or purchaser. If any proceedings are instituted for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Sublessor covering the Property or Premises, Sublessee shall, upon Sublessor's request, attorn to the purchaser upon any foreclosure or sale and recognize the purchaser as the Sublessor under this sublease.

Section 13.4 Transfer Documents. In the event of any such sale, assignment, mortgage, transfer or hypothecation, Sublessee will promptly execute any and all documents, including but not limited to consents and true and accurate estoppel certificates, as may be deemed necessary to the transaction by the Sublessor. Further, in the event that for any business purpose of Sublessor it shall be necessary for Sublessor that Sublessee execute documents, including but not limited to consents and estoppel certificates, Sublessee agrees to execute any and all of said documents, provided only that the documents accurately and truthfully reflect the matters contained therein.

The Sublessee shall upon and after written notice, received as designated in Section 12.1, act upon the requested document. The Sublessee shall respond within the time period of ten (10) business days or such additional time period the Sublessee may request.

ARTICLE XIV

GENERAL

Section 14.1 Time is of the Essence. Time is of the essence in all provisions of this sublease.

Section 14.2 Hawaii Law; Venue; Jurisdiction. This sublease shall be construed, interpreted, and governed by the laws of the State of Hawaii. The venue for any mediation, arbitration or judicial action with respect to this sublease shall be in the county or city and county in which the Property is situated. All parties to this agreement shall submit to the jurisdiction of the State and/or Federal Courts of the State of Hawaii for all purposes relating to this sublease, subject to the terms of the mediation and arbitration clause in Section 14.3 herein. All parties agree to subject themselves to the power and authority of such courts for the enforcement of any arbitration award hereunder and for all other matters relating to this sublease and the Property.

Section 14.3 Disputes Subject to Mediation and Arbitration. If a dispute arises out of or relates to this sublease, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration, litigation, or some other dispute resolution procedure.

Thereafter, following such effort to settle such dispute by negotiation and mediation, any controversy or claim arising out of or relating to this sublease or the breach thereof, shall be settled by arbitration in the county or city and county in which

the property is situated, in accordance with the Commercial Arbitration rules (and the Supplementary Procedures for International Commercial Arbitration of the American Arbitration Association, if the Sublessor is not a resident of the United States of America); and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Any such arbitration shall be held and conducted in the city or city and county in which the premises is situated.

Section 14.4 Attorney's Fees. In the event of any action or proceeding brought by any party to the other party based upon or arising out of any breach of the terms and conditions herein, the prevailing party shall be entitled to recover all costs, including attorney's fees from the other party.

In the event that Sublessor without any fault on its part, be made a party to any litigation commenced by or against Sublessee, then Sublessee, to the extent permitted by law, shall pay to Sublessor all costs including reasonable attorney's fee incurred by or imposed upon the Sublessor by or in connection with the action or litigation. Conversely, in the event that Sublessee, without the fault on its part, be made a party to any litigation commenced by or against Sublessor, then Sublessor shall pay all costs, including reasonable attorney's fee, incurred by or imposed upon Sublessee by or in connection with such action or litigation.

Section 14.5 Exhibits - Incorporated in Sublease. All exhibits referred to are attached to this sublease are deemed incorporated by reference.

Section 14.6 Singular and Plural. When required by the context of this sublease, the singular shall include the plural.

Section 14.7 Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this sublease.

Section 14.8 Successors and Assigns. The term "Sublessor" as used herein shall include the Sublessor, its successors and assigns, and the term "Sublessee" as used herein shall include the Sublessee and its successors and assigns.

Section 14.9 Partial Invalidity. If any term, provision, covenant or condition of this sublease should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this sublease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 14.10 Neither Landlord nor Tenant Deemed Drafter. All provisions of this lease have been negotiated by Sublessor and Sublessee at "arms length" and with full opportunity for representation by their respective legal counsel and Sublessor and Sublessee agree that neither party shall be deemed to be the drafter of this sublease and in the event this sublease is ever construed by a court of law, such court shall not construe this sublease against either party drafter of this sublease.

Section 14.11 Entire Agreement; Modification. This sublease contains all the agreements of the parties and cannot be amended or modified except by written agreements signed by Sublessor and Sublessee.

IN WITNESS WHEREOF, the Sublessor has caused this instrument to be duly executed, and the Department of Accounting and General Services, by its Comptroller, the Sublessee, has caused this instrument to be duly executed, on the day, month, and year first above written.

(Developer)

By: _____
Its Sublessor

STATE OF HAWAII

By: _____
Comptroller, Department of
Accounting and General Services
Sublessee

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

ACKNOWLEDGMENT

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

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

Notary Public, State of Hawaii

My commission expires: _____



March 31, 1997

Mr. Sam Callejo
State Comptroller
Department of Accounting and
General Services
State of Hawaii
P. O. Box 119
Honolulu, Hawaii 96810

Mr. Michael Wilson
Chairman
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Gentlemen:

Re: State/Campbell Estate Agreement Dated September 14, 1994

I am writing to you on behalf of the Estate of James Campbell (the "Estate") in reference to that certain letter agreement dated September 14, 1994 (the "Letter Agreement") regarding the Estate's obligation to provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations in Kapolei to be used for governmental offices or other public facilities.

The purpose of this letter is to set forth our agreement that if, by December 31, 1997, vertical construction of the office building for use by the State of Hawaii on Parcel 3 (now Lot 11000) has commenced, the Letter Agreement will be amended as follows:

March 31, 1997

Page 2

1. The last sentence of paragraph 2 of the Letter Agreement is deleted in its entirety and the following is substituted in place thereof:

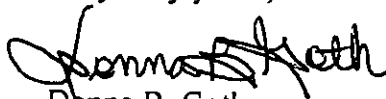
“The Estate’s obligation to make any conveyances of any portion of the Land (except Lot 11000) shall terminate on December 31, 2006 as to any portion of the land for which the State has not satisfied the requirements of subparagraphs 2(a) or 2(b) of the Letter Agreement.”

2. A new subparagraph reading as follows will be added to the end of paragraph 2 of the Letter Agreement:

“The Estate will provide to the State, at no cost, an additional fifty (50) acres of land designated as Lots 12010 and 12012 on Map 885 of Land Court Application No. 1069 by means of a dedication deed in substantially the form of the instrument used to convey to the State Lot 12009 as shown on said Map. Concurrently with the recording of the dedication deed, the State shall annex the land described in the dedication deed to the Declaration of Covenants, Conditions and Restrictions on Use to be recorded as an encumbrance against said Lot 12009. The conveyance of Lots 12010 and 12012 will be made within sixty (60) days of the commencement of vertical construction of said office building on Lot 11000.”

If these amendments to the Letter Agreement are acceptable to you, please sign the enclosed copy of this letter in the space provided below and return it to the undersigned.

Very truly yours,



Donna B. Goth


Director, Hawaii Development

Agreed and accepted:


DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

By 
Sam Callejo
Its Comptroller

BOARD OF LAND AND NATURAL
RESOURCES


By 
Michael Wilson
Its Chairman

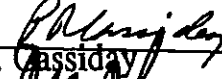
APPROVED AS TO FORM:


Deputy Attorney General

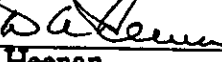
APPROVED:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities


C. D. Frajt, Jr.


P. R. Cassidy


C. R. Churchill


D.A. Heenan

October 31, 2006

Mr. Thomas R. Keller
Administrative Director of the Courts,
State of Hawaii
417 South King Street
Honolulu, Hawaii 96813

Mr. Peter T. Young
Chairperson
Department of Land and Natural Resources,
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Mr. Russ K. Saito
State Comptroller
Department of Accounting and
General Services, State of Hawaii
P. O. Box 119
Honolulu, Hawaii 96810

Gentlemen:

Re: State/Campbell Estate Agreement dated
September 14, 1994 - Kapolei Judiciary Complex

I am writing to you on behalf of the Estate of James Campbell (the "Estate") and Kapolei Property Development LLC, a Hawaii limited liability company ("KPD") in reference to that certain letter agreement dated September 14, 1994 (the "September Letter Agreement") regarding the Estate's obligations to provide 40 acres to the State of Hawaii ("State") in mutually agreed upon locations in Kapolei to be used for governmental offices or other public facilities.

On September 23, 1988, the State of Hawaii Land Use Commission ("LUC") entered Findings of Fact, Conclusions of Law and Decision and Order ("Decision and Order") which granted the Estate's petition to amend the Land Use District boundary to reclassify approximately 890 acres of land situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii, from the Agricultural District to the Urban District to develop Kapolei. The Decision and Order contained a number of pre-conditions which were more particularly described in that certain Document Evidencing Petitioner's Commitments dated April 11, 1989. These conditions included the 40-acre obligation described above.

In the September Letter Agreement, the State and the Estate identified the locations of the 40 acres which will satisfy one of the pre-conditions including Parcels 4 and 5, containing an aggregate area of approximately 13.5 acres, to be used for the Kapolei Judiciary Complex. The State and the Estate proposed to enter into a new letter agreement dated June 30, 1998, (the "June 1998 Letter") covering specifically Parcels 4 and 5, which would supersede the September Letter Agreement as to the terms and conditions pertaining to Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6.

The June 1998 Letter was submitted to the Board of Land and Natural Resources for approval. On February 26, 1999, the Board approved the June 1998 Letter as agenda item D-14. Due to the passage of time since the June 1998 Letter was approved, and

Execution Copy
4839-8549-8368.53.054438-00062

EXHIBIT 7

there being further clarification and modifications to the June 1998 Letter, the parties now wish to update and restate the terms and conditions under which Parcels 4 and 5 would be conveyed to the State for the Kapolei Judiciary Complex.

The amended terms and conditions set forth herein regarding Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6 supersede those in the September Letter Agreement and the June 1998 Letter. For the convenience of the parties, these amended terms and conditions are restated and set forth in their entirety as follows:

1. Designation of State Land. The forty (40) acres of land to be provided by the Estate to the State shall include the land designated as Lot 80001-C-1 (formerly Parcels 4 and 5) on Exhibit "A" attached hereto and incorporated herein by reference on the terms and conditions more particularly set forth below. Lot 80001-C-1 is currently owned by KPD. Lot 80001-C-1 contains an increased area of 15.274 acres. As a result, the remaining lands to be provided by the Estate and designated as Parcels 2 and 6 in the September Letter Agreement will be reduced in size so that the total area provided to the State does not exceed 40 acres in total.

2. Conveyance of Land. Subject to the satisfaction of the terms and conditions of this agreement, Lot 80001-C-1 will be conveyed upon the State's request, but no later than sixty (60) days after the subdivision of Lot 80001-C-1 has been completed as set forth below and the State has entered into a construction agreement for a court building and juvenile detention facility (including ancillary central plant structures) to be constructed on Lot 80001-C-1 with a floor area ratio as defined in the Land Use Ordinance of the City and County of Honolulu ("FAR") of not less than 0.39 (the "Required Improvements") and State funds have been appropriated and have been certified as available for said construction agreement. Notwithstanding the foregoing, however, if Lot 80001-C-1 is not used by the State for a court building and a juvenile detention facility (including ancillary central plant structures), the density of the buildings constructed on Lot 80001-C-1 shall have a FAR of not less than 0.5 and the definition of "Required Improvements" shall be modified accordingly. The Required Improvements shall be designed by the State. Subject to the provisions of paragraph 3.a below, the obligation to make a conveyance of Lot 80001-C-1 shall terminate as provided in paragraph 3 below if the State has not entered into a construction agreement to build the Required Improvements or State funds have not been appropriated and certified as available to pay for the cost of such construction. Such conveyance shall also be subject to the receipt of subdivision approvals from the City and County of Honolulu and the filing of the required subdivision map with the Land Court of the State of Hawaii, all of which will be completed by the Estate and/or KPD at their sole cost and expense. If KPD has not obtained subdivision approval of Lot 80001-C-1 from the City and County of Honolulu by June 30, 2007, or such other date as may be mutually agreed upon by the parties to this letter agreement, KPD will pursue obtaining subdivision approval on a substitute parcel or parcels mutually agreeable to the parties, and said parcel or parcels shall be conveyed to the State on terms and conditions substantially equivalent to those governing the conveyance of Lot 80001-C-1, provided that the State will be given a reasonable period of time to redesign the Required Improvements, obtain any required State funding, and enter into the required construction agreement. The conveyance of Lot 80001-C-1 will be made by means of a limited warranty deed substantially in the form of Exhibit "B" attached hereto and incorporated herein by reference, together with non-exclusive easements for access purposes over Easements "1" and "2" as shown on Exhibit "C-1" attached hereto and subject to (i) the City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions described in paragraph 6 below, (ii) all liens and encumbrances shown on Exhibit "A" to the limited warranty deed, and (iii) encumbrances

imposed as the result of the required subdivision. The State's right to use Easement "1" will terminate upon the dedication of Easement "1" as a public roadway. The State's rights to use Easement "2" will terminate upon the completion of the construction of roadway improvements therein and the dedication of Easement "2" as a public roadway.

3. Alternate Site Configuration. The State has determined that the projected costs of constructing the Required Improvements exceed the amount of the appropriation approved by the Hawaii State Legislature in the 2005 legislative session. Based on the amount currently appropriated, the State cannot meet the 0.39 FAR density requirement of 259,481 square feet for the Required Improvements to be built on Lot 80001-C-1 unless approximately 4.40 acres of Lot 80001-C-1 is retained by KPD. While the State obtained an appropriation of \$6.0 million in the 2006 legislative session with which to acquire all of Lot 80001-C-1, the State may not be successful in reaching agreement with KPD on such acquisition. As a result, the State and KPD further agree as follows:

a. If the State is not successful in negotiating an agreement with KPD to acquire said 4.40 acres of Lot 80001-C-1, KPD agrees to convey, and the State agrees to accept, less than the entire 15.274 acres of Lot 80001-C-1. The parties agree that the amount of acreage to be conveyed to the State shall be the maximum number of acres of Lot 80001-C-1 as to which the State has funding to build a court building and juvenile detention center (including ancillary central plant structures) that meet the 0.39 FAR density requirement (the "Modified Required Improvements"). In decreasing the size of the property to be conveyed to the State, the property shall be decreased on the Kapolei Parkway/Waianiani Way side of Lot 80001-C-1 as shown on Exhibit "A-1" attached hereto and incorporated herein by this reference. Thereafter, the term "Lot 80001-C-1" will refer to the smaller parcel to be conveyed to the State. As set forth above, the State shall be entitled to this conveyance (i) after the new lots have been subdivided, (ii) the State has entered into a construction agreement for the Modified Required Improvements, and (iii) State funds have been appropriated and are certified as available for said construction agreement. KPD's obligation to convey the property shall cease if the State fails to meet conditions (ii) and (iii) on or before midnight on June 30, 2007. If the new subdivision of Lot 80001-C-1 in order to create the smaller parcel to be conveyed to the State cannot be completed by June 30, 2007, KPD will convey all of Lot 80001-C-1 to the State subject to the State's agreement and unconditional obligation to reconvey to KPD the land to be retained by KPD after the new subdivision is completed. KPD shall complete the required subdivision and the schedule for completing the subdivision and reconveyance shall be determined by KPD in its sole discretion. The State shall cooperate with KPD in connection with completing the subdivision and the reconveyance, and will promptly execute any applications, agreements or other documents required for the same. KPD shall bear all of the third party, out-of-pocket costs and expenses of reconveying the land to be retained by KPD including the responsibility for completing the subdivision required to effectuate the reconveyance and paying all third party, out-of-pocket costs and expenses for such subdivision.

b. If the State is successful in negotiating an agreement with KPD to acquire said 4.40 acres of Lot 80001-C-1 and expands the Kapolei Judiciary Complex in the future to include permitted improvements on the additional 4.40 acres of Lot 80001-C-1, KPD agrees that the density requirement for the 15.274 acres taken as a whole shall be reduced to 0.37 FAR.

c. In order to accommodate the State's desire to begin construction as soon as reasonably possible, upon the State's request, KPD will enter into one or more Construction Right of Entry agreements with the State's contractors for the construction of the

Required Improvements or Modified Required Improvements, as the case may be, provided that: (i) the subdivision of Lot 80001-C-1 (15.274 acres) has been approved by the City and County of Honolulu; (ii) the State has entered into the construction agreement for the Required Improvements or Modified Required Improvements, as the case may be; and (iii) State funds have been appropriated and certified as available for said construction agreement. The Construction Right of Entry shall be in a form mutually agreeable to KPD and the State.

4. Lot 80001-C-1 Improvements. KPD will provide drainage, water and sewer lines (together with laterals and points of connection as shown on KPD's construction plans) and a utility conduit system for electrical, telephone and cable television lines (together with points of connection as shown on KPD's construction plans) for Lot 80001-C-1 as set forth in the conceptual plan attached hereto as Exhibit "C-1" and incorporated herein by reference, which plan may be revised by KPD. It is understood and agreed that KPD will consult with the State prior to making any revisions to the conceptual plan and/or points of connection that materially adversely change the location or nature of the drainage, water and sewer lines, and/or the conduit system for electrical, telephone and cable television lines serving Lot 80001-C-1 as shown on Exhibit "C-1". KPD has provided or will provide, at its own cost and expense, paved access, drainage, water and sewer lines and other utilities and improvements for Lot 80001-C-1 as more particularly described in Exhibit "C-2" attached hereto and incorporated herein by reference. KPD will coordinate the installation of gas lines in Kamokila Boulevard provided that the State finalizes its plans with the gas utility company and provides those plans to KPD prior to KPD's commencement of construction in Kamokila Boulevard and the gas utility company coordinates its installation of the gas lines with KPD. If the construction of the Kapolei Parkway extension along the northerly boundary of Lot 80001-C-1 is completed by KPD or KPD's assignee and causes damage to any landscaping, berm or other improvements on Lot 8001-C-1, KPD or its assignee shall restore the same at its expense.

5. Permitted Uses. KPD and the State agree that Lot 80001-C-1 shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings constructed on Lot 80001-C-1. The term "governmental offices or other public facilities" may include, among other things, a court building and juvenile detention facility (including ancillary central plant structures).

6. City of Kapolei Declaration. The Land will be conveyed to the State subject to that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, filed in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 34321422 and 3449337, respectively, and by that certain Supplemental Declaration To City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions substantially in the form attached hereto as Exhibit "D" and incorporated herein by reference, as the same may be amended from time to time in the future both prior to and after the conveyance of Lot 80001-C-1 to the State (the "Declaration"), which Declaration, as to the matters set forth therein, supplements and completely supersedes the

corresponding provisions of the September Letter Agreement as to Lot 80001-C-1. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. The State further agrees to use reasonable efforts to comply with the Signage Guidelines attached as Exhibit "G" to the Declaration subject to such modifications as are consented to by the Estate, which consent shall not be unreasonably withheld.

7. Phase 1 Environmental Site Assessment. The Estate, at its expense, has obtained and delivered to the State a Phase 1 Environmental Site Assessment for Lot 80001-C-1 dated August 4, 2005 prepared by Tetra Tech EM Inc. The Site Assessment states that no recognized environmental conditions were identified on Lot 80001-C-1. Any additional environmental investigations shall be completed at the expense of the State.

8. City of Kapolei Improvements. As set forth in the limited warranty deed attached hereto as Exhibit "B", KPD has agreed to limit its right to construct improvements within Lot 80001-C-1 for the benefit of the City of Kapolei or Lot 80001-C-1 to Easement 6170, for nonpotable water utility purposes, and Easement 70002, for landscaping and utility purposes, as shown on Exhibit "A". The State shall have the right to review and comment on the improvements prior to their construction, and KPD shall reasonably coordinate the location and construction of said improvements with the State.

9. Landscaping. KPD or the City of Kapolei Community Association shall irrigate (until the conveyance of Lot 80001-C-1 to the State) and maintain: (a) the street trees planted by KPD in accordance with the Street Tree Master Plan shown in the City of Kapolei Urban Design dated June 1998, if a landscaping easement is granted by the State for such purpose; and (b) the trees in the planting easement(s) shown on the parcel maps. Except in the case of emergencies or health or safety concerns, the State may not cut down, remove or relocate such street trees without obtaining KPD's prior written consent. The Estate shall plant such street trees along the extension of Kamokila Boulevard as set forth in Exhibit "C-2" when such extension is completed. KPD acknowledges that the State may use St. Augustine grass for ground cover within Lot 80001-C-1.

10. Parking. If only two buildings are constructed on Lot 80001-C-1, parking may be on-grade asphalt. If more than two buildings are constructed on Lot 80001-C-1, the State agrees to provide one level of parking under each additional building on Lot 80001-C-1, and the remainder of the required parking for each additional building shall be on-grade asphalt located temporarily on Lot 80001-C-1 next to each building with appropriate landscaping. It is understood and agreed that the State's construction of ancillary central plant structures for its court building and juvenile detention facility shall not be considered a third building for purposes of this paragraph. Within ten (10) years of occupancy of each additional building on Lot 80001-C-1, the State shall, subject to funding availability, replace the temporary parking with:

a. Underground parking facility(s) on portions of the 40 acres described in the September Letter Agreement then owned by the State, or

b. Above ground parking structure(s) on portions of the 40 acres described in the September Letter Agreement then owned by the State, or

c. A remote park and ride facility on other lands owned by the State.

11. Assignment by KPD. The State acknowledges and agrees that Lot 80001-C-1 and/or certain adjacent and nearby lands may be transferred by KPD to the James Campbell Company LLC, a Delaware limited liability company ("JCC"), or to another affiliate of KPD or JCC and that KPD may assign this letter agreement to JCC or another affiliate of the KPD or JCC in connection with such transfer(s) with the consent of the State, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment to JCC or any such affiliate, and the assumption by JCC or any such affiliate of KPD's obligations under this letter agreement, KPD shall have no further liability under this letter agreement provided that the assignee assumes and agrees to perform all of KPD's obligations under this letter agreement.

12. Exhibits. All Exhibits referred to in this letter agreement shall be deemed to be incorporated herein by the reference made to them as fully as though the entire Exhibit were set forth within the body of this Agreement itself.

13. Notices. All communications hereunder will be in writing and shall be deemed duly communicated when sent by certified or registered mail, postage prepaid, addressed:

If to the Estate:

The Estate of James Campbell
1001 Kamokila Boulevard
Kapolei, Hawaii 96707
Attention: Chief Executive Officer

with a copy to:

Carlsmith Ball LLP
2200 American Savings Bank Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Robert E. Strand, Esq.

If to KPD:

Kapolei Property Development LLC
1001 Kamokila Boulevard
Kapolei, Hawaii 96707
Attention: President

with a copy to:

Carlsmith Ball LLP
2200 American Savings Bank Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Robert E. Strand, Esq.



If to the State:

Administrative Director of the Courts
State of Hawaii
417 South King Street
Honolulu, Hawaii 96813

Comptroller
Department of Accounting and
General Services
State of Hawaii
1151 Punchbowl Street, Room 410
Honolulu, Hawaii 96813

with copies to:

Chairman
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Department of the Attorney General
Land/Transportation Division
465 South King Street, Room 300
Honolulu, Hawaii 96813
Attention: Supervising Attorney

or, in each case, to any address as may hereunder have been designated most recently. Any communications so mailed shall be deemed delivered four (4) business days after mailing.

14. No Party Deemed Drafter. No party shall be deemed the drafter of this agreement. If this agreement is ever construed by a court of law, such court shall not construe this agreement or any provisions hereof against any party as drafter.

15. Binding Effect. This agreement and all of the terms, covenants and conditions hereof shall extend to the benefit of and be binding upon the respective successors, successors in trust and permitted assigns of the parties hereto. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees Under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and its successors, successors in trust and assigns, and not the personal liability of any trustee, officer or employee of the Estate of James Campbell.

16. Estate Authority. This agreement is subject to the approval of the Trustees Under the Will and of the Estate of James Campbell, Deceased.

17. Time of the Essence. Time is of the essence of this agreement.

18. Governing Law. This agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

19. Paragraph Headings. The use of any pronoun herein shall include any and all pronouns and the singular shall include the plural and vice versa, as the context may require. Paragraph headings are inserted only for convenience in reference.

20. Counterparts. This agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

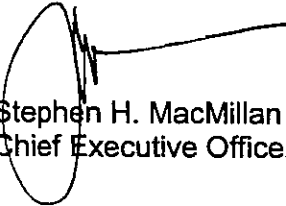
21. Entire Agreement. This agreement and the Exhibits attached hereto are intended to clarify that certain Document Evidencing Petitioner's Commitments dated April 11, 1989, supersede the September Letter Agreement and the June 1998 Letter Agreement as to Parcels 4 and 5 and the acreage to be included in Parcels 2 and 6, and constitute the entire agreement of the parties with respect to the matters set forth herein regarding Parcels 4 and 5, now Lot 80001-C-1, and the acreage to be included in Parcels 2 and 6.

22. Amendments. Any amendments to this agreement shall be in writing and signed by the parties hereto.

[Remainder of this page left intentionally blank.]


If the foregoing correctly sets forth the agreements we have reached, please sign the enclosed copy of this letter in the space provided below and return it to the undersigned.

Very truly yours,

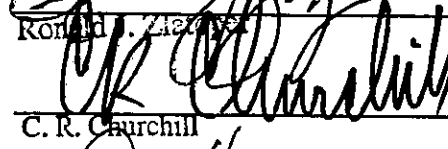

Stephen H. MacMillan
Chief Executive Officer

APPROVED:

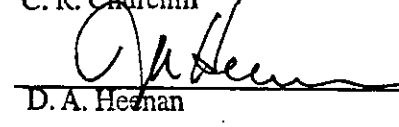
TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities



Ronald J. Ziegler

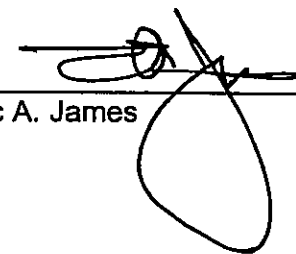


C. R. Churchill



D. A. Hesnan

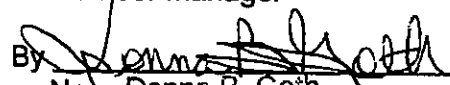
Approved as to Form
Carlsmith Ball LLP

By 


Eric A. James

KAPOLEI PROPERTY DEVELOPMENT LLC

By Aina Nui Corporation, a Hawaii corporation,
its member manager

By 

Name: Donna B. Goth
Title: President

By 

Name: Bradford J. Myers
Title: Senior Vice
President/Treasurer

Agreed and accepted:

THE JUDICIARY, STATE OF HAWAII

By Thomas R. Keller
Thomas R. Keller
Administrative Director of the Courts

APPROVED AS TO FORM:

Susan Gochros
Susan Gochros
Judiciary Staff Attorney

BOARD OF LAND AND NATURAL
RESOURCES

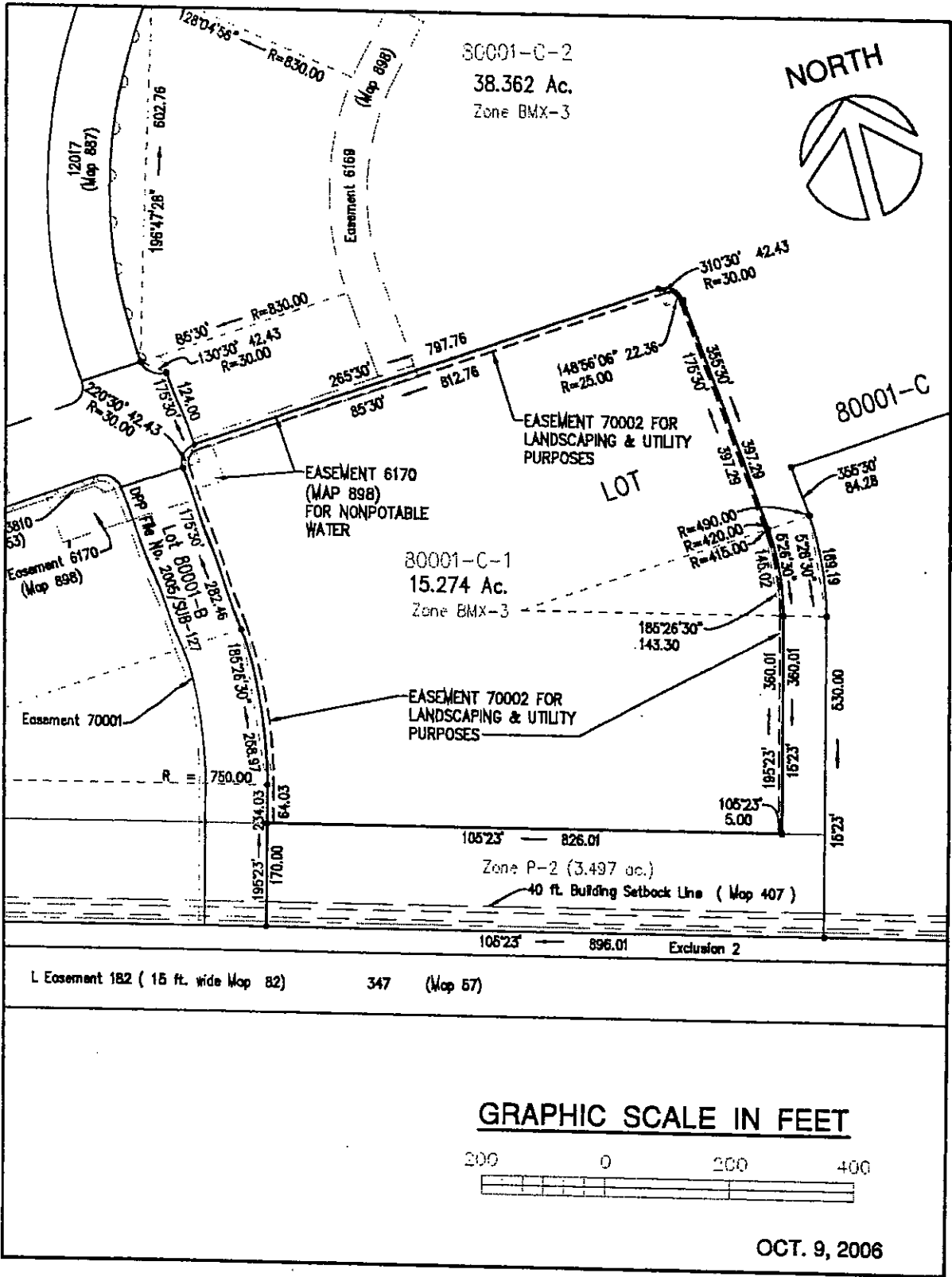
By Peter T. Young
Peter T. Young
Its Chairperson

DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

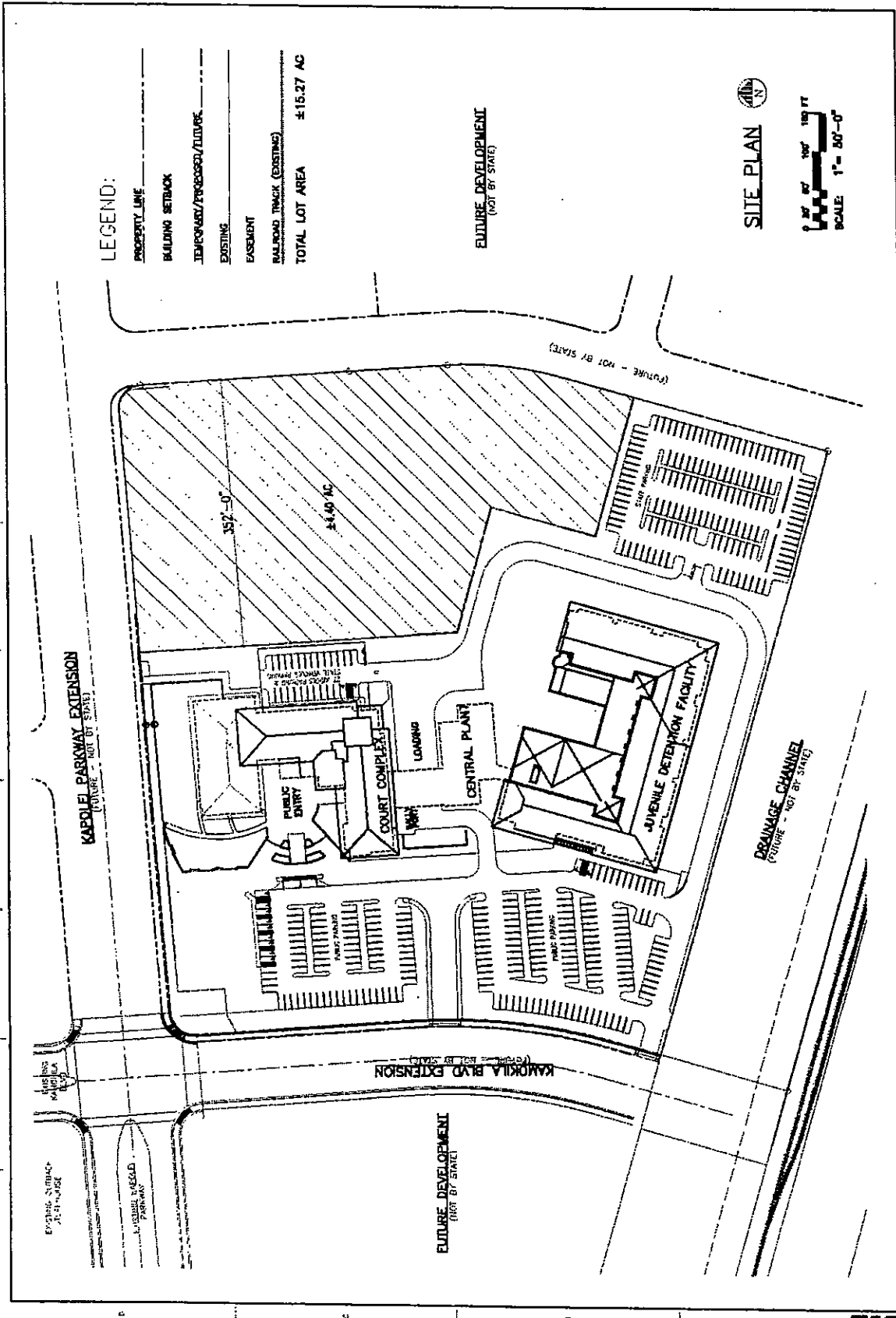
By Russ K. Saito
Russ K. Saito
Its Comptroller

APPROVED AS TO FORM:

Brian Aburant
Deputy Attorney General



Oct 09, 2006 10:20am
 N:\00000000\10000000\10000000\10000000\10000000.dwg



LEGEND:

- PROPERTY LINE
- BUILDING SETBACK
- TEMPORARY/PROCESS/UTILITIES
- EXISTING
- EASEMENT
- RAILROAD TRACK (EXISTING)
- TOTAL LOT AREA ±15.27 AC

FUTURE DEVELOPMENT
(NOT BY STATE)

SITE PLAN

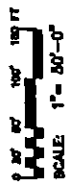


Exhibit "A-1"

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813

Attention: Robert E. Strand
Telephone: (808) 523-2500

TITLE OF DOCUMENT:

**CITY OF KAPOLEI LIMITED WARRANTY DEED
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES**

PARTIES TO DOCUMENT:

GRANTOR: **KAPOLEI PROPERTY DEVELOPMENT LLC**
1001 Kamokila Boulevard
Kapolei, Hawaii 96707

GRANTEE: **STATE OF HAWAII**, by its Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

TAX MAP KEY(S): Oahu 9-1-___:___ (This document consists of ___ pages.)
Lot 80001-C-1, Map ___, L.C.App. 1069, TCT No. _____

⊕ ⊕

**CITY OF KAPOLEI LIMITED WARRANTY DEED
WITH COVENANTS, CONDITIONS, RESTRICTIONS AND ENCUMBRANCES**

KNOW ALL MEN BY THESE PRESENTS:

THIS INDENTURE is made this ____ day of _____, 200_, by and between the **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability company, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, hereinafter called the "Grantor", and the **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called the "Grantee",

W I T N E S S E T H:

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1.00), to it paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, the property described in **Exhibit "A"** attached hereto and made a part hereof, subject to the encumbrances and reservations set forth in said **Exhibit "A"** and to the covenants, rights, reservations, exceptions, obligations, duties and agreements set forth below (the "Property").

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

TOGETHER WITH non-exclusive easements appurtenant to the Property for access purposes over and across Easements "1" and "2" as shown on Map ____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, together with the right to construct, reconstruct, install, reinstall, operate, repair and maintain driveway improvements within said Easements "1" and "2"; provided that (i) such improvements in Easements "1" and "2" will not have a material adverse impact on the design or use of improvements planned for or existing therein, (ii) after performing any work in Easements "1" or "2", Grantee shall return the land to its original condition to the extent that

such restoration is reasonably possible without adversely affecting any driveway improvements constructed thereon, (iii) Grantor shall have the right to review and comment on any improvements in Easements "1" and "2" prior to the construction of such improvements and Grantee shall reasonably coordinate the location and construction of such improvements with the Grantor, and (iv) Grantee shall not be responsible for maintaining any part of Easements "1" or "2" other than any driveway or other improvements Grantee constructs thereon. Said easements will terminate automatically as to any portion of said Easements "1" or "2" upon Grantor's dedication to, and acceptance thereof as a public highway by, any governmental authority, Grantor reserving the right to so dedicate the same without notice to or the joinder of Grantee; provided that the public highway provides access to the Property through the then-existing driveways.

EXPRESSLY EXCEPTING AND RESERVING UNTO GRANTOR, ITS SUCCESSORS, AND ASSIGNS, the right to grant or relocate in, on, over, under, across and through those portions of the Property designated as Easement "70002", as shown on Map ____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 (the landscaping easement along the boundaries of the Property) all easements now or hereafter required for the construction of any additional phases and/or buildings in the City of Kapolei and for the construction, installation, operation, maintenance, repair and replacement of underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and any other service or utility, upon such terms and conditions as the Grantor may determine in its sole discretion or as may be specified by the grantee in connection with the acceptance of the same; provided that (i) such easements in Easement "70002" will not have a material adverse impact on the design or use of improvements planned for or existing on the Property or Easements "1" and "2", (ii) after performing any work in Easement "70002", Grantor or such grantees shall restore the Property and Easements "1" and "2" to the condition they were in prior to the performance of

work in Easement "70002" to the extent that such restoration is reasonably possible, (iii) Grantee shall have the right to review and comment on any improvements in Easement "70002" prior to the construction thereof, and the Grantor shall reasonably coordinate the location and construction of such improvements with the Grantee, and (iv) Grantee shall not be obligated to pay any costs or expenses regarding the grant of any easements under this paragraph or to construct, repair or maintain any of the lines, facilities, appurtenances, or other improvements constructed, installed, or operated by the grantees under any such agreements. Without limiting the foregoing, the Grantor reserves the right to grant easements within Easement "70002" to the Association created under the Declaration for the purpose of landscaping and/or such other purpose as the Grantor deems appropriate; and

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the said Grantee, absolutely and in fee simple.

And for the consideration aforesaid, the Grantor, for itself, its successors and assigns, does hereby covenant and agree with the Grantee, its successors and assigns, that the Grantor has done or suffered no act or thing whereby the Property hereby granted is encumbered, except as aforesaid; and that the Property is free and clear of all liens and encumbrances made or suffered by the Grantor; and that the Grantor will and its successors and assigns shall, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through and under the Grantor, except as aforesaid.

SUBJECT, HOWEVER, to the following:

1. Grantee does hereby acknowledge that, by the acceptance and recordation of this deed, it (i) is familiar with and has examined the physical conditions of the Property and has agreed to accept the Property without any warranties or representations by Grantor except the limited warranties of title set forth above, and the reservations regarding

environmental conditions as set forth below, and (ii) agrees and covenants to hold and shall hold, convey, encumber, use, occupy and improve the Property subject to the terms, covenants, conditions, reservations and restrictions contained herein, and shall not use or permit the use of the Property in violation thereof. Grantor acknowledges that Grantee does not release Grantor for any environmental remediation costs or other costs or damages resulting from contamination of the Property or Easements "1" and "2" prior to the date hereof unless such contamination has occurred by or through Grantee.

2. The Property shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings constructed on the Property. The term "governmental offices and other public facilities" may include a court building and juvenile detention facility (including ancillary central plant structures). The Property shall not be used for any other purposes without the prior written consent of Grantor, which consent may be withheld by the Grantor in its sole discretion for any reason. If Grantee breaches the foregoing use restriction, Grantee acknowledges the Grantor may pursue a claim for damages against Grantee for such breach but not for a reverter of the Property to Grantor or the remedies of specific performance or injunctive relief, and Grantor's damages for such breach shall be limited to actual (but not consequential) damages, which Grantor agrees shall not exceed the fee simple fair market value of the Property at the time of such breach, exclusive of any buildings, and unencumbered by any lease or any use restriction.

3. Grantor shall have the right, without the consent of but with notice to Grantee, to assign or partially assign any or all of the rights, reservations and exceptions, held by Grantor hereunder, to the "Declarant" or to the "Association", as these terms are defined in the Declaration.

4. The Grantee agrees, whenever nonpotable water is reasonably available, to use reasonable efforts to use such nonpotable water for all uses for which such water is

feasible, including, without limiting the generality of the foregoing, development of a nonpotable water system on the Property and connecting such system to the nonpotable water system for the City of Kapolei within one hundred twenty (120) days after the completion of construction of the court building and juvenile detention facility (including ancillary support structures) on the Property or, if applicable, completion of Grantee's first building on the Property if Grantee does not construct a court building or juvenile detention facility. Notwithstanding the foregoing, the Grantee shall not drill for water on the Property without obtaining Grantor's prior written consent, which consent may be withheld in the Grantor's sole discretion. Any external water features, including but not limited to ponds, streams, fountains and water falls on the Property shall use nonpotable water whenever the same is reasonably available. Grantee's landscaping and ground cover shall at all times comply with the City of Kapolei Urban Design Plan and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources; provided, however, that Grantee may use St. Augustine grass for ground cover on the Property. The Grantee authorizes the Grantor to obtain water consumption records pertaining to the Property from the BWS or any other Governmental Authority or private entities providing water to the Property, and agrees to provide the Grantor written authorization to do so if so required.

5. That certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006 filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 248739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381,

2710921, 2766063, 2933812, 2933814, 3432142 and 3449337, respectively, as the same may be amended from time to time (collectively the "Declaration"). The Grantor's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company ("New Declarant"), by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829. Grantee shall use reasonable efforts to comply with the Signage Guidelines attached as **Exhibit "G"** to the Declaration subject to such modifications as are consented to by the New Declarant, which consent shall not be unreasonably withheld.

6. Any word, term or phrase which begins with initial capitalization and which is not defined in this deed, shall be given the definition of such word, term or phrase in the Declaration.

7. The foregoing rights, reservations, exceptions, obligations, duties and agreements of Grantor and Grantee shall be deemed covenants running with the land, binding upon Grantor and Grantee, and their respective successors and assigns, for a period commencing with the filing of this deed in the Office of the Assistant Registrar of the Land Court of the State of and continuing for as long as the Declaration shall be in effect as to the City of Kapolei, all as more fully described in Article 2.2(III) of the Declaration, the terms of which article are incorporated herein by reference.



IN WITNESS WHEREOF, the parties hereunto have caused these presents to be
 duly executed on the day and year first above written.

KAPOLEI PROPERTY DEVELOPMENT LLC,
 a Hawaii limited liability company

By Aina Nui Corporation, a Hawaii corporation,
 its member manager

Approved as to Form
 Carlsmith Ball LLP

By _____
 Name:
 Its:

By _____

By _____
 Name:
 Its:

"Grantor"

STATE OF HAWAII, by its Department of
 Land and Natural Resources

By _____
 Chairperson, Board of Land and Natural
 Resources

APPROVED AS TO FORM:

By _____
 Deputy Attorney General

By _____
 Member, Board of Land and Natural
 Resources

Date: _____

"State"

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

On this ____ day of _____, 200_, before me personally appeared _____ and _____, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

EXHIBIT "A"

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 80001-C-1, area 15.274 acres, as shown on Map _____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being all of the land covered by **Certificate of Title No.** _____, issued to Kapolei Property Development LLC, a Hawaii limited liability company.

SUBJECT, HOWEVER, to the following:

1. Amended Document Listing Conditions and Preconditions to Reclassification dated November 14, 1989, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1684751.
2. City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as modified by instruments dated May 12, 1994, March 30, 1995, March 30, 1995, March 6, 1997, March 26, 1997, April 1, 1997, October 10, 1997, September 9, 1998, December 9, 1998, September 22, 2000, November 17, 2000, November 17, 2000, April 10, 2001, April 10, 2001, May 31, 2001, December 21, 2001, May 16, 2003, May 16, 2003, April 28, 2006 and June 29, 2006, filed in said Office of the Assistant Registrar as Document Nos. 2152082, 2228679, 2228680, 2369693, 2372518, 2376561, 2409507, 2489739, 2506094, 2654911, 2665797, 2665798, 2699380, 2699381, 2710921, 2766063, 2933812, 2933814, 3432142 and 3449337, respectively. The Estate's rights and obligations under the above-referenced Declaration were assigned to Campbell Hawaii Investor LLC, a Hawaii limited liability company, by instrument filed in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829.
3. Amended and Restated Document Listing Conditions to Reclassification dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260754, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119177.
4. Document Listing Conditions of Order Modifying Conditions dated September 11, 1995, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2260756, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-119179.
5. Unilateral Agreement and Declaration for Conditional Zoning dated November 17, 2004, filed in said Office of the Assistant Registrar as Land Court Document No. 3195672.

6. Designation of Easement "6170" for non-potable water utility purposes, as shown on Maps 898 and 1055, as set forth by Land Court Order No. _____, filed _____.

7. Grant of Non-Exclusive Easements in favor of the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu dated December 30, 2004, filed in said Office of the Assistant Registrar as Land Court Document No. 3228386.

8. Designation of Easement "70002" (_____ square feet) for landscaping and utility purposes, as shown on Map _____, as set forth by Land Court Order No. _____, filed _____.

9. Supplemental Declaration to City of Kapolei Declaration of Protective Covenants, Conditions and Restrictive Covenants, Conditions and Restrictions (Government Use) dated _____, 200_, filed in said Office as Land Court Document No. _____.

End of Exhibit "A"

EXHIBIT "C-1"

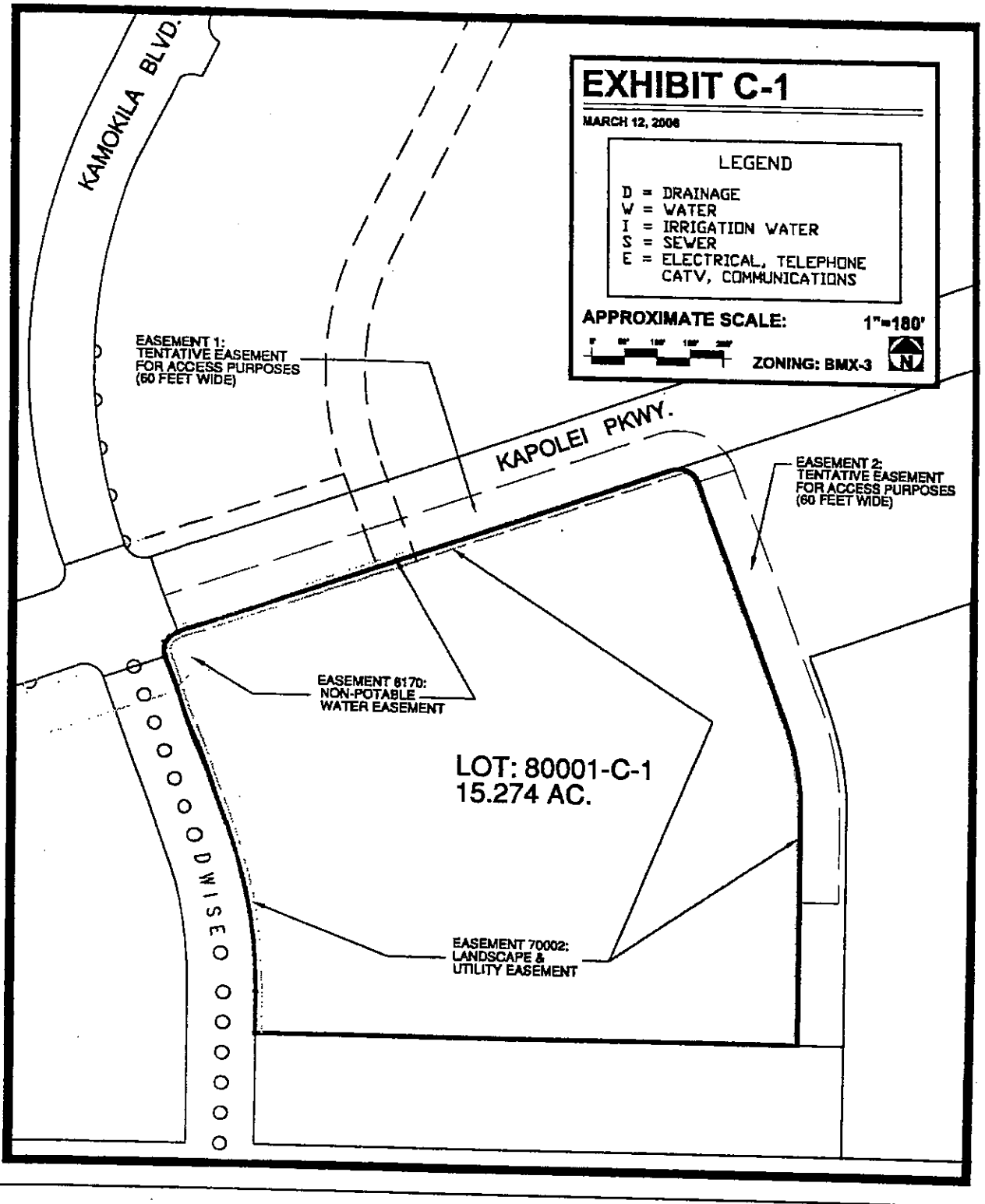


EXHIBIT "C-2"

LOT 80001-C-1 OFF-SITE IMPROVEMENTS

1. Interim Improvement.

KPD shall provide access to Lot 80001-C-1 sufficient to permit the commencement of construction of the Required Improvements or the Modified Required Improvements, as the case may be, on the Property. This access may not be paved or of a permanent nature, and KPD reserves the right, from time to time, with reasonable notice to the State (not less than 15 calendar days), to relocate this temporary access in order to facilitate construction of other improvements in the City of Kapolei. KPD shall cooperate with the State as reasonably necessary to obtain governmental permits and approvals for the construction of the Required Improvements or the Modified Required Improvements, as the case may be, and access improvements to Easements "1" and "2" provided that the Required Improvements or the Modified Required Improvements, as the case may be, and access improvements are in compliance with the State's obligations under the letter agreement to which this Exhibit "C-2" is attached and such cooperation is at no cost to KPD.

2. Permanent Improvements.

KPD covenants and agrees to provide the following KPD improvements prior to the completion of construction of the Required Improvements or the Modified Required Improvements, as the case may be, subject to extensions of time for delays in the completion of such improvements caused by force majeure:

a. Paved Access. In order to provide reasonable access to and from Lot 80001-C-1, KPD shall extend Kamokila Boulevard to the Renton Road alignment intersection. KPD will provide curbs, gutters and sidewalks along Kamokila Boulevard. KPD will also provide along the extension of Kamokila Boulevard two (2) curb cuts with related driveway aprons in the locations set forth on Exhibit "C-3" attached hereto and incorporated herein by reference. If Waianiani Way is constructed, the entity completing such construction will provide curbs, gutters and sidewalks along any portion of Waianiani Way so constructed. If such construction extends through the entrance to Lot 80001-C-1 shown on Exhibit "A-1", the entity completing such construction shall also provide a curb cut and driveway apron for such entry. KPD shall not be responsible for any other curb cuts, driveways or aprons for the Required Improvements or the Modified Required Improvements, as the case may be.

b. Drainage. KPD will provide drainage improvements to serve Lot 80001-C-1 in Kamokila Boulevard incrementally as and when required to accommodate buildings on Lot 80001-C-1. State will be responsible for all on-site drainage requirements including, but not limited to, NPDES requirements. If permanent drainage improvements to be constructed by KPD are not completed by the time the State begins construction of the Required Improvements or the Modified Required Improvements, as the case may be, temporary drainage meeting all applicable governmental requirements will be provided by KPD. The permanent and temporary off-site drainage improvements provided by KPD shall meet all applicable governmental requirements and accommodate the quantity of stormwater runoff generated from Lot 80001-C-1 based on the data provided by the State's consultants prior to

September 1, 2006, and the State shall meet all applicable governmental requirements regarding the quality of the stormwater water runoff generated from Lot 80001-C-1.

c. Potable Water and Sewer Service; Fire Hydrants. KPD will install potable water and sewer lines in Kamokila Boulevard adjacent to or near Lot 80001-C-1. The potable water line will be connected to the Board of Water Supply's water main. The sewer line will be connected to the sewer main of the entity providing sewer service. KPD will allocate potable water for the Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1 from a water source available to KPD based on Board of Water Supply standards but in no event exceeding 45,900 gallons of maximum day capacity. The State shall not be required to reimburse KPD or the Board of Water Supply for source, storage or transmission charges for such allocation. By letters dated August 7, 2006 and September 8, 2006, the Estate has agreed to allocate 57 ESDU's of sewage transmission capacity for the Required Improvements subject to the State's reimbursement to the Estate of \$280,468 for such allocation. The Estate's allocation obligation and right to receive reimbursement has been assigned to and assumed by KPD. It shall be State's responsibility to obtain and pay for any other costs associated with the connection to or the provision of potable water or sewer services to Lot 80001-C-1. While KPD shall install fire hydrants in Kamokila Boulevard as shown on KPD's construction plans approved by the City and County of Honolulu (the "City"), all other fire hydrants and fire protection facilities required for the Required Improvements or the Modified Required Improvements as the case may be, shall be designed and constructed at the State's expense.

d. Non-potable Water Line. The State agrees, whenever nonpotable water is reasonably available, to use reasonable efforts to use such nonpotable water for all uses for which such water is feasible, and to develop a nonpotable water system on Lot 80001-C-1 and connect such system to the nonpotable water system for the City of Kapolei within one hundred and twenty (120) days after the completion of construction of the Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1. The Board of Water Supply has advised the State that non-potable water service will be available from an existing 16-inch R-1 main located in the Kamokila Boulevard extension fronting Lot 80001-C-1. The Board of Water Supply may impose a meter or other hook-up charge for this non-potable water which, together with any other costs associated with the connection or provision of non-potable water to Lot 80001-C-1, will be paid by the State. Notwithstanding the foregoing, the State shall not drill for water on Lot 80001-C-1 without obtaining KPD's prior written consent (which may be withheld in KPD's sole discretion.) Any external water features, including but not limited to ponds, streams, fountains and water falls shall use nonpotable water whenever the same is reasonably available. The landscaping and ground cover on Lot 80001-C-1 shall at all times comply with the City of Kapolei Urban Design Plan and shall be chosen with the purpose of minimizing irrigation requirements, especially from potable water resources. The State authorizes KPD to obtain water consumption records pertaining to Lot 80001-C-1 from the BWS or any other governmental agencies or private entities providing water to Lot 80001-C-1, and agrees to provide KPD written authorization to do so if so required.

e. Other Utilities. KPD at its expense will install in Kamokila Boulevard to the boundary of Lot 80001-C-1 a utility conduit system for electrical and telephone and cable television lines. It shall be the State's responsibility, at its expense, to (i) pull the lines and install any other facilities required to provide electric, telephone and cable television service to, and (ii) contact the appropriate utility or provider for services in the conduit system to serve Lot 80001-C-1 and to pay for such services. KPD's infrastructure does not include gas lines. KPD will coordinate the installation of gas lines in Kamokila Boulevard provided that the State

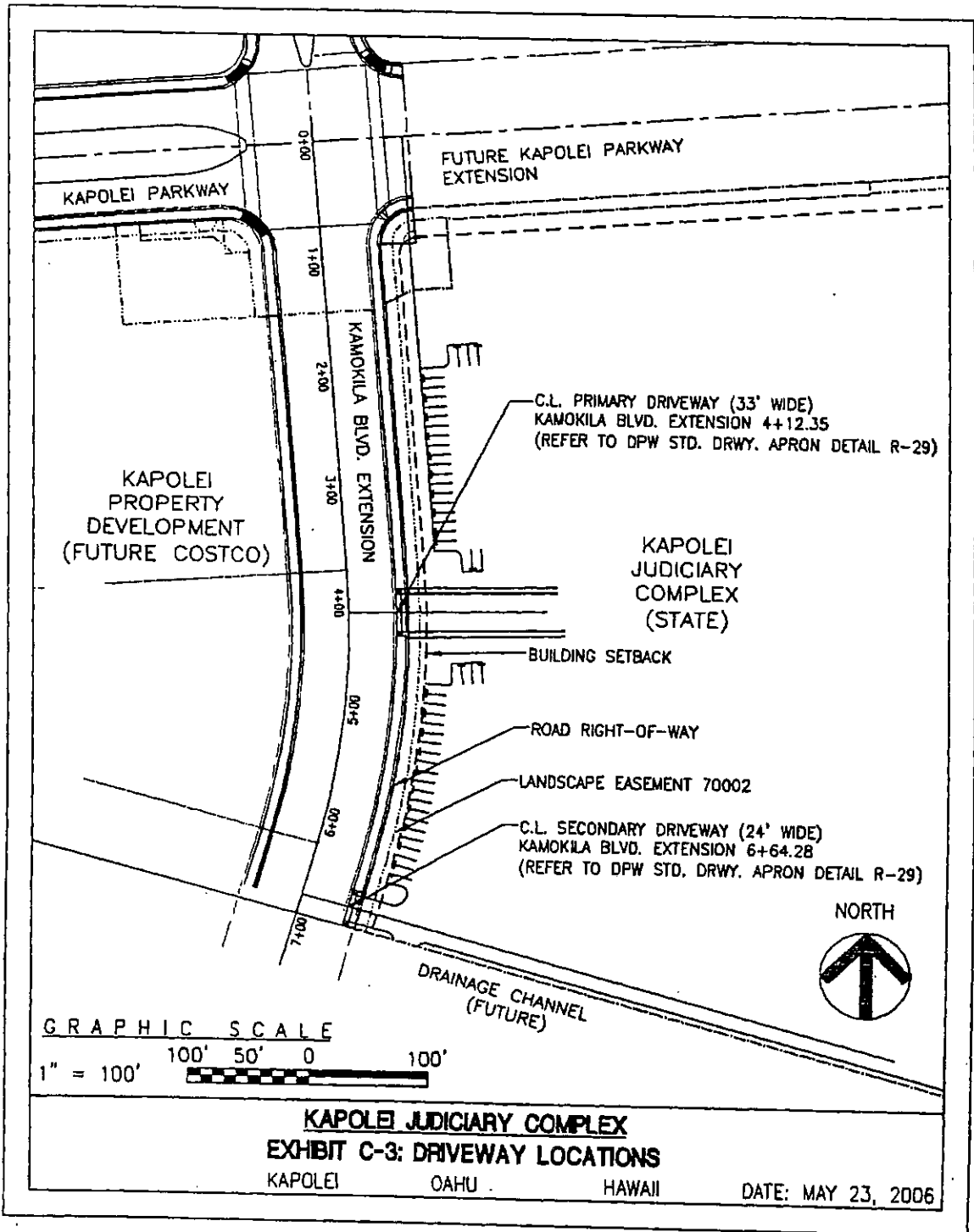
finalizes its plans with the gas utility company and provides those plans to KPD prior to KPD's commencement of construction in Kamokila Boulevard and the gas utility company coordinates its installation of the gas lines with KPD. KPD shall give the State at least forty-five (45) calendar days written notice prior to KPD's commencement of construction in Kamokila Boulevard.

f. Traffic Improvements. KPD shall make the following traffic improvements at its cost and expense: (i) install a traffic signal at the intersection of Kapolei Parkway and Kamokila Boulevard when warranted by traffic counts and approved by the City; (ii) provide a second (double) left-turn lane on the southbound approach of Kalaeloa Boulevard to Kapolei Parkway; (iii) provide an additional lane in the median area on the westbound approach of Kapolei Parkway to Kalaeloa Boulevard and re-stripe the westbound lanes to provide a left-turn lane, a right-turn lane, and a middle lane from which traffic can turn left or right or go straight through the intersection. The traffic improvements described in (ii) and (iii) above will be completed within two (2) years after KPD receives all required approvals and permits from the City for those improvements.

KPD's obligations under this Exhibit "C-2" shall only be to provide such improvements as are necessary to service Lot 80001-C-1, and nothing herein shall be deemed or construed to require or otherwise obligate KPD to complete such infrastructure to any other portions of the City of Kapolei or to complete any other amenities or facilities of any kind or description in the City of Kapolei prior to the completion of the Required Improvements or the Modified Required Improvements, as the case may be, on Lot 80001-C-1. Without limiting the foregoing, the State acknowledges that such infrastructure and other amenities or facilities for the City of Kapolei may not be completed within such time period; may be changed, modified or deleted from time to time in accordance with the provisions of the Declaration; and may not be constructed at all as to any portions of KPD's lands which are not annexed to the City of Kapolei. The State further acknowledges and agrees that KPD's construction of such infrastructure and other amenities or facilities may interfere with the State's use and enjoyment of Lot 80001-C-1 during the periods of such construction.

End of Exhibit "C-2"

EXHIBIT "C-3"



LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Robert E. Strand
Telephone: 523-2525

TITLE OF DOCUMENT:

**SUPPLEMENTAL DECLARATION AND AMENDMENT TO CITY OF KAPOLEI DECLARATION
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**
(Government Use)

PARTIES TO DOCUMENT:

DECLARANT: **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability
company
James Campbell Building, Suite 257, 1001 Kamokila Boulevard, Kapolei,
Hawaii 96707

**CONSENTING
PARTY:** **KAPOLEI PROPERTY DEVELOPMENT LLC**, a Hawaii limited liability
company

TAX MAP KEY(S):

(Oahu) 9-1-016: parcels 034; 054(por.); 121 and 125
(Oahu) 9-1-088: parcels 001 through 011; and parcels 013 through 018
(Oahu) 9-1-106: parcels 001 through 008; and parcels 010 through 016
(Oahu) 9-1-118: parcels 001 through 009
Certificate of Title Nos. 422,482 (as to Lot 8213-A); 446,646; 496,527; 524,480; 530,523;
569,438; 576,046; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314; 600,144; 600,145;
600,146; 600,147; 600,148; 600,149; 600,150; 600,151; 600,152; 600,153; 600,154; 600,155;
600,156; 600,157; 600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164; 600,165;
600,166; 600,287; 619,022; 631,047; 631,048; 631,381; 652,137; 658,382; 663,182; 671,118;
674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010; 806,011; 806,012; 806,013;
806,014; and 807,561.

(This document consists of ___ pages.)

Execution Copy
4839-8549-8368.53.054438-00062

Exhibit "D"

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⊖

**SUPPLEMENTAL DECLARATION AND AMENDMENT TO
CITY OF KAPOLEI DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS**

(Government Use)

THIS SUPPLEMENTAL DECLARATION, dated as of the ___ day of _____, 20___, is made by **CAMPBELL HAWAII INVESTOR LLC**, a Hawaii limited liability company (the "Declarant"), whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707.

RECITALS:

WHEREAS, as original Declarant, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed that certain City of Kapolei Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1993, in the Office of Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2103428, as the same has been and may be amended and/or modified from time to time (collectively the "Declaration"); and

WHEREAS, by instrument dated January 2, 2002, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2770829, said Trustees assigned, transferred and conveyed to Declarant all of the rights and obligations vested in or reserved unto said Trustees' as the original Declarant under the Declaration; and

WHEREAS, Kapolei Property Development LLC, a Hawaii limited liability company, is the Owner of Lot 80001-C-1, as shown on Map _____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, as more fully described in **Exhibit 1** attached hereto and incorporated herein by this reference (the "Annexed Lot"); and

WHEREAS, although the Annexed Lot is not currently a part of the Benefited Lands, to the extent that Declarant may only Annex a legal Lot, Declarant intends to hereby Amend the definition of "Benefited Lands" in the Declaration to conform such definition to include all of the Annexed Lot; and

WHEREAS, Declarant reserved unto itself in Section 3.1 (Amendment To Declaration) of the Declaration, the right, power and authority to Amend the Declaration to correct any technical defects or to make non-substantive changes, such as the Amendment described in the immediately preceding recital; and

WHEREAS, Declarant reserved unto itself in Section 3.3 (Annexation) of the Declaration, the right, power and authority to Annex portions of the Benefited Lands to the Land with the Consent of the Owner of the applicable Benefited Land, and thereby subject such Annexed parcels to the terms of the Declaration; and

WHEREAS, as a condition of rezoning of the Annexed Lot from zoning designation Ag-1 to zoning designation B-2, the City and County of Honolulu required that the

Annexed Lot be developed in conformance with the City of Kapolei Urban Design Plan, as amended from time to time; and

WHEREAS, Declarant intends to Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration and to the City of Kapolei Urban Design Plan;

WHEREAS, Owner intends to convey the fee simple interest in the Annexed Lot to the State of Hawaii for government use only in partial satisfaction of its obligations under that certain Findings of Fact, Conclusions of Law and Decision and Order entered by the State of Hawaii Land Use Commission dated September 23, 1988, as amended, reclassifying certain lands situated at Honouliuli, Ewa, Island of Oahu, State of Hawaii from Agricultural District to Urban District and subject to the Declaration as heretofore and hereby amended; and

WHEREAS, Declarant intends to now Annex the Annexed Lot to the Land and thereby subject the same to the terms of the Declaration, as modified hereinbelow;

NOW THEREFORE, Declarant, in consideration of the foregoing, and subject to the condition set forth below regarding the effective date of this instrument, does hereby declare as follows:

1. Declaration; Annexation of Annexed Lot to Declaration. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, as of the Effective Date (defined in paragraph 3 below) Declarant does hereby Annex the Annexed Lot described in Exhibit 1 to the Land. For all purposes set forth in Section 1.2 of the Declaration, or otherwise expressly set forth or implicit in the Declaration, Declarant declares that the Annexed Lot is and shall be from the Effective Date and throughout the Term developed, maintained, utilized, operated and Transferred subject to any and all of the protective covenants, conditions and restrictions set forth in the Declaration. The Declaration shall attach to the title to the Annexed Lot, inure to the benefit of each Owner, and run with such title throughout the Term, being binding upon and Enforceable against every Owner and Occupant.

2. Use of the Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby declare that the Annexed Lot shall be used only for governmental offices or other public facilities, including sundry shops and blind vendor concessions not to exceed five percent (5%) of the gross leasable area of any office buildings included in the Approved Improvements constructed on the Annexed Lot. The term "governmental offices and other public facilities" may include a court building and a juvenile detention facility (including ancillary central plant structures). The foregoing uses are deemed to be government use for purposes of the Declaration, and at all times during such use, the Annexed Lot shall not be deemed to be a part of the Development Land. If after the completion of construction of any Approved Improvements on the Annexed Lot, the Annexed Lot ceases, at any time and from time to time, to be used for government use as required under this paragraph 2, then during all times that the Annexed Lot is not used for such government use, the Annexed Lot shall automatically and without further action by Declarant or the Owner of the Annexed Lot: (i) be deemed to be used for commercial purposes and deemed to be a part of the Development Land; (ii) have Floor Area and Units computed in accordance with the provisions of Section 5.4 of the Declaration and based upon the Approved Improvements, notwithstanding the fact that there is not a minimum Floor Area and Units shown on Exhibit "D" to the Declaration; and (iii) the Owner of the Annexed Lot shall be required to pay all Assessments of any type assessed against the Annexed Lot under the Declaration during such

periods. During any such periods that the Annexed Lot is not used for government use as set forth herein, the Owner of the Annexed Lot shall also have voting rights as a Member of the Association, as and to the extent set forth in the Declaration.

3. Effective Date. The effective date ("Effective Date") of this Supplemental Declaration shall be the date upon which this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

4. Amendment to Exhibit A of Declaration. Under Section 3.1 of the Declaration, Declarant has the right, without Notice to any Party, to Amend the exhibits to the Declaration as necessary each time a parcel of Benefited Lands is Annexed to the Land pursuant to Section 3.3 of the Declaration. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "A" of the Declaration by adding thereto the legal description of the Annexed Lots attached hereto as Exhibit 1, which for all purposes shall be deemed incorporated therein by reference as of the Effective Date. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

5. Amendment to Exhibit D of Declaration. Under Section 3.1 of the Declaration, Declarant has the right to Amend Exhibit "D" of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "D" of the Declaration by deleting in its entirety every previous Exhibit "D" and substituting therefor the revised Exhibit "D" attached hereto as Exhibit "D" and incorporated herein by reference. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

6. Amendment to Exhibit D-1 of Declaration. Under Section 3.1 of the Declaration, Declarant has the right to Amend Exhibit D-1 of the Declaration at any time, in its Sole Discretion, without Notice to any Party. Pursuant to the rights reserved unto Declarant under Section 3.1 of the Declaration, Declarant does hereby Amend Exhibit "D-1" of the Declaration by deleting in its entirety every previous Exhibit "D-1" and substituting therefor the revised Exhibit "D-1" attached hereto as Exhibit "D-1" and incorporated herein by reference. As defined in the Declaration, the term "Party" means any person or legally constituted entity, which includes without limitation, any Owner under the Declaration.

7. Modification of Declaration as to Annexed Lot. Pursuant to the rights reserved unto Declarant under Section 3.3 of the Declaration, Declarant does hereby Amend the provisions of the Declaration as and to the extent set forth below, solely as they apply to the Annexed Lot. In the event of any conflict between the other provisions of the Declaration and the provisions of this paragraph 7, the provisions of this paragraph 7 shall control.

7.1. No Assessments. During all periods that (i) the Annexed Lot is used for government use as set forth in paragraph 2 above and (ii) the State of Hawaii has any interest in the Annexed Lot, the State of Hawaii shall be exempt from paying General, Special or Subdistrict Assessments on the Annexed Lot, whether past, present or future, and including, without limitation, any Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration.

7.2. No Reimbursements. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be exempt from any obligation to Reimburse the Board, the Association, the Declarant or any other Party under the Declaration.

7.3. No Indemnity. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be exempt from any obligation to Indemnify the Board, the Association, the Declarant or any other Party under the Declaration.

7.4. No Liens. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii's interest in the Annexed Lot shall not be subject to any lien under the Declaration.

7.5. Non-Disturbance and Attornment. During all periods that the State of Hawaii is the sublessee of the entire Annexed Lot: (a) the State of Hawaii shall not be deemed to be the Owner of the Annexed Lot; and (b) if the Declarant or the Board (on behalf of the Association) forecloses on any lien arising under the Declaration against the interests of the Owner of the Annexed Lot, the interest of the State of Hawaii, as such sublessee, shall not be disturbed so long as (i) the State of Hawaii is not in default of its obligations under such sublease and (ii) the State of Hawaii agrees to attorn to any Party who succeeds to such Owner's interest in the Annexed Lot upon the request of such Party.

7.6. Cure Periods. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii and the Owner of the Annexed Lot (if other than the State of Hawaii) shall have one hundred twenty (120) days, running concurrently, to complete any actions required of them under Notices given pursuant to Sections 6.6 or 7.9 of the Declaration (subject to further extension as provided for in such Sections), rather than the sixty (60) day periods specified in such Sections.

7.7. Inspection. During all periods that the State of Hawaii has any interest in an Annexed Lot, the State of Hawaii shall be given two (2) business days prior written Notice before the Board, its designees or the Declarant enter onto the Annexed Lot pursuant to the provisions of Sections 7.9 or 10.6 of the Declaration.

7.8. Remedies. Paragraph 2 and subparagraphs 7.1, 7.2 and 7.3 above shall not be deemed or construed to prevent:

(i) the Declarant from (x) bringing an action for damages against the State of Hawaii after it has acquired the fee simple interest in an Annexed Lot, or any of its Transferees thereafter holding the fee simple interest in such Lot, for breach of the restrictions set forth in paragraph 2 above limiting the use of the Annexed Lot to government use, and (y) recovering all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Declarant that are recoverable at law from the State of Hawaii or such Transferees in such an action;

(ii) the Board (on behalf of the Association) from filing suit against the State of Hawaii, in its capacity as Owner of an Annexed Lot, to (a) recover costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association as a result of the State of Hawaii's act or failure or refusal to act in accordance with the Declaration or its failure or refusal to comply with the Rules while it is the Owner of the Annexed Lot and such Annexed Lot is used for government use as set forth in paragraph 2 above, or (b) collect

any Assessments, levied against the Annexed Lot pursuant to paragraph 2 during any periods that it is not used for such government use, that are due and unpaid;

(iii) the Board (on behalf of the Association), the Declarant or any other Party from filing suit against the State of Hawaii, in its capacity as Owner of an Annexed Lot, to recover all costs and expenses (including, if applicable, reasonable attorneys' fees) incurred by the Association, the Declarant or such Party, as appropriate, that are recoverable at law from the State of Hawaii, with respect to any event or occurrence that would otherwise be subject to Reimbursement or Indemnity under the provisions of the Declaration, but for subparagraphs 7.2 and 7.3 above;

(iv) the Board (on behalf of the Association), or the Declarant (pursuant to Section 10.8 of the Declaration) from exercising their rights under Sections 5.6(f) of the Declaration; or

Notwithstanding any provision in this paragraph 7.8 to the contrary, nothing in this Supplemental Declaration or the Declaration, as it may be supplemented or amended from time to time, shall be deemed to waive the sovereign immunity of the State of Hawai'i beyond what is expressly provided in the Constitution, statutes and case law of the State of Hawai'i.

7.9. Exempt Property. In addition to the foregoing provisions of this paragraph 7 which apply to the State of Hawaii, Section 9.10 of the Declaration is hereby modified as follows as it applies to all other Owners of an Annexed Lot:

From the Effective Date through completion of construction of an Approved Improvement on the Annexed Lot and during all periods that the Annexed Lot is used for government use as set forth in paragraph 2 above, the Owners of the Annexed Lot (other than the State of Hawaii) shall be exempt from paying: (i) all Assessments (including, without limitation, Special Assessments levied under subpart (ii) of the last sentence of Section 8.1 of the Declaration and the initial contribution required under Section 9.2 of the Declaration), except for Special Assessments levied against them pursuant to Sections 9.6(a) and/or 9.6(b) of the Declaration; and (ii) all Reimbursements, except for Reimbursements owed by such Owners to the Association under this Declaration as a result of their failure to pay such Special Assessments.

7.10. Reserved Rights of Declarant. For so long as an Annexed Lot is used solely for government use as set forth in paragraph 2 above, the Annexed Lot shall be exempt from the following provisions of the Declaration which reserve certain rights unto the Declarant as set forth therein: (i) Section 10.1, dealing with Water Rights; (ii) Section 10.2, dealing with Easements; and (iii) Section 10.4, dealing with Air Rights. In the event that the Annexed Lot ever ceases, at any time and from time to time, to be used solely for government use as set forth in paragraph 2 above, then during all times that the Annexed Lot is not used for such government use, the foregoing provisions of Article X of the Declaration shall automatically and without further action by Declarant or the Owner of the Annexed Lot, apply fully to the Annexed Lot as set forth in Article X of the Declaration.

8. No Other Effect. Except as expressly provided in paragraphs 1 through 7 above, in all other respects, the Declaration shall remain unmodified, and in full force and effect.

9. Notation of Instrument. This instrument shall be noted on each of the following Certificates of Title:

422,482 (as to Lot 8213-A); 446,646; 496,527; 524,480; 530,523;
569,438; 576,047 (as to Lots 1344-A-2-B and 13090-A); 592,314;
600,144; 600,145; 600,146; 600,147; 600,148; 600,149; 600,150;
600,151; 600,152; 600,153; 600,154; 600,155; 600,156; 600,157;
600,158; 600,159; 600,160; 600,161; 600,162; 600,163; 600,164;
600,165; 600,166; 600,230 (as to Lot 16013); 600,287; 619,022;
631,047; 631,048; 631,381; 652,137; 658,382; 663,182; 671,118;
674,004; 725,036; 740,833; 780,730; 780,731; 806,009; 806,010;
806,011; 806,012; 806,013; 806,014; and 807,561.

10. Defined Terms. Any word, term or phrase which begins with initial capitalization and which is not defined in this instrument or defined in another identified document, shall be given the definition of such word, term or phrase in the Declaration.

11. Consent of Owner. By its execution of this instrument, Kapolei Property Development LLC, a Hawaii limited liability company, as Owner of the Annexed Lot, does hereby join in and consent to the Annexation of the Annexed Lot to the Declaration in accordance with the terms and conditions of this instrument and of the Declaration.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Declarant has executed these presents as of the date first above written.

Consent of Owner:

Declarant:

KAPOLEI PROPERTY DEVELOPMENT
LLC, a Hawaii limited liability company

CAMPBELL HAWAII INVESTOR LLC, a Hawaii limited
liability company

By Aina Nui Corporation, a Hawaii
corporation, its member manager

By James Campbell Company LLC, Its Manager

By _____
Name:
Its:

By: _____
Name:
Title: [Officer of JCCLLC]

By _____
Name:
Its:

By: _____
Name:
Title: [Officer of JCCLLC]

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

On this _____ day of _____, 20__, before me personally appeared _____ and _____, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Name: _____

Notary Public, State of Hawaii
My commission expires: _____

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

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Name: _____

Notary Public, State of Hawaii

My commission expires: _____

EXHIBIT 1

All of those certain parcels of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 80001-C-1, area 15.274 acres, as shown on Map ____, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being all of the land covered by Certificate of Title No. _____, issued to Kapolei Property Development LLC, a Hawaii limited liability company.

End of Exhibit 1

EXHIBIT D-1

[REVISED EXHIBIT D-1 TO BE ATTACHED]

End of Exhibit D-1

End of Exhibit D

Of Counsel:

CARLSMITH, WICHMAN, CASE,
MUKAI AND ICHIKI

IVAN M. LUI-KWAN	1089-0
Attorney at Law	
A Law Corporation	
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1001 Bishop Street	
Honolulu, Hawaii 96813	
Tel. No. (808) 523-2500	

Attorneys for
The Estate of James Campbell

SEP 26 3 53 PM '89
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A87-613
THE TRUSTEES UNDER THE WILL AND)	FIRST ANNUAL REPORT;
OF THE ESTATE OF JAMES CAMPBELL,)	CERTIFICATE OF SERVICE
DECEASED)	(Kapolei City)
To Amend the Agricultural Land Use)	
District Boundary into Urban Land)	
Use District for Approximately)	
813.02 acres of land at)	
Honouliuli, Ewa, Island of Oahu,)	
State of Hawaii, Tax Map Key)	
Numbers: 9-1-15: Portion of 4;)	
9-1-16: Portion of 1, Portion of)	
4, 5, 6, Portion of 9, 12, 13,)	
Portion of 16, 18, Portion of 24,)	
30; 9-2-03 Portion of 2, 12; and)	
9-2-19: Portion of 1)	

FIRST ANNUAL REPORT

Pursuant to Condition No. 11 of those certain
"Findings of Fact, Conclusions of Law and Decision and Order"

certified herein on September 23, 1988, as amended on March 29, 1989 and on May 30, 1989, Petitioner Trustees Under the Will and of The Estate of James Campbell, Deceased ("Petitioner") submits this first annual report on the status of the project and on Petitioner's progress in complying with conditions imposed.

I. PROCEDURAL BACKGROUND AND CURRENT STATUS

A. Petition and Original Decision and Order

On September 23, 1988 and pursuant to a petition filed on June 29, 1987, the Land Use Commission, State of Hawaii ("Commission") reclassified approximately 890 acres of land located in Honouliuli, Ewa, Island of Oahu, State of Hawaii from Agricultural District to Urban District. The reclassification allowed Petitioner to proceed with the development and planning of a second urban center for Oahu situated in the Petition area. Because it appeared that the entire 890 acres of land could not be fully developed within five years from the date of final approval by the City and County, 135 acres of land were apportioned into Increment I and the balance of 755 acres were classified as subsequent increments. Immediate reclassification for Increment I was approved, and incremental redistricting was granted for the subsequent increments pursuant to Section 15-15-78, subject to 14 conditions and preconditions. (Hereinafter, these conditions and preconditions will be referenced by their

respective paragraph number as set forth in the September 23, 1988 Decision and Order.)

B. First Amended Decision and Order: Deletion of Kapolei Knolls Area

On March 29, 1989 and pursuant to Petitioner's motion filed on January 10, 1989, the Commission filed and certified a "First Amended Findings of Fact, Conclusions of Law and Decision and Order". This first amendment deleted approximately 76.98 agricultural acres from the 755 acres constituting the subsequent increments. These 76.98 agricultural acres were the subject of an independent reclassification petition filed with the Commission by the Lusk Co. on August 31, 1988, Docket No. A88-628, and commonly known as "Kapolei Knolls". Pursuant to the first amendment, the total Petition area was reduced to approximately 813.02 acres (135 acres in Increment I; 678.02 acres in the subsequent increments).

C. Second Amended Decision and Order: Reconfiguration of Increment I

On May 30, 1989 and pursuant to a motion filed by the Petitioner on March 3, 1989, the Commission filed and certified a "Second Amended Findings of Fact, Conclusions of Law and Decision and Order." This second amendment effected a reconfiguration of Increment I by exchanging approximately 8.5 acres between Increment I and the subsequent increments. The

aggregate total number of acres for the Petition area, as amended, remained at 813.02; and the sub-total acres for Increment I remained at 135 with the balance of 678.02 acre in the subsequent increments. The reconfiguration permitted better siting and design of a proposed park.

D. Recordation of Conditions and Preconditions

On November 28, 1988 a document listing the 14 conditions and preconditions contained in the September 23, 1988 Decision and Order was recorded at the Bureau of Conveyances. No document listing the conditions in the First Amended Decision and Order of March 29, 1989 was recorded, because shortly thereafter, the March 29, 1989 order was superseded and replaced by the Second Amended Decision and Order of May 30, 1989. An amended document listing conditions and preconditions with respect to the Second Amended Decision and Order is being prepared, and will be recorded with the Bureau after being reviewed and cleared by the Commission.

E. Satisfaction of Preconditions

On June 6, 1989, by an "Order Approving Executed Agreements Satisfying Petitioner's Preconditions to Reclassification" and pursuant to Petitioner's motion and memoranda filed on April 4 and April 12, 1989, the Commission approved certain agreements executed by the Petitioner. The Commission concluded that these agreements satisfied

preconditions 9.a., 9.b., and 9.c. of the Commission's Second Amended Decision and Order dated May 30, 1989.

II. STATUS OF COMPLIANCE WITH CONDITIONS

1. With respect to Condition No. 1, considerable progress has been made during the past year toward the establishment of Kapolei as a commercial, industrial, government, and business center.

On September 30, 1988, Petitioner applied to the City and County of Honolulu to rezone 92.7 acres of the 135-acre first increment. The Planning Commission recommended approval of this rezoning in concurrence with the Director of the Department of Land Utilization. Bill No. 101 to rezone this area passed the second reading on August 9, 1989 and was heard by the Honolulu City Council on September 20, 1989. The Petitioner is preparing a unilateral agreement to be submitted to the Council in consideration of third reading.

The application for rezoning for the balance of 42.3 acres was submitted on June 27, 1989, and accepted for processing by the Department of Land Utilization on July 31, 1989. It is expected to go to the Planning Commission in October.

A traveling exhibit has been prepared to attract additional interest in Kapolei City. In April, 1989 this exhibit was shown to the National Conference of the American Institute of Planners in Atlanta (3,000 delegates); in May 1989

the exhibit was displayed at the International Council of Shopping Centers in Las Vegas (10,000 delegates). A tour of Kapolei City is planned as a kick-off to the Hawaii Congress of Planning Officials' conference in Honolulu this October 1989. This represents just a small part of a larger effort, both locally and globally, to attract businesses to Kapolei.

2. With respect to Condition No. 2, infrastructure to serve Increment I has been designed. Construction of sewer oversizing in conjunction with Ko Olina has been completed. Construction drawings are being reviewed by the appropriate government agencies for approval. This includes widening Farrington Highway and constructing Kapolei Boulevard between Farrington Highway and Kalaeloa Boulevard.

3. With respect to Condition No. 3, the Petitioner has participated with the state Department of Health in an air quality monitoring program. The Petitioner has purchased an air monitoring system at a cost of \$250,000 to provide the state with necessary equipment to monitor air quality standards in the area.

4. With respect to Condition No. 4, no significant archeological resource has been uncovered during the past year.

5. With respect to Condition No. 5, water service needs are being addressed. The Ewa Plain Water Development Corporation consists of Campbell Estate, West Beach Estates, HASEKO, and Gentry and is funding the Ewa water system which

has a projected cost of \$23,400,000. As of June 30, 1989, \$16,300,000 had been expended. Completion of this phase of the project is expected by July 1990. A joint venture pilot project between Campbell Estate and the State of Hawaii on the desalting plant will be completed by September 1990 and is expected to yield one million gallons per day of potable water from brackish water. The project cost is \$5.7 million of which the Petitioner is contributing \$2.0 million. The Petitioner has donated 3.5 acres for the project site.

6. With respect to Condition No. 6, drainage improvements have been coordinated with the state Housing Finance and Development Corporation and the Barbers Point Naval Air Station. State officials have attended and participated in meetings of Petitioner's recently formed Kapolei Advisory Panel whose purpose is to assure the greatest degree of coordination for the various projects.

7. With respect to Condition No. 7, the Campbell Office Building, the first building in the 92.7-acre area, will contain 120,000 square feet of office space, of which 25 percent will be occupied by the Estate. Groundbreaking on this project will occur next year.

As a result of meetings with city and state government officials, efforts are well underway to plan for the establishment of city and state government offices in Kapolei.

The city and state have each retained consultants to prepare detailed plans for these facilities.

8. With respect to Condition No. 8, the Kapolei Shopping Center has secured Safeway and Longs as anchor tenants. A strong response to a preleasing program has resulted in full commitment to planned commercial spaces. Groundbreaking is expected to occur next year.

9. With respect to the preconditions listed in paragraph 9, the Petitioner has entered into various agreements with the State of Hawaii. These agreements have been documented and approved by the Commission as satisfying the preconditions imposed by paragraph 9. See discussion at Section I.E. above.

10. With respect to Condition No. 10, on September 18, 1989, Petitioner filed for Probate Court approval of a portion of the pre-condition relating to Barbers Point Harbor. (Equity No. 2388, Petition for Approval of 1987 Account for Instructions.)

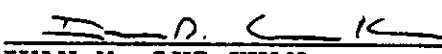
11. With respect to Condition No. 11, the Petitioner submits this annual report.

12. With respect to Condition No. 12, the preceding paragraphs demonstrate that the petition area is being developed in substantial conformity to and compliance with Petitioner's representation to the Commission.

13. With respect to Condition 13, Petitioner has not formed any plan or intent to sell, lease, assign, or otherwise alter its ownership interest in the petition area prior to the development of the property.

WHEREFORE, Petitioner submits this first annual report on the status of the development of Kapolei City.

DATED: Honolulu, Hawaii, SEP 26 1989.



IVAN M. LUI-KWAN
PRESLEY W. PANG

Attorneys for
The Estate of James Campbell


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "First Annual Report" was duly served upon the following persons on SEP 26 1989, by depositing said copy, postage prepaid, in a United States Post Office, Honolulu, Hawaii, addressed as follows:

HAROLD S. MATSUMOTO, DIRECTOR
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

DONALD A. CLEGG
Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 S. King Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, SEP 26 1989



IVAN M. LUI-KWAN
PRESLEY W. PANG

Attorneys for
The Estate of James Campbell

FILED: JUNE 29, 1987

NO./PETITIONER:

613 THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED

Attorney for Petitioner

~~Benjamin Kudo, Esq.~~
~~Ivan Lui-Kwan, Esq.~~
~~Carlsmith, Wichman, Case, Mukai,~~
~~& Tchiki~~
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STATE

~~G.V. Pai~~
ROGER ULVELING, Director
Dept. of Planning and Economic
Development
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Attorney for State

~~Rick Kichav~~
Everett Kaneshige, Esq.
Deputy Attorney General
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COUNTY

~~Cherry G. Pina~~
MR. ROBIN FOSTER, CHIEF PLNG.
OFFICER
Planning Department, CSC of
Honolulu
650 South King Street
Honolulu, HI 96813

Attorney for County

INTERVENOR

PUBLIC WITNESS - Timely

Ms. Sharlyne Palacio, Administrative
Assistant
ILWU, Local 142
451 Atkinson Drive
Honolulu, HI 96814

Rec'd 8-18-87 (On list)

PUBLIC WITNESS - Timely

T.L. Ferrier, Captain
U.S. Navy
Chief of Staff
Dept. of the Navy
Commander
Naval Base Pearl Harbor
Box 110
Pearl Harbor, HI 96860-5020

PUBLIC WITNESS - UNTIMELY

Jane A. Ross, Corresponding Secretary
Honokai Hale/Nanakai Gardens
Community Association -
92-783 Laaloa Place
Ewa Beach, HI 96707

Rec'd 9/30/87

PUBLIC WITNESS - Untimely

Elizabeth Ann Stone
General Delivery
Naalehu, HI 96772

Rec'd 11/18/87 (on list)

DATE		INI
6/29/87	Letter acknowledging receipt of petition sent to Mr. Lui-Kwan.	fl
7/14/87	Notice of Boundary Amendment petition sent to all persons and organizations on the Statewide and Oahu mailing lists.	fl
8/6/87	Notice of P/H Conf. ^{at 10:30 a.m.} (9/11/87) sent to R. Ulveling, E. Kaneshige, I. Lui-Kwan, Don Clegg, R. Wurdeman, and O.K. Stender.	dk
8/12/87	Notice of September 29, & 30, 1987 Hearing sent to all persons and organizations on the Statewide and Oahu mailing lists.	fl

EXHIBIT 9

DATE		IN
8/13/87	Notice of Hearing sent to R. Ulveling, E. Kaneshige, D. Clegg, R. Wurdeman, S. Nakatani, I. Lui-Kwan, O.K. Stender, Oahu Sugar, HI Electric, HI Telephone, Grace Pacific Corp., and Walter D. West III. Hearing set for 9/29 & 9/30, 1987	dk
8/28/87	Motion for Extension of Time to File Statement of Position filed by DBED.	dk
9/15/87	Agenda sent to all persons & organizations on the Statewide, Oahu, and Kauai mailing lists.	f.
9/15/87	Agenda sent to R. Ulveling, D. Clegg, Ivan Lui-Kwan, E. Kaneshige, R. Wurdeman, O.K. Stender, S. Nakatani, Oahu Sugar, HI Electric, HI Telephone, Grace Pacific Corp. & W. West III.	f.
10-7-87	Notice of Continued Hearing sent to R. Ulveling, R. Marks, D. Clegg, R. Wurdeman, Ivan Lui-Kwan, O.K. Stender, Oahu Sugar, Robert Rawson, HI Electric, HI Telephone, Grace Pacific, and Walter D. West III. Continued Hearing set for 11-16 & 17, 1987 at 9:00 am.	dk
10/7/87	Notice of Continued Hearing sent to Public Witnesses.	fl
11/2/87	Agenda for 11/16 & 17, 1987 sent to R. Ulveling, D. Clegg, I. Lui-Kwan, R. Marks, R. Wurdeman, & O.K. Stender, Oahu Sugar, R. Rawson, HI Electric, HI Telephone, Grace Pacific, & Walter D. West III.	fl
11/2/87	Agenda sent to all persons & organizations on the Statewide, Oahu, & Kauai mailing lists.	fl
11-10-87	Testimony in Support of Petition filed by DGP, C&C of Honolulu.	dk
11/24/87	Notice of Continued Hearing sent to R. Ulveling, R. Marks, D. Clegg, R. Wurdeman, Ivan Lui-Kwan, O.K. Stender, Oahu Sugar, Robert Rawson, HI Electric, HI Telephone, Grace Pacific, & Walter D. West III. Hearing set for 12/17/87 & 12/18/87 at 9:00 a.m.	fl
11/24/87	Notice of Continued Hearing sent to Public Witnesses.	fl
11/27/87	Agenda for 12/17 & 12/18/87 sent to R. Ulveling, D. Clegg, Ivan Lui-Kwan, Esq., R. Marks, R. Wurdeman.	fl
11/30/87	Agenda for 12/17 & 12/18/87 sent to Public Witnesses. Also sent to all persons & organizations on the Statewide, Maui, Kauai, & Oahu mailing lists.	fl
2/21/87	Notice of Continued Hearing sent to R. Ulveling, R. Marks, Esq., D. Clegg, R. Wurdeman, Esq., R. Rawson, Ivan M. Lui-Kwan, Esq., O.K. Stender, Oahu Sugar Co., Ltd., HI Electric, HI Telephone, Grace Pacific Corp. & Walter D. West III. Hearing set for 1/5 & 1/6/87.	fl
12/22/87	Agenda sent to R. Ulveling, D. Clegg, Ivan Lui-Kwan, R. Marks, R. Wurdeman. Agenda also sent to all persons & organizations on the Statewide, Oahu, Maui, Kauai, & Hawaii mailing lists.	fl

Docket No. and Petitioner: A87-613 The Trustees Under the Will and of the Estate of James Campbell, Dec.

Page No.: 3

DATE		INI
1-7-88	Notice of Continued Hearing and Agenda (1/19 & 1/20, 1988) sent to R. Ulveling, Ivan Lui-Kwan, R. Marks, R. Wurdeman, R. Rawson, O.K. Stender, Oahu Sugar Co., Hi Electric, Hi Telephone, Grace Pacific Corp. and Walter West.	dk
1-7-88	Agenda sent to Jane A. Ross and Capt. Ferrier. Hearing set for 1-19-88 & 1-20-88	dk
1/8/88	Agenda sent to all persons & organizations on the Statewide, Oahu, Maui & Hawaii mailing lists.	fl
1/22/88	Agenda sent to all persons & organizations on the Statewide, Maui, & Oahu mailing lists.	fl
1/22/88	Notice of Continued Hearing and Agenda (2/9/ & 2/10/1988) sent to R. Ulveling, Ivan Lui-Kwan, R. Marks, R. Wurdeman, R. Rawson, O.K. Stender, Oahu Sugar Co., Hi Electric, Hi Telephone, Grace Pacific Corp. & Walter West.	fl
5-6-88	Notice of Cont'd Hearing and Cert. of Serv. sent to R. Ulveling, Don Clegg, R. Wurdeman, Ivan Lui-Kwan, & R. Marks. Notice of Cont'd Hearing also sent to R. Rawson, O.K. Stender, Oahu Sugar Co., Hi Electric, Hi Telephone, Grace Pacific Corp. and Walter D. West, III. Cont'd Hearing set for 5/24/88 at 9:00 a.m. (*-sent certified)	dk
5/10/88	Agenda sent to all persons & organizations on the Statewide & Oahu mailing lists. Hearing set for 5/24/88.	fl
5/10/88	Agenda sent to R. Ulveling, D. Clegg, Ivan Lui-Kwan, Esq., R. Marks, Esq., D. Laxson, Esq., & public witnesses. Hearing set for 5/10/88.	fl
6/14/88	DGP'S Comments Regarding The Proposed Findings of Fact, Conclusions of Law and D & O filed by DGP.	dk
6/14/88	DBED's Proposed Findings of Fact and D & O filed by DBED. (Also attached is a copy of Campbell Estate's Second draft of findings of fact, Conclusions of Law, and D & O.)	dk
6/14/88	Proposed Findings of Fact, Conclusions of Law and Decision and Order and Certificate of Service filed by Ivan Lui-Kwan for Petitioner.	dk
6/17/88	First Amended Proposed Findings of Fact, Conclusions of Law, Decision and Order and Certificate of Service filed by Ivan Lui-Kwan.	dk
6/24/88	Petitioner's Response to DBED's Proposed Findings of Fact and Conclusions of Law filed by Ivan Lui-Kwan. Cert. Serv filed also.	dl

DATE		INI
6/28/88	DBED's Amendments to the Proposed Findings of Fact and D & O filed.	dk
6/28/88	Second Amended Proposed Findings of Fact, Conclusions of Law and Decision and Order filed by Campbell Estate.	dk
6/17/88	Agenda sent to all persons & organizations on the Statewide & Oahu mailing lists. Also sent to R. Ulveling, D. Clegg, Ivan Lui-Kwan, Esq., R. Marks, Esq. & R. Wurdeman, Esq.	fl
8-24-88	(Motion) Stipulation to Form of Order filed by Ivan Lui-Kwan.	dk
8-31-88	Amended Agenda sent Certified to Ivan Lui-Kwan, H. Masumoto, A. Mitsuda, Don Clegg, Robert Marks, and Richard Wurdeman. Agenda is for Sept. 7 & 8, 1988 also Amended Agenda/sent to T.L. Ferrier, Captain, ILWU, Jane A. Ross.	dk
8-31-88	Amended agenda for 9-7-88 and 9-8-88 sent to all persons and organizations on the Statewide and Oahu mailing lists.	dk
9/23/88	Served Final Decision and Order to Ivan Lui-Kwan, Esq., Donald A. Clegg, Harold S. Masumoto	to
-10-89	Motion to Amend FOF, COL, AND DECISION AND ORDER FILED BY IVAN LUI-KWAN.	dk
1/13/89	Agenda sent to H. Masumoto, Donald A. Clegg, Ivan Lui-Kwan, Esq., R. Marks, Esq., All public witnesses, Shigeyuki Nakatani, O.K. Stender, Oahu Sugar Co., Ltd, Hawaiian Electric Co., Inc. Hawaiian Telephone Co., Grace Pacific Corp. & Walter D. West III.	fl
1/17/89	Agenda sent to all persons & organizations on the Statewide & Oahu mailing lists. Action set for 1/26,27/89.	fl
1-23-89	Joinder to Petitioner's Motion to Amend Findings of Fact, Conclusions of Law and Decision and Order filed by OSP.	dk
3-3-89	Motion for Second Amendment to Findings of Fact, COL, and Decision and Order filed by Ivan M., Lui-Kwan.	dk
3-14-89	Joinder to Petitioner's Motion for Second Amendment to FOF, COL, and D&O filed by OSP.	dk
3/14/89	Agenda sent to H. Masumoto, D. Clegg, Ivan Lui-Kwan, Esq., R. Marks, Esq., O.K. Stender, Oahu Sugar, R. Rawson, HI Electric, HI Telephone, Grace Pacific, & Walter D. West III. Hearing set for 3/22/23/89.	fl
3/15/89	Agenda sent to all persons & organizations on the Statewide & Oahu mailing lists. Hearing set for 3/22,23/89.	fl

Docket No. and Petitioner: AB7-613 THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DEC.

Page No.: 5

DATE		INI
4-4-89	Motion of Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification and Department of Health Condition in Decision and Order filed by Ivan Lui-Kwan.	dk
4/6/89	Agenda sent to H. Masumoto, D. Clegg, Ivan Lui-Kwan, Esq., J. Anderson, Esq., R. R. Rawson, O.K. Stender, Oahu Sugar Co., Haw'n Telephone, Haw'n Electric, Grace Pacific, Walter D. West, III. Agenda sent to all persons & organizations on the Statewide & Oahu mailing lists. Action set for 4/14/89.	fl
4-12-89	Supplemental Memorandum in Support of Motion for Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification and Department of Health Condition in D & O; Exs. A, B & C filed by Ivan Lui-Kwan.	dk
5/30/89	Served Second Amended Findings of Fact, Conclusions of Law and Decision and Order to H.Masumoto, D. Clegg, Ivan Lui-Kwan, Esq.	to
6/6/89	Served Order Approving Executed Agreements Satisfying Petitioner's Pre-Conditions to Reclassification to H.Masumoto, D.Clegg, Ivan Lui-Kwan, Esq.	to
6-5-90	Motion for Order Approving Executed Agreement Satisfying Department of Health Condition in D & O filed by Ivan M. Lui-Kwan.	dk
6/18/90	Agenda sent to H. Masumoto, A. Mitsuda, Rick Eichor, Esq., Ivan Lui-Kwan, Esq., Benjamin Lee, Planning Commission, O.K. Stender, Oahu Sugar Co, Ltd, HI Electric Light Co., HI Telephone Co, Grace Pacific Corp. & Walter D. West III. Hearing set for 6/28,29/90.	fl
6/19/90	Agenda sent to all persons & organizations on the Statewide & Oahu mailing lists, all public witnesses.	fl
7/11/90	Order For Conditional Approval of Executed Agreement Satisfying Petitioner's Department of Health Condition to Reclassification served to H.Masumoto, B.Lee, and I.Lui-Kwan,Esq.	to
	<p>Type on page 6 of Docket sheet</p>	

DATE		INI
12-4-92	Motion for Third Amendment to FOF, COL, and D&O; Memorandum in Support of Motion; Certificate of Service, and Exhibits A thorough C filed by Ivan Lui-Kwan.	dk
12-8-92	Motion to Approve Subsequent Increments for Kapolei Center; Memorandum in Support of Motion; Certificate of Service; and Exhibits 1 through 15 filed by Ivan Lui-Kwan.	dk
2-16-93	Notice of P/H/ Conf. sent to Ivan Lui Kwan, H. Masumoto, A. Mitsuda, R. Eichor, Mr. Foster, and Frances Mossman. P/H. Set for 3-15-93 at 10000	dk a.m.
2-26-93	Notice of Hearing sent to H. Masumoto, R. Eichor, A. Mitsuda, Robin Foster, Frances Mossman, and Ivan Lui-Kwan. Also sent notices to people listed on the Amended Certificate of Service. Hearing set for 3/31 & 4/1 1993.	dk
3/2/93	Notification of Application For Incremental Districting & Notice of Hearing sent to all persons & organizations on the Statewide & Oahu mailing lists.	fl
3-22-93	Second Amendment to Motion for Third Amendment to FOF, COL, & D&O, Cert Serv. filed by Ivan Lui-Kwan, Esq.	dk
3/23/93	Agenda sent to H. Masumoto, A. Mitsuda, R. Foster, Ivan Lui-Kwan, Esq., R. Eichor, Esq., Planning Comm. all persons on the Certificate of Service & all persons & organizations on the Statewide & Oahu mailing lists. Action set for 3/31 & 4/1, 2/93.	fl
6/4/93	Served Order Granting Motion for Third Amendment to Findings of Fact, Conclusions of Law, and Decision and Order to H.Masumoto, R.Foster and I.Lui-Kwan, Esq.	th
6/17/93	Served Findings of Fact, Conclusions of Law, and Decision and Order to H.Masumoto, R.Foster, and I.Lui-Kwan, Esq. Copies sent to Alan Sanborn & Henry Eng.	th
6-15-93	Notice of Petitioner's Change of Address and Certificate of Service filed by Ivan Lui-Kwan, Esq.	dk
11-7-94	Motion for Fourth Amendment to FOF, COL, & D&O and For Other Relief, Exhibits A, B & C, and Certificate of Service filed by Ivan Lui-Kwan, Esq.	dk
1/11/95	Agenda sent to G. Pai, Cheryl Soon, R. Eichor, A. Mitsuda, Ivan Lui-Kwan, Esq., Ping. Comm., all on the Statewide (1/11/95) & Oahu (dated 1/6/95 & current) mailing lists. Action set for 1/19/95.	fl
2/10/95	Agenda sent to G. Pai, R. Eichor, Esq., Chyerl Soon, Ivan Lui-Kwan, Esq., all on the Statewide (2/9/95) & Oahu (2/9/95) mailing lists. Action set for 2/23/95.	fl
3/7/95	Agenda sent to G. Pai, Cheryl Soon, R. Eichor, A. Mitsuda, I. Lui-Kwan, F. Mossman, Planning Commission, and all persons and organizations on the Statewide (2-9-95) and Oahu (2-9-95) mailing lists. Meeting set for 3-16-95 at 9:00 a.m.	dk
4-13-95	Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Certificate of Service filed by Nathan Natori, Esq.	dk

H

Tanaka v. Department of Hawaiian Home Lands
 Hawai'i App., 2004.

Intermediate Court of Appeals of Hawai'i.
 Raymond T. TANAKA, Appellant-Appellant,
 v.

DEPARTMENT OF HAWAIIAN HOME LANDS,
 Appellee-Appellee.
 No. 25526.

Dec. 3, 2004.

As Amended Dec. 10, 2004.

Background: The Hawaiian Homes Commission ordered cancellation of resident's lease with the Department of Hawaiian Home Lands, based upon a finding that he and his wife had engaged in criminal activity. After Commission denied resident's motion for reconsideration, resident appealed. The Circuit Court, First Circuit, No. 01-1-3662-12, Eden Elizabeth Hifo, J., affirmed Commission's order denying reconsideration. Resident appealed.

Holding: The Intermediate Court of Appeals, Fujise, J., held that failure to timely appeal Commission's decision left Commission without jurisdiction and precluded Circuit Court's review.

Judgment vacated and matter remanded for dismissal of appeal.

West Headnotes

[1] Public Lands 317 ↪ 148.1

317 Public Lands

317III Disposal of Lands of the States

317k148.1 k. Hawaii. Most Cited Cases

Resident's failure to appeal within 30 days from decision of Hawaiian Homes Commission, which decision resulted in cancellation of resident's lease with the Department of Hawaiian Home Lands based upon a finding that he and his wife had engaged in criminal activity, left Commission without jurisdiction to act on subsequent requests for reconsideration; consequently, those further proceedings were legally ineffective and could not serve as a basis for circuit court review of the administrative decision. HRS § 91-14; Haw.Admin.Rules (HAR) § 10-5-43.

[2] Administrative Law and Procedure 15A
 ↪ 683

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak681 Further Review

15Ak683 k. Scope. Most Cited Cases

The question of whether a court has jurisdiction to consider a decision by an administrative agency is reviewed applying the right/wrong standard.

[3] Administrative Law and Procedure 15A
 ↪ 229

15A Administrative Law and Procedure

15AIII Judicial Remedies Prior to or Pending Administrative Proceedings

15Ak229 k. Exhaustion of Administrative Remedies. Most Cited Cases

Administrative Law and Procedure 15A ↪ 513

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak513 k. Administrative Review. Most

Cited Cases

A party's failure to timely request an agency review hearing not only bars the agency from considering that request, but also precludes the circuit court from considering an appeal of the administrative decision.

[4] Administrative Law and Procedure 15A
 ↪ 513

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(D) Hearings and Adjudications

15Ak513 k. Administrative Review. Most

Cited Cases

An administrative agency may not enlarge its powers to hold a review hearing by waiving or extending mandatory time limits.

[5] Administrative Law and Procedure 15A
 ↪ 651

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions

15AV(A) In General
15Ak651 k. In General. Most Cited Cases

Administrative Law and Procedure 15A
657.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions

15AV(A) In General
15Ak657 Nature and Form of Remedy
15Ak657.1 k. In General. Most Cited

Cases
The right to appeal from an administrative agency's decision is governed by the Hawaii Administrative Procedures Act (HAPA) and strict compliance with those provisions is required.

[6] Administrative Law and Procedure 15A
723

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions

15AV(C) Proceedings for Review
15Ak722 Time for Proceedings
15Ak723 k. Effect of Delay. Most Cited

Cases
The time limit for the taking of an appeal established by statute, from the decision by an administrative agency, is mandatory, and if not complied with, the appeal must be dismissed.

[7] Public Lands 317 148.1

317 Public Lands
317III Disposal of Lands of the States
317k148.1 k. Hawaii. Most Cited Cases

Resident's requests for reinstatement of his lease with the Department of Hawaiian Home Lands, following a decision by the Hawaiian Homes Commission to cancel the lease based upon a finding that he and his wife had engaged in criminal activity, did not constitute a new contested case that would have made resident's appeal timely; resident's requests for reinstatement involved the same lease and the same grounds of criminal activity that had already been reviewed by the Commission, from which resident had failed to timely appeal. HRS § 91-14; Haw.Admin.Rules (HAR) § 10-5-43.

[8] Pleading 302 4

302 Pleading
302I Form and Allegations in General
302k4 k. Entitling Pleadings. Most Cited Cases
It is the substance of the pleading that controls, not its nomenclature.

****407** Hayden Aluli, Honolulu, on the briefs, for Appellant-Appellant.
Clayton Lee Crowell, Deputy Attorney General, State of Hawai'i, on the briefs, for Appellee-Appellee.

WATANABE, Acting C.J., NAKAMURA, and FUJISE, JJ.

Opinion of the Court by FUJISE, J.
***247** This secondary agency appeal arises from the cancellation by the Hawaiian Homes Commission (the "Commission") of Lease No. 2477 of Residence Lot No. 38 in Waiman lo, O'ahu ("Lot 38") to Appellant-Appellant Raymond T. Tanaka ("Tanaka"). Tanaka appeals from the "Judgment in a Civil Case" and contests the "Findings of Fact, Conclusions of Law and Order Affirming Hawaiian Homes Commission's Decision and Order to Deny Request for Reconsideration, Dated November 30, 2001," entered by the first circuit court ^{FN1} on November 7, 2002. We vacate the circuit court's judgment and remand with instructions that the circuit court enter an order dismissing Tanaka's appeal.

FN1. The Honorable Eden Elizabeth Hifo presided.

I.

In October 1996, after investigating complaints about drug activity at Tanaka's residence, the Honolulu Police Department executed a search warrant and found crystal methamphetamine, marijuana, and drug paraphernalia in Tanaka's residence. Tanaka and his wife were convicted of drug use and possession in March 1998.

On June 1, 1998, a contested case hearing was held before a hearing officer of Appellee-Appellee Department of Hawaiian Home Lands ("DHHL"). After presentations of evidence by Tanaka and DHHL, the hearing officer found, by a preponderance of the evidence, that Tanaka and his wife had engaged in criminal activity on Lot 38, that such

criminal activity resulted in their criminal convictions, and that the drug activity and said convictions violated the terms of Tanaka's lease with DHHL,^{FN2} as well as section 208 **408 *248 of the hawaiian homeS commission act ("HHCA").^{FN3} On June 1, 1998, the hearing officer issued "Findings of Fact, Conclusions of Law and Recommended Order," recommending that the Commission adopt his findings of fact and conclusions of law and issue an order canceling Tanaka's lease and forfeiting all improvements to Lot 38, as authorized by HHCA § 210^{FN4} (the "Recommended Order").

FN2. Appellant-Appellant Raymond T. Tanaka's ("Tanaka") Hawaiian Homes Commission Residence Lot Lease, No. 2477, signed by him on December 30, 1970, provided, in relevant part, as follows:
The terms, covenants and conditions upon which this lease is issued are as follows:

....
4. The Homesteader will, at his own expense, at all times, well and substantially repair, maintain, amend and keep all buildings and improvements now or hereafter erected or constructed on the demised premises with all necessary reparations and amendments whatsoever; and will keep the demised premises and all improvements thereon in a strictly clean, sanitary and orderly condition; and will observe, perform and comply with all laws, ordinances, rules and regulations of the health or other governmental authorities, including the rules and regulations of the Commission, applicable to the use and occupation of said demised premises as may from time to time be issued, enacted or promulgated; and will allow the Commission and its agents at all reasonable times free access to the demised premises for the purpose of examining the same and determining whether the covenants herein and elsewhere in this lease contained are being fully observed and performed.
(Emphasis added.)

FN3. The Hawaiian Homes Commission Act, 1920 ("HHCA") § 208, as reprinted in volume 1, Hawaii Revised Statutes (HRS) (1993 & Supp.2003) provides, in relevant part:

§ 208. **Conditions of leases.** Each lease made under the authority granted the

department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

....
(8) *The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease;* provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease.
(Emphasis added.)

FN4. HHCA § 210 (Supp.2003) provides, in relevant part:

§ 210. **Cancellation of leases.** Whenever the department has reason to believe that any condition enumerated in section 208, or any provision of section 209, of this title has been violated, the department shall give due notice and afford opportunity for a hearing to the lessee of the tract in respect to which the alleged violation relates or to the successor of the lessee's interest therein, as the case demands. *If upon such hearing the department finds that the lessee or the lessee's successor has violated any condition in respect to the leasing of such tract, the department may declare the lessee's interest in the tract and all improvements thereon to be forfeited and the lease in respect thereto canceled, and shall thereupon order the tract to be vacated within a reasonable time.* The right to the use and occupancy of the Hawaiian home lands contained in such tract shall thereupon revert in the department and the department may take possession of the tract and the improvements thereon.
(Emphasis added.)

DHHL then notified Tanaka that the Commission would convene on June 23, 1998 to consider the Recommended Order and to allow Tanaka an opportunity to present any arguments on his behalf regarding the order. On June 23, 1998, with Tanaka present, the Commission heard the matter and on August 12, 1998, the Commission issued its Findings of Fact, Conclusions of Law, Decision and Order which adopted and incorporated by reference the hearing officer's Recommended Order (the "August 1998 Order"). The Commission's August 1998 Order also notified Tanaka that he had ten days from the date of service of the August 1998 Order to

request reconsideration by the Commission and thirty days to institute proceedings for judicial review in the circuit court. The Commission also ordered that its decision "shall take effect immediately" and that Tanaka, and anyone claiming under Tanaka, "shall surrender and vacate the property covered under the Lease within sixty (60) calendar days after the mailing date of the Notice of Cancellation and Order to Vacate."

On December 31, 1998, after considering a timely request for reconsideration by Tanaka's mother, the Commission issued its Final Findings of Fact, Conclusions of Law, Decision and Order affirming the August 1998 Order (the "December 1998 Final Order"). That same day, the Commission mailed Tanaka a letter, enclosing a certified copy of the December 1998 Final Order and again advised him of the thirty-day period in which he had to request judicial review. Tanaka, however, did not request judicial review within thirty days.

Meanwhile, Tanaka was sentenced and began serving his term in prison in July 1998. In November 1999, this court vacated his conviction based on erroneous jury instructions and remanded the matter for a new trial. *State v. Tanaka*, 92 Hawai'i 675, 994 P.2d 607 (App.1999). On May 5, 2000—sixteen months after the expiration of his deadline to seek judicial review of the December 1998 Final Order—Tanaka wrote a letter to the Commission asking it to "review [his] case" and for "[r]e-instatement of [l]ease" based on this fact.

In June 2000, the Commission held a meeting regarding Tanaka's "Request for Reconsideration**409 *249 for Reinstatement of Lease," at which Tanaka and his wife were present. The Commissioners decided to "defer action [on the request] until the end of the second [criminal] trial," but the Chairman also "informed Mr. and Mrs. Tanaka that the Commission is not reconsidering its decision to cancel the lease."

Approximately five weeks later, the circuit court judge in Tanaka's remanded criminal case granted the prosecutor's Motion for Nolle Prosequi Without Prejudice and on August 15, 2001, Tanaka's counsel "request[ed] the reinstatement" of Tanaka's lease by letter to the Commission. Tanaka and his wife appeared at a proceeding convened on November 19, 2001 by the Commission to "consider the request for reconsideration of [Tanaka's] cancelled lease" (the "November 2001 Reconsideration Request Proceeding"). Tanaka's counsel asserted that the

Commission should reinstate Tanaka's lease because Tanaka's conviction was overturned.

After hearing from both parties, the Commission stated: "We are denying your request for reconsideration. Cancellation stands. We will contact you about moving out..." The Commission subsequently issued a Decision and Order to Deny Request for Reconsideration on November 30, 2001 (the "November 2001 Order Denying Reconsideration Request") and asked Tanaka to vacate the premises by January 14, 2002.

On December 31, 2001, Tanaka appealed the November 2001 Order Denying Reconsideration Request to the first circuit court. On November 7, 2002, the circuit court entered 1) Findings of Fact, Conclusions of Law and Order Affirming [the Commission's November 2001 Order Denying Reconsideration Request]" and 2) "Judgment in a Civil Case," in favor of DHHL and against Tanaka (the "Circuit Court Judgment").

Tanaka filed his notice of appeal from the Circuit Court Judgment on December 9, 2002, which appeal we ^{FN5} now consider.

^{FN5}. This case was assigned to this court on October 3, 2003.

II.

[1] While Tanaka raises a number of issues on appeal, we do not reach them as his failure to appeal from the Commission's December 1998 Final Order left the Commission without jurisdiction to act on Tanaka's 2000 and 2001 requests for reconsideration. Moreover, the Commission had no jurisdiction to hold the November 2001 Reconsideration Request Proceeding because it was not a separate "contested case hearing" under Hawaii Revised Statutes (HRS) § 91-14(a). We thus vacate the Circuit Court Judgment and remand for an order dismissing the appeal in the circuit court.

A. The Commission's Jurisdiction to Reconsider the December 31, 1998 Final Decision and Order Ended Thirty Days After Service of the December 31, 1998 Final Decision and Order Since Tanaka Failed to File an Appeal.

[2][3][4][5][6] The question of whether a court has jurisdiction to consider a matter is reviewed applying

the right/wrong standard. State v. Lorenzo, 77 Hawai'i 219, 220, 883 P.2d 641, 642 (App.1994). A party's failure to timely request an agency review hearing not only bars the agency from considering that request, but also precludes the circuit court from considering an appeal of the administrative decision. Association of Apt. Owners of the Governor Cleghorn v. M.F.D., Inc., 60 Haw. 65, 68-70, 587 P.2d 301, 304 (1978). The agency may not enlarge its powers by waiving or extending mandatory time limits. Id., quoting with approval Iowa Civil Rights Comm'n v. Massey-Ferguson, Inc., 207 N.W.2d 5, 9-10 (Iowa 1973). Similarly, the right to appeal from an administrative agency's decision is governed by the Hawaii Administrative Procedures Act (the "HAPA") and strict compliance with those provisions is required. Korean Buddhist Dae Won Sa Temple of Hawaii, Inc. v. Zoning Bd. of Appeals, 9 Haw.App. 298, 302-03, 837 P.2d 311, 313, cert. granted, 73 Haw. 626, 834 P.2d 1315, cert. dismissed, 74 Haw. 651, 843 P.2d 144 (1992), overruled on other grounds, **410*250 Rivera v. Department of Labor and Indus. Relations, 100 Hawai'i 348, 60 P.3d 298 (2002) (application of Hawai'i Rules of Civil Procedure Rule 6). The time limit for the taking of an appeal established by statute is mandatory and if not complied with, the appeal must be dismissed. Korean Buddhist Dae Won Sa Temple of Hawaii, Inc. at 303, 837 P.2d at 313-14.

Here, the hearing officer held a contested case hearing and recommended cancellation of Tanaka's lease. The Commission then adopted the recommendation through its August 1998 Order. Tanaka was told of, and timely exercised, his option ^{FN6} to request reconsideration of the August 1998 Order. The Commission considered this first motion for reconsideration and denied the same when it entered the December 1998 Final Order. Tanaka had thirty days from the receipt of that order to file an appeal to the circuit court. ^{FN7}

^{FN6}. Hawaii Administrative Rules (HAR) § 10-5-42 (1998) provides, in relevant part:

(d) The commission may entertain a written petition to reconsider or re-hear its final order, decision or ruling. The petition shall be determined with reasonable expedition so that the aggrieved party may have timely opportunity to appeal. Denial of such petition shall be in writing with the reasons stated therefor.

(e) Petition to reconsider or re-hear any final order, decision or ruling of the commission

shall be filed not later than ten days after a person is served with a certified copy of the final decision and order of the commission.

^{FN7}. Hawaii Revised Statutes (HRS) § 91-14 (1993), entitled "Judicial review of contested cases," provides, in pertinent part:

(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term "person aggrieved" shall include an agency that is a party to a contested case proceeding before that agency or another agency.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court except where a statute provides for a direct appeal to the supreme court, which appeal shall be subject to chapter 602, and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal (except in cases appealed under sections 11-51 and 40-91). The court in its discretion may permit other interested persons to intervene.

See also, HAR § 10-5-43 (1998), which provides, in relevant part:

§ 10-5-43. Court Appeal. Any appeal to court for judicial review of a final decision of the commission must be made within thirty days after a person is served with a certified copy of the final decision and order of the commission.

Tanaka did not appeal within this time limit but waited until May 2000, when he sought "review" or "reinstatement" of his lease, followed in August 2001 by his counsel's letter asking for reinstatement. The HAPA does not provide for any reconsideration by a

board or commission, but even if the Hawaii Administrative Rules (the "HAR") could be construed to allow a second motion for reconsideration, the time for that motion lapsed, at best, ten days after Tanaka received service of the December 1998 Final Order.^{FN8} HAR § 10-5-42 (1998). Thus, pursuant to the provisions of the HAPA and the HAR, if Tanaka wished a review of the Commission's December 1998 Final Order, his only option was to note his appeal to the circuit court within thirty days of receiving service of the December 1998 Final Order. Having failed to do so, the Commission lost the authority to take any further action regarding its cancellation of Tanaka's lease inasmuch as the HAPA and the HAR do not provide for any extension of time to appeal, nor any vehicle for collateral attack of the December 1998 Final Order. Tanaka's requests, **411 *251 in May 2000 and August 2001, for "review" and "reinstatement" of his lease, were simply not requests the Commission could act upon.^{FN9}

FN8. Tanaka argues on appeal that the Hawaiian Homes Commission (the "Commission") had jurisdiction to consider his request for reinstatement because "substantially changed circumstances existed," i.e., the dismissal of his criminal charges. However, Tanaka offers no authority to support this position and, as we have pointed out, there appears to be no authority for such late review.

FN9. The Commission's actions regarding Tanaka's 2000 and 2001 requests were inconsistent and in any event prolonged a process that had, long before then, been concluded as a legal matter. Although the Commission initially communicated that it was not reconsidering its decision to cancel Tanaka's lease, it simultaneously "deferred action" on Tanaka's requests until after completion of the retrial on his criminal charges. When these charges were, instead, dismissed without prejudice, the Commission informed Tanaka it would convene to "consider the request for reconsideration of [his] cancelled lease" and after doing so, denied his "request for reconsideration," asking him to vacate the premises no later than six weeks later. When Tanaka's counsel raised the implications of this deferment at the November 2001 Reconsideration Request

Proceeding, the Chairman responded that "I'm the one who has to write the eviction and I'm the one who sends the staff out to evict.... What you should assume is that I didn't have enough information to act on an eviction at that point." Commissioner Agpalsa added,

The valid lesson I learned here today is to stick to the rules. And, it's a sad day for me because I act a lot on my heart and compassion. And, if we allowed, [] the wife and child to live in that house, that was for that purpose, so they wouldn't be on the streets. That's what I recall. You know, it was to, to help them. And if we're being held to task for being compassionate it's a very, very sad day for me.

However, no matter how compassionate the motive, consistent treatment of Tanaka's lease would have avoided the protracted nature of these proceedings and served the interests of other eligible lessees. There being no authority for entertaining Tanaka's belated reconsideration requests, the Commission should have summarily disposed of these letters.

Considering a similar situation, the Hawai'i Supreme Court concluded,

Having found that the Board lacked jurisdiction to consider reinstatement of appellants' permits, its proceedings and decision must be rendered void and legally ineffective. Furthermore, we believe that the appeal to the circuit court was improper and should have been dismissed. An appeal from a decision of an administrative board which acts without jurisdiction confers no jurisdiction on the appellate court. We have held that this type of jurisdictional defect can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion.

Association of Apt. Owners of the Governor Cleghorn, 60 Haw. at 69-70, 587 P.2d at 304 (internal citations omitted). The Commission had no authority to consider Tanaka's untimely letter requests for reconsideration. Consequently, those proceedings were "legally ineffective" and could not have served as a basis for circuit court review.^{FN10}

FN10. The Department of Hawaiian Home Lands' ("DHHL") May 16, 2002 motion to dismiss for subject matter jurisdiction was denied by the circuit court by order filed

July 9, 2002. Unfortunately, the order gives no explanation for the action and the transcript of that proceeding has not been included in the record. Consequently, we do not know the circuit court's thinking regarding either the untimeliness of Tanaka's 2000 and 2001 review requests or the DHHL's argument that the November 2001 Reconsideration Request Proceeding was not a "contested case," discussed *infra*.

B. Tanaka's Requests Did Not Constitute a New Contested Case.

[7] Tanaka argues on appeal that his requests for reinstatement of his lease and the subsequent hearing thereon constituted a new contested case. If this were so, his subsequent timely appeals to the circuit and this court would have been in compliance with the corresponding rules and statutes and, consequently, would have conferred jurisdiction on both courts. However, Tanaka's requests for reinstatement did not constitute a new contested case and, as a result, could not be appealed to either court.

[8] It is true that it is the substance of the pleading that controls, not its nomenclature. *Anderson v. Oceanic Properties, Inc.*, 3 Haw.App. 350, 355, 650 P.2d 612, 617 (1982). But the very substance of Tanaka's requests supports our conclusion that they did not constitute a new contested case. The crux of Tanaka's requests was that the Commission should reconsider its decision to cancel his lease based on new evidence, namely, that Tanaka's convictions had been overturned and thus, no basis existed to cancel the lease. These requests involved the same lease and the same grounds-his illicit drug activity. There is no legitimate ground upon **412 *252 which to base a conclusion that these requests constituted a new case.^{FN11}

^{FN11}. The following factors also support this conclusion: 1) The November 2001 Reconsideration Request Proceeding had the same docket number, No. 98-718, as the August 1998 Order and the December 1998 Final Order; 2) the Commission apparently understood it to be a reconsideration request based on its November 5, 2000 letter informing Tanaka that it would hold a proceeding on November 19, 2000, calling it a "request for reconsideration" and when it stated at the end of the proceeding that it was denying his "request for

reconsideration," to which Tanaka did not object; likewise, the November 30, 2000 order is titled "Order to Deny Request for Reconsideration;" and, most significantly 3) Tanaka's counsel admitted that the November 2001 Reconsideration Request Proceeding was about a reconsideration request rather than a separate and independent proceeding, asking the Commission to "reconsider" the lease cancellation, stating that if the Commission "is not prepared to [reinstate] at this time, I request a contested case hearing," and stating further that "I've been informed that asking for reconsideration after a deadline in the administrative process is nothing new."

III.

We thus vacate the "Judgment in a Civil Case" and remand to the circuit court for an order dismissing the appeal.

Hawai'i App., 2004.
Tanaka v. Department of Hawaiian Home Lands
106 Hawai'i 246, 103 P.3d 406

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

MARK J. BENNETT, as ATTORNEY
GENERAL, STATE OF HAWAII,

Petitioner,

vs.

RICHARD W. GUSHMAN, II, CLINTON
R. CHURCHILL, DAVID A. HEENAN,
and R.J. ZLATOPER, Trustees under the
Will and of the Estate of James Campbell,

Respondents.

DOCKET NO. DR06-32

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was
duly served upon the following party by hand-delivering a copy of same on March 8,
2007:

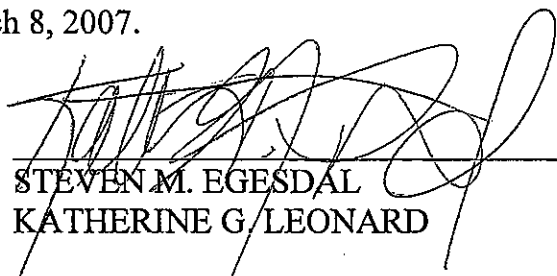
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