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STATE OF HAWAII  
NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

SUBLEASE NO. **K-39**

between

NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

in relation with the State Department  
of Business, Economic Development and  
Tourism

and

**BLUE OCEAN BARNS, INC.**

**a Delaware Public Benefit corporation**

covering

**10** acres of land at  
**Keahole**, North Kona, Hawaii

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EXHIBIT “A”.....Project Proposal

EXHIBIT “B”.....Site Survey Description

EXHIBIT “C” .....Site Survey Map

EXHIBIT “D” .....Federal Aviation Regulations, Part 77

EXHIBIT “E” .....Assignment of Lease Evaluation Policy

EXHIBIT “F” .....Master Lease

EXHIBIT “G” .....UCC-1 Form

EXHIBIT “H” .....NELHA Aquatic Species Health Management Program

STATE OF HAWAII  
THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

SUBLEASE NO. **K-39**

THIS INDENTURE OF Sublease, made this 09 day of June 2021, but effective as of the first day of the sublease term, **June 9, 2021**, and superseding all prior agreements related to the subject property, by and between the NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY (NELHA), a body corporate and politic and an instrumentality and agency of the State of Hawaii organized pursuant to Hawaii Revised Statutes, Chapter 227D, as amended, hereinafter referred to as the “Sublessor”, and whose business and post office address is 73-4460 Queen Kaahumanu Hwy., #101, Kailua-Kona, Hawaii 96740, and **BLUE OCEAN BARNs, INC., a Public Benefit corporation**, under the laws of the State of **Delaware**, hereinafter referred to as “Sublessee”, whose business and mailing address is **73-4460 Queen Kaahumanu Hwy, #138, Kailua Kona, Hawaii 96740.**

WITNESSETH:

WHEREAS, the Sublessee desires to sublease certain NELHA leased land near Kona International Airport at Keahole, North Kona, Island of Hawaii, only for the purposes specified in the Sublessee’s project proposal attached hereto as Exhibit “A” and incorporated by reference herein;

WHEREAS, the Sublessor recognizes Sublessee’s benefits to the public and Sublessor;

WHEREAS, NELHA is the Lessee, and the Board of Land and Natural Resources is the Lessor under that certain master lease No. S-5619; and

WHEREAS, at a meeting of the Board of Land and Natural Resources held on June 22, 2001, the Board authorized its chairperson to review and approve on behalf of the Board requests made by NELHA to enter into subleases and related matters;

WHEREAS, at a meeting of the Board of Land and Natural Resources held on June 23, 2006 and October 27, 2006, the Board has approved the amendment to General Sublease S-5619 for the purpose of waiving the lease requirement to obtain prior approvals for subleases, from the Board of Land and Natural Resources, its Chairperson, or its authorized representative.

NOW, THEREFORE, in consideration of the mutual promises provided herein, the parties hereto mutually agree as follows:

The Sublessor for and in consideration of the rent to be paid and of the terms, covenants, and conditions herein contained, all on the part of the Sublessee to be kept, observed, and performed, does hereby sublease unto the Sublessee, and the Sublessee does hereby sublease from the Sublessor the subleased premises identified as:

Lease Parcel \_\_\_\_\_ being a portion of the NELHA site at Ooma 1<sup>st</sup>, North Kona, Island of Hawaii, County and State of Hawaii, more particularly described in Exhibit "B" and as shown on the map marked Exhibit "C," hereto attached and made a part hereof for the only purposes and uses specified in the Sublessee's project proposal attached hereto as Exhibit "A" (hereinafter "permitted uses").

### **TERM OF SUBLEASE**

TO HAVE AND TO HOLD the subleased premises unto the Sublessee for the term of **THIRTY (30)** years, commencing on the **9<sup>th</sup> day of June, 2021**, up to and including the **8<sup>th</sup> day of June, 2051**, unless sooner terminated as hereinafter provided, the Sublessor reserving and the Sublessee yielding and paying to the Sublessor at the Office of the Natural Energy Laboratory of Hawaii Authority, Kona, Hawaii, State of Hawaii, a monthly rental as provided herein, and a percentage of gross sales ("Percentage Rent") more particularly described as follows:

### **RENTAL**

#### **1. Rental fees**

In consideration of the property and services provided by the Sublessor, Sublessee agrees to pay Sublessor:

##### **a) Fixed rental fee**

A monthly fixed rental fee, calculated at **THREE HUNDRED FORTY-TWO AND 75/100 DOLLARS (\$342.75)** per acre per month for improved/unimproved lands, payable in advance, without notice or demand, on the first day of each and every month.

The fixed rental fee shall be based upon the entire area of the parcel, **gross acreage of 10.00 acres**, as shown on the survey map attached hereto as Exhibit "C". Based upon the **net acreage of 10.00 acres** as shown on Exhibit "C," Sublessee shall pay a total monthly fixed fee of **THREE THOUSAND FOUR HUNDRED TWENTY-SEVEN AND 50/100 DOLLARS (\$3,427.50).**

The monthly rental fee shall be adjusted annually according to the published Hawaii CPI for a period of ten (10) years following the commencement of this Sublease. In the event that the CPI declines, the rental fee shall remain the same as the previous year and shall not increase until cumulative CPI calculated as the sum of the declines plus subsequent gains becomes positive.

b) Percentage rent.

Sublessee shall pay a percentage rent equivalent to a percentage of Sublessee's gross sales less the amount of fixed rental fees already received by Sublessor for said calendar year. The percentage rent shall depend on the type of product sold. **This project is approved for wholesale products only and no retail products. TWO AND A HALF percent (2.5%)** shall be applied to gross sales of wholesale products.

If the percentage of Sublessee's gross sales for any calendar year exceeds the amount of fixed rental fees already paid by Sublessee for such period, then Sublessee shall pay percentage rent based on the types of product sold and percentage of Sublessee's gross sales less the amount of fixed rental fees already received by Sublessor for said calendar year. The amount of fixed rental fees to be subtracted from the percentage rent due in any calendar year shall not exceed an amount equal to twelve (12) months of fixed rental fees. Within ninety (90) days of the end of each calendar year, Sublessee shall submit to Sublessor an annual report prepared by its certified public accountant (or an independent public accountant that is acceptable to Sublessor) showing its gross sales less any exclusions as provided herein for each of its product types. Sublessee shall submit to Sublessor a copy of its completed annual state of Hawaii general excise tax form at the same time the general excise tax form is due to the State of Hawaii. Sublessee shall also submit to Sublessor any other information and evidence requested by Sublessor related to Sublessee's gross sales. Sublessee shall within ninety (90) days of the end of each calendar year pay Sublessor any percentage rent due without further notice or demand.

c) Costs and other fees

Sublessee agrees to pay all costs incurred by Sublessor that result from the installation of Sublessee's seawater and utility systems, including any metering and monitoring devices; provided that prior to commencing any work Sublessee and Sublessor have approved and signed a NELHA work order specifying the work to be accomplished. Sublessee agrees to pay all other fees and accumulated variable charges for services and utilities which are based on actual or estimated usage by Sublessee multiplied by the then current rate established by NELHA. Invoices will be mailed after the fifteenth (15<sup>th</sup>) day of each month beginning on the commencement date of this Sublease and are payable within thirty (30) days. A service fee of FIFTY AND NO/100 DOLLARS (\$50.00) will be due for each check returned due to insufficient funds. All payments shall be made at, or

mailed to, the Sublessor's business office in Kailua-Kona. Checks shall be made payable to: State of Hawaii/NELHA.

d) Interest rate

The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus an administrative fee of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

e) "Gross sales" defined

As used herein, the term "gross sales" means:

(i) All income and revenue derived by Sublessee (or any of Sublessee's subsidiaries, sister companies, parent company, related companies, affiliates, officers, directors, shareholders, investors, owners, principals, managers, members, employees, partners or joint venturers) from, relating to, or connected with the production, operation, sales, or services rendered under this Sublease as described in the project proposal attached hereto as Exhibit "A" and incorporated herein, whether for cash or credit, whether paid or unpaid, and whether the income or revenue is generated on or off of the subleased premises, or whether the order is placed by mail, telephone, fax, internet or otherwise; provided, however, that the following shall be excluded **or deducted, depending on Sublessee's accounting treatment of them**, from the computation of gross sales:

- A. Any and all retail sales taxes, excise taxes, or related direct taxes upon the consumer and collected by the Sublessee on these sales;
- B. Receipts from the sale or trade-in value of any furniture, fixtures, or equipment used upon the subleased premises and owned by the Sublessee;
- C. Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
- D. Receipts with respect to any sale where the subject of the sale, or some part thereof, is returned by the purchaser and accepted by the Sublessee, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
- E. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
- F. Receipts from the sales at cost of uniforms or clothing to Sublessee's employees where the uniforms or clothing are required by the Sublessee;
- G. Receipts for shipping costs to a destination outside of the State of Hawaii;
- H. Brokerage commissions for foreign sales—To the extent that the amount of any brokerage commission for foreign sales is included in the sales price charged to

Sublessee's customer, then Sublessee shall be allowed to exclude from its gross sales such brokerage commission that is directly imposed upon Sublessee by such foreign broker; or

- I. Import tariffs—To the extent that the amount of any import tariff is included in the sales price charged to Sublessee's customer, then Sublessee shall be allowed to exclude from its gross sales such import tariff that is directly imposed upon Sublessee by a duly constituted authority.
- J. **Intellectual property licenses and royalties related to intellectual property which are determined on the basis of Sublessee's gross revenue.**

(ii) The Sublessee shall not be credited with or allowed to have any reduction in the amount of the gross sales, which results in any arrangements for a rebate, kickback, or hidden credit given or allowed to any customer. In order to induce Sublessor to enter into this Sublease, Sublessee represents and warrants that it shall not attempt to avoid or reduce the percentage rent provided for herein by, among other things, attempting to reduce its gross sales or avoid a sale which otherwise would or could have been made at or from the subleased premises. For example, but not intending to limit the scope of this provision, Sublessee shall not transfer or move any portion of its operations (which includes, but is not limited to production, sales or services rendered), whether existing or planned as described in this Sublease or the project proposal attached hereto as Exhibit "A," to a site away from the subleased premises which has the effect of avoiding or reducing the percentage rent as provided for herein; provided however, Sublessee may, with Sublessor's prior written approval, transfer or move a portion of its operations to a site away from the subleased premises as long as Sublessee includes all income and revenue generated from such off-site operations into Sublessee's "gross sales" for purposes of determining the percentage rent provided for herein.

g) Incentives

In recognition of the substantial capital investment by Sublessee to the subleased premises during the early years of the Sublease and the substantial financial risks undertaken by Sublessee together with other direct and indirect benefits which will accrue to the State of Hawaii by reason of the presence of Sublessee at the subleased premises, Sublessee shall be entitled to an offset against the Percentage Rent payable to Sublessor. The Sublessee shall be entitled to a maximum total offset of ONE HUNDRED PERCENT (100%) of permanent land improvements made by the Sublessee to the subleased premises during the first FIVE (5) years of the sublease term. The offset shall only be credited against the amount by which the Percentage Rent exceeds the fixed monthly rental fee defined above. Offsets may be applied at Sublessee's discretion over the initial ten year period, but no offsets shall be taken against Percentage Rent after the tenth (10<sup>th</sup>) year of the sublease term, i.e. after **June 8th, 2031**.

Sublessee shall, within ninety (90) days of the end of each calendar year during the first five years of the sublease term, submit to Sublessor documentation of all capital

investments which are to be applied as offsets against the Percentage Rent due for the preceding year.

For purposes of this offset provision, “land improvements” shall mean all expenditures by Sublessee for permanent site improvements which have been constructed during the first FIVE (5) years of the sublease term, including: grading, contouring, road construction, paving, fill materials, landscaping, utility installation, and seawater and deep well pipeline installation. It is specifically understood between the parties that no offsets shall be allowed for “above ground improvements” or Sublessee’s equipment or trade fixtures. “Above ground improvements” shall mean all expenditures by Sublessee for initial construction, alterations, additions or improvements to any permanent buildings or structures. It is the intent of the parties that any offsets allowed hereunder shall be for the construction of permanent improvements, which permanent improvements shall remain on the premises at the end of the term of this Sublease, unless otherwise directed by the Sublessor.

2. Reopening of monthly rental fees

The monthly fixed rental fees and the percentage rent reserved shall be reopened and redetermined as of the day following the expiration of the **TENTH (10<sup>TH</sup>) year** and **EVERY TENTH (10<sup>TH</sup>) YEAR THEREAFTER** of the sublease term.

3. Determination of fixed rental fees and percentage rent upon reopening of the annual rent.

a) The rental fees for any period after the fifth year of the sublease term shall be the fair market rental at the time of reopening, provided however, in no event shall the fair market rental for the ensuing period be less than the minimum monthly rent for the preceding rental period. Unless the Sublessor and the Sublessee mutually agree on the fair market rental for the ensuing period at least six (6) months prior to the time of reopening, then the fair market rental shall be determined by an appraiser appointed by Sublessor who is: (i) an employee of the Department of Land and Natural Resources who is qualified to appraise lands; or (ii) a disinterested appraiser whose services shall be contracted for by Sublessor. In determining the fair market rental for the subleased premises, the appraiser or appraisers shall consider: (i) the infrastructure and amenities (both tangible and intangible) available to Sublessee and other tenants within the Natural Energy Laboratory of Hawaii Authority leased lands (as described in General Lease S-5619, Exhibit “F,” attached hereto) that enhance or add to the value or desirability of the subleased premises, including, but not limited to the investment costs incurred by Sublessor for the infrastructure, land improvements, freshwater lines, seawater lines, and other improvements on the premises of neighboring tenants; (ii) the buildings and other improvements existing on the subleased premises at the time of reopening that were neither constructed nor placed on the subleased premises by Sublessee; and (iii) local commercial rates and rents, and any other applicable and appropriate market evidence. Notwithstanding the foregoing, in no event shall the fair market rental for the ensuing period be less than the monthly fixed rent for the preceding rental period. The Sublessee shall be promptly notified by certified mail, return receipt requested of the fair market rental as determined by Sublessor’s appraiser; provided, that



should the Sublessee fail to notify Sublessor in writing within thirty (30) days after receipt thereof that Sublessee disagrees with the fair market rental as determined by Sublessor's appraiser and that Sublessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Sublessor's appraiser shall be deemed to have been accepted by Sublessee and shall be the fair market rental as of the date of the reopening. If Sublessee has notified Sublessor and appointed its appraiser as stated hereinabove, Sublessee's appraiser shall complete its appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of the Sublessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Sublessor and Sublessee, unless otherwise modified or corrected for good cause by a majority of the appraisers within TWENTY (20) days thereafter. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Sublessor and the Sublessee. All appraisal reports shall become part of the public record of the Sublessor.

In the event the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Sublessee shall pay the fair market rental as determined by the Sublessor's appraiser and the rental paid by Sublessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Sublessee or Sublessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Sublessee's right to contest the new rent, and the Sublessee shall pay the rent as determined by Sublessor's appraiser without any retroactive adjustments. Alternatively, Sublessor may treat this failure as a breach of this Sublease and terminate the Sublease accordingly.

b) Unless otherwise mutually agreed upon by the Sublessor and the Sublessee, the percentage rent for any ensuing period shall be the same two and a half percent (2.5%) of Sublessee's gross sales as provided for in paragraph 1 hereinabove; provided however, in no event shall the percentage rent for the ensuing period be less than the percentage rent for the preceding rental period.

#### 4. Business records

The Sublessee shall:

a) Prepare and keep for a period of at least five (5) years, all pertinent original sales records including serially numbered sales slips and all other sales records whatsoever

which would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of the Sublessee's sales and gross sales.

b) Submit to the Sublessor on or before the ninetieth (90<sup>th</sup>) day following the end of each calendar year at the place fixed for the payment of rent, a statement certified as correct by the Sublessee or by a person duly authorized by the Sublessee, which sets forth in accurate detail the amount of gross sales during the preceding calendar year, duly verified by an independent certified public accountant. These statements shall be prepared in compliance with Generally Accepted Accounting Principles (GAAP).

Without prejudice to any remedies provided in this Sublease for Sublessee's default, if the Sublessee shall fail to promptly furnish any calendar year report or certified public accountant's annual verification report, the Sublessor may have the report prepared on Sublessee's behalf by an accountant to be selected by the Sublessor, at the expense of the Sublessee. The Sublessee shall furnish to the accountant all records requested for the purpose of preparing the reports, and the Sublessee shall pay to the Sublessor all expenses incurred by the Sublessor in securing the reports. In the event that Sublessee fails to cause its certified public accountant to submit an annual report of gross sales to Sublessor, Sublessee shall submit copies of its monthly or quarterly general excise tax returns and shall pay the appropriate percentage rent of its gross revenues for the preceding calendar year.

c) Grant unto the Sublessor at all reasonable times access to all books, accounts, records, and reports including gross income tax reports, showing sales, and other pertinent records including **and limited to** the following **provided these documents are sufficient to substantiate Sublessee's annual reports:**

- (i) shipping costs to foreign destinations;
- (ii) import tariffs;
- (iii) Hawaii general excise tax;
- (iv) Hawaii corporate, partnership, or individual income tax;
- (v) federal corporate, partnership, or individual income tax;
- (vi) records showing capital expenditures made until the full offset against percentage rent has been achieved, if offset is provided.

Sublessee shall at any reasonable time upon **ten (10)** business days notice, permit the Sublessor's accountant or a certified public accountant to complete an audit of the Sublessee's entire business affairs and records relating to the business conducted on the subleased premises for the term of the Sublease. The Sublessee shall cooperate fully in making any inspection, examination, or audit. If the audit by a certified public accountant or by Sublessor's accountant discloses that rental has been underpaid by two percent (2%) or more for any period under examination, the Sublessor shall, in addition to the remedies provided in paragraph b. above, be entitled to reimbursement of the reasonable cost of the audit in addition to the deficiency. If the audit by a certified public accountant or by Sublessor's accountant shall disclose that rent has been underpaid by five percent (5%) or more for the period under examination, the Sublessor shall also have the right to terminate this Sublease.

5. Reserved

6. Additional rent

All taxes, rates, assessments, charges, duties, costs, expenses, interest on past due accounts, administrative fees for late payments, and charges for utility services that Sublessee assumes, agrees to, or is obligated to pay Sublessor under this Sublease and its attachments, shall be deemed additional rent. In the event of a Sublessee's nonpayment, Sublessor shall have the same rights and remedies with respect to the additional rent as is provided for herein in case of nonpayment of rent. Sublessee shall pay Sublessor the rent, additional rent, and adjustments of rent provided for in this Sublease, when due and without notice of demand, at the time and in the manner specified herein.

RESERVING UNTO THE STATE OF HAWAII AND SUBLESSOR THE FOLLOWING:

7. Minerals and waters

a) All minerals as hereinafter defined, in, on or under the subleased premises and the right, on the State of Hawaii's or Sublessor's own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, bauxite, silver, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Sublessee's permitted activities on the subleased premises and not for sale to others.

b) All surface and ground waters appurtenant to the subleased premises (but specifically excluding seawater) and the right on the State of Hawaii's or Sublessor's own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of this right reserved; provided, however, that as a condition precedent to the exercise by the State of Hawaii or Sublessor of the rights reserved in this paragraph, just compensation shall be paid to the Sublessee for any of Sublessee's improvements taken.

8. Prehistoric and historic remains

All prehistoric and historic remains found on said subleased premises.

9. Ownership of fixed improvements

The ownership of all improvements of whatever kind or nature, including but not limited to fences and pipeline system(s) located on the land prior to or on the date when this Sublease was executed.

THE SUBLESSEE COVENANTS AND AGREES WITH THE SUBLESSOR AS FOLLOWS:

10. Payment of rent

Sublessee shall pay said rent to the Sublessor at the times, in the manner and form provided in this Sublease and at the place specified above, or at such other place as the Sublessor may from time to time designate, in legal tender of the United States of America.

11. Taxes, assessments, etc.

Sublessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the subleased premises or any part thereof, or any improvements thereon, the Sublessor or Sublessee are now or may be assessed or become liable by authority of law during the term of this Sublease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Sublessee shall be required to pay only such installments, together with interest, which becomes due and payable during said term.

12. Seawater, brackish water, potable water, and groundwater

If applicable, Sublessor will use reasonable efforts to maintain seawater flow at the times and rates required by Sublessee, but because of the unpredictable conditions and aging equipment relating to the seawater delivery, Sublessor does not guarantee a continuous delivery of seawater. Sublessor shall not be liable for any and all claims, loss, costs, damages, or expenses arising out of Sublessor's inability to provide seawater to Sublessee. Sublessee may terminate this Sublease if seawater delivery is permanently discontinued by Sublessor and is unavailable to the subleased premises.

Sublessee acknowledges that Sublessor cannot warrant, guarantee, or represent that the quality of its seawater, brackish water, potable water, and groundwater is never subject to contamination or change. Sublessee further acknowledges that it assumes all risk of loss for injury or property damage which may result from contamination of seawater, brackish water, potable water, and groundwater. Sublessor shall not be liable for change in quality of any and all claims, loss, costs, damages, or expenses arising out of the contamination or change in quality of seawater, brackish water, potable water, and groundwater.

13. Utilities

Sublessee shall pay when due all charges, duties, and rates of every description, including water, electricity, sewer, gas, refuse collection, and any other charges, as to which the subleased premises or any part, or any improvements the Sublessor or Sublessee may become liable for during the term, whether assessed to or payable by the Sublessor or Sublessee.

Sublessor will use reasonable efforts to accommodate Sublessee's requirements for utilities at the site. However, Sublessor shall not be responsible for any inability to provide utilities to

Sublessee. In the event that the utilities furnished to Sublessee must be interrupted or diminished by Sublessor on a scheduled basis, Sublessor will provide Sublessee with **ten (10) days** notice thereof, **unless the situation warrants an emergency repair**. Sublessor shall not be liable for any and all claims, loss, costs, damages, or expenses arising out of any interruption of utility service to the Sublessee.

Sublessee recognizes that potable water is in limited supply in the North Kona-Kohala area and Sublessee agrees that it shall conserve portable water whenever possible.

Provision of potable water will be on a non-guaranteed basis and is subject to the provisions of the County Department of Water Supply.

Subject to Sublessor's prior approval, Sublessee may install its own telephone equipment using existing utility conduits.

14. Equipment and apparatus

Sublessee shall be solely responsible for any equipment and apparatus provided and operated by the Sublessee. All of Sublessee's equipment and apparatus that will be connected to the seawater systems and the electrical systems at the facility shall be subject to inspection by the Sublessor or its designated representative prior to any connection. All of Sublessee's equipment and apparatus shall be installed and operated in accordance with applicable standards, regulations, codes and sound engineering practice. Sublessee shall, at its own expense, keep, repair and maintain its equipment and apparatus in good order, condition and repair, reasonable wear and tear excepted. Sublessor or its designated representative may request additional inspection and certification by outside experts or professional engineers at Sublessor's expense; however, the expense for the additional inspection and certification shall be paid by the Sublessee if all of Sublessee's equipment and apparatus have not been installed and operated according to the foregoing requirements stated herein.

15. Seawater systems and utility connections

It shall be the responsibility of the Sublessee to make the necessary connections to the existing seawater, potable water, electrical, process air, and utility systems. All connections and service lines shall be installed in accordance with the applicable rules, regulations, laws, and codes and shall be subject to Sublessor's prior approval. Sublessee shall discuss with and obtain the concurrence of the Sublessor or its designated representative as to the method proposed for each connection and line, and the days and time that any proposed connection might cause disruption to Sublessor's operations, utilities, or services. Sublessor shall be permitted to inspect the installation of all connections and service lines.

16. Operations

Sublessee shall conduct its activities on the subleased premises in accordance with all applicable Federal, State, and County statutes, ordinances and regulations in addition to Sublessor's rules and regulations. Sublessor will provide the Sublessee with a copy of its Facilities Use Manual (FUM) which outlines the day to day operating rules, regulations, and expected conduct on the subleased premises. All discharges from the Sublessee's project shall be in conformity with and comply with existing NELHA permits at the site. Sublessee shall

obtain and be responsible for all required species importation permits and copies of all permits shall be submitted to Sublessor prior to introduction of any species to the subleased premises.

Sublessee also shall comply with and obey all rules and regulations pertaining to the use and enjoyment of the premises and facilities, including, but not limited to full compliance with the NELHA Facilities Use Manual, the NELHA Aquatic Species Health Management Program, the Natural Energy Laboratory of Hawaii and Hawaii Ocean Science and Technology Park Policy and Procedure Manual. Sublessor may, in its sole and absolute discretion, amend any existing rule or regulation, and promulgate or otherwise impose additional rules and regulations at any time. Sublessee's breach of any of the aforesaid rules or regulations shall be deemed a material default under this Sublessee, and Sublessor may, in its sole and absolute discretion, elect to terminate this Sublessee.

17. Seawater discharges

Sublessee shall minimize any adverse environmental effects to the surrounding ocean waters and to the water returned by Sublessee to the ocean. Sublessee shall permit Sublessor to monitor the surrounding ocean waters and the water returned by Sublessee to the ocean. Sublessee shall submit discharge water quality and quantity samples to Sublessor for inspection, review, and testing upon request by Sublessor. Water discharged by Sublessee into any disposal system shall meet the applicable water quality criteria prescribed by the department of health in its rules relating to water quality standards. Sublessee shall be responsible and bear all costs incurred for re-treating its discharged water to meet these standards.

Sublessor may require Sublessee to monitor, record, and report the quality of Sublessee's discharged water to Sublessor monthly. Sublessee shall allow Sublessor to enter the subleased premises **with at least one (1) day notice** for the purpose of taking samples of Sublessee's water discharge for independent water quality analysis. **Sublessor must accommodate all biosecurity protocols and procedures prior to entering the premises.** In the event that Sublessee's water discharge fails to meet the department of health's water quality standards, Sublessor shall have the authority to order the Sublessee to cease all of its operations until the water discharge problem has been corrected to the satisfaction of the Sublessor and the department of health; provided that Sublessee shall be given reasonable notice of such action, and shall be afforded reasonable time to shut down Sublessee's operations without unduly disrupting its business or damaging or endangering its live stock. Should the Sublessee fail to cease all of its operations when ordered to do so by the Sublessor, Sublessee's actions shall amount to a breach of this Sublease, thereby entitling the Sublessor to terminate this Sublease in accordance with paragraph 37 herein. In any event, Sublessee shall be liable for any and all property or environmental damage resulting from its water discharge.

18. Sublessee responsibility

All persons hired or used by Sublessee shall be considered Sublessee's agents and employees and Sublessee shall be responsible for all services performed by its agents and employees. Further, Sublessee intentionally, voluntarily, and knowingly assumes the sole and entire liability for any of its agents and employees, and to third persons for all loss, cost, damage, or injury caused, either directly or indirectly, by Sublessee's agents and employees in the course of their employment.

19. Covenant against discrimination

The use and enjoyment of the subleased premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, sexual identity or expression and sexual orientation, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, or HIV (human immunodeficiency virus) infection.

20. Sanitation, etc.

Sublessee shall keep the subleased premises and improvements in a strictly clean, sanitary, and orderly condition.

21. Waste and unlawful, improper or offensive use of subleased premises

Sublessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the subleased premises, or any part, nor, without the prior written consent of the Sublessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the subleased premises.

22. Compliance with laws

Sublessee shall comply with all of the requirements of all county, state, and federal authorities and observe all county, state, and federal laws (including, but not limited to the observance of and compliance with the Americans With Disabilities Act) applicable to the subleased premises, now in force or which may be in force.

23. Inspection of subleased premises

Sublessee shall permit the Sublessor and its agents, at all reasonable times during the sublease term **and with at least one (1) day notice**, to enter the subleased premises and examine the state of repair and condition of the subleased premises. **Sublessor must accommodate all biosecurity protocols and procedures prior to entering the premises.**

24. Improvements

Sublessee shall not at any time during said term construct, place, maintain, and install on the subleased premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Department of Transportation, Airports Division and Sublessor, and upon those conditions as the Chairperson of the Board of Land and Natural Resources and the Sublessor may impose, including any adjustment of rent, unless otherwise provided in this Sublease. The Sublessee shall own these improvements until the expiration, surrender, or termination of the Sublease, at which time the building, structure or improvement shall, at the option of the Sublessor, remain and become the property of the Sublessor or be removed by the Sublessee at the Sublessee's expense.

All allowed structures and improvements shall comply with applicable County building codes and construction permits. Copies of all required permits shall be submitted to Sublessor prior to initiating any construction activities. All buildings, structures, and landscaping shall express the island character and be of high quality, but shall be natural in appearance emphasizing the outdoor environment. The Sublessee shall provide sufficient landscaping, satisfactory to Sublessor, to make the project site visually attractive **in accordance with the**

**NELHA Development and Design Guidelines as published by NELHA at the time of Sublessee's construction.**

25. Repairs to improvements

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

26. Non-adverse effects

Any building, structure, or improvement erected or constructed by the Sublessee on the subleased premises, shall not in any way adversely affect the safe and efficient operations of the Kona International Airport at Keahole and prior to construction or erection shall be approved in writing by the Sublessor.

27. Non-obstruction reservations

The conveyance of this Sublease shall be subject to the following reservations:

- a) There is hereby reserved to the Department of Transportation, Airports Division, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the subleased premises herein conveyed. This public right of flight shall include the right to cause any noise inherent in the landing, departing or operation of any aircraft used for navigation or flight through the airspace or on or about the Kona International Airport at Keahole.
- b) The erection of structures or growth of natural objects that would constitute an obstruction to air navigation is prohibited.
- c) Any activity on the land or along the adjacent coast that would interfere with or be a hazard to the flight of aircraft over the land or to and from the Kona International Airport at Keahole or interfere with air navigation and communication facilities serving said airport is prohibited.
- d) The height limitations above which no structure or growth shall be permitted shall be in accordance with the Airport Zoning Regulations all as shown on Exhibit "D".
- e) The filing of notice of construction requirements in FAR Part 77 shall remain in effect.

28. Liens

Sublessee shall not commit or suffer any act or neglect which results in the subleased premises, any improvement, or the leasehold estate of the Sublessor becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Sublease, and shall indemnify, defend, and hold the Sublessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses and attorneys' fees.



## 29. Assignments

The Sublessee shall not transfer, assign, or permit any other person to occupy or use the subleased premises or any portion or transfer or assign this Sublease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approvals of the Board of Land and Natural Resources and the Sublessor the assignment and transfer of this Sublease or any portion may be made if (1) in the case of commercial, industrial, and other business uses, the Sublessee was required to put in substantial building improvements; (2) the Sublessee becomes mentally or physically disabled; (3) extreme economic hardship is demonstrated to the satisfaction of the Board of Land and Natural Resources and the Sublessor; or (4) it is to the corporate successor of the Sublessee; provided, further, that prior to the approval of any assignment of sublease, the Sublessor shall have the right to review and approve the consideration paid the assignee and may condition consent to the assignment of the Sublease on payment by the Sublessee to the Sublessor of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the assignee pursuant to the Board of Land and Natural Resources' Assignment of Lease Evaluation Policy, as it may be amended, a copy of which is attached hereto as Exhibit "E." The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor, pursuant to the abovementioned Evaluation Policy.

With respect to state agricultural or aquaculture subleases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Sublessee is a partnership, joint venture or corporation, the sale or transfer of 50% interest or more of ownership in one year or stocks by dissolution, merger, or any other means shall be deemed an assignment for purposes of this paragraph and subject to the rights of the Board of Land and Natural Resources and the Sublessor to impose the foregoing premium as described in attached Exhibit "E. **The sale of stock for the purpose of raising funds to grow the business in accordance with the approved business plan attached hereto in Exhibit A shall not trigger this assignment clause.**

## 30. Subletting

The Sublessee shall not rent or sublet the whole or any portion of the subleased premises, without the prior written approvals of the NELHA Board of Directors and the Sublessor; provided, however, that prior to this approval, the NELHA Board and the Sublessor shall have the right to review and approve the rent to be charged to the proposed Sublessee and that in the case where the Sublessee is required to pay rent based on a percentage of its gross sales, the receipts of the proposed Sublessee or any subsequent Sublessee shall be included as part of the Sublessee's gross sales, and the NELHA Board of Directors and the Sublessor shall have the right to revise the rent of the subleased premises based upon the rental rate charged to the proposed Sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

### 31. Indemnity

The Sublessee shall indemnify, defend, and hold the State and Sublessor harmless from and against any claim or demand for loss, liability, or damage including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of Sublessee relating to Sublessee's or its employee's or agent's use, occupancy, maintenance, or enjoyment of the subleased premises; (2) any failure on the part of the Sublessee to maintain the subleased premises and sidewalks, roadways and parking areas adjacent thereto in Sublessee's use and control, and including any accident, fire, or nuisance, growing out of or caused by any failure on the part of the Sublessee to maintain the subleased premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Sublessee's non-observance or non-performance of any of the terms, covenants, and conditions of this Sublease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

### 32. Costs of litigation

In case the Sublessor or the State of Hawaii shall, without any fault on its part, be made a party to any litigation commenced by or against the Sublessee (other than condemnation proceedings), the Sublessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Sublessor and the State of Hawaii; furthermore, the Sublessee shall pay all costs, including reasonable attorney's fees and expenses which may be incurred by or paid by the Sublessor and the State of Hawaii in enforcing the covenants and agreements of this Sublease, in recovering possession of the subleased premises or in the collection of delinquent rental, taxes, and any and all other charges.

### 33. Liability insurance

The Sublessee shall procure and maintain, at its cost and expense and acceptable to the Sublessor, in full force and effect throughout the term of this Sublease, commercial general liability insurance in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and commercial general property damage insurance in an amount of at least \$50,000.00 for each occurrence and \$100,000.00 aggregate, with an insurance company or companies rated A or higher licensed to do business in the State of Hawaii or any other state. If surplus insurance is obtained by the Sublessee for liability insurance, Sublessee shall procure the surplus insurance in accordance with the applicable laws of the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii and the Sublessor as additional insureds. The insurance shall cover the entire subleased premises, including buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the subleased premises in the use or control of the Sublessee.

The Sublessee, prior to entry and use of the subleased premises or within fifteen (15) days from the effective date of this Sublease, whichever is sooner, shall furnish the Sublessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire sublease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be canceled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Sublessor.

The Sublessee agrees that, with respect to any contractors or subcontractors performing services on the Sublessee's behalf on the subleased premises, the aforementioned liability insurance requirements shall also apply. The Sublessee shall provide the required certificate(s) of insurance to Sublessor prior to commencement of those services.

The Sublessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Sublease. If, in the opinion of the Sublessor, the insurance provisions in this Sublease do not provide adequate protection for the Sublessor, the Sublessor may require Sublessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Sublessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Sublessor shall notify Sublessee in writing of changes in the insurance requirements and Sublessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Sublessor incorporating the changes within thirty (30) days of receipt of the notice.

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

It is agreed that any insurance maintained by the Sublessor with respect to the subleased premises will apply in excess of, and not contribute with, insurance provided by Sublessee's policy.

Sublessee shall provide a full and complete copy of any insurance contract obtained as required by this sublease to NELHA upon demand.

34. Bond, performance

The Sublessee shall, at its own cost and expense, within thirty (30) days after the date of receipt of this sublease document, procure and deposit with the Sublessor and thereafter keep in full force and effect during the term of this Sublease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Sublessee of all the terms, conditions, and covenants of this Sublease, in an amount equal to the annual rent and annual estimated additional rental then payable. This bond shall provide that in case of a breach or default of any of the sublease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Sublessor as liquidated and ascertained damages and not as a penalty.

35. Sublessor's lien

All buildings, improvements, equipment, fixtures, furniture, furnishings, inventory, merchandise, goods and other property of every kind and description which the Sublessee shall during the term of this Sublease construct, install, place or store, or caused to be constructed, installed, placed or stored, within the subleased premises whether subsequently removed therefrom by the Sublessor to a public warehouse or other place of storage and whether exempt

from execution or not, shall be bound by and subject to a lien in favor of the Sublessor for the payment of the rent and charges herein reserved and any damages arising from any breach by the Sublessee of any of the terms, covenants or conditions of this Sublease; that upon default by the Sublessee, the Sublessor may take possession of said property or any parts thereof and sell or cause the same to be sold at public or private sale, with or without notice, to the highest bidder for cash, and apply the proceeds of said sale toward the cost thereof and the expenses of moving, preserving, protecting, and storing said property, and then toward any amount which may be owing to the Sublessor on account of Sublessee's default. Without limitation to the foregoing, all persons who have any right, title or interest or security interest in any of the buildings, improvements, equipment, fixtures, furniture, furnishings, and other property constructed, installed, placed, or stored within the subleased premises by Sublessee, shall be deemed to have subordinated all of their right, title and interest and security interest in and to the same to the lien of the Sublessor as set forth herein unless they obtain the prior written approval of Sublessor that their said interest shall have priority. Resort by the Sublessor to the remedy herein provided shall be in addition to and without prejudice to any other right or remedy which Sublessor may have or be entitled.

36. Mortgage

Except as provided in this Sublease, Sublessee shall not mortgage, hypothecate or pledge the subleased premises or any portion, or any interest in this Sublease, without the prior written approval of Sublessor and the State of Hawaii's Board of Land and Natural Resources and mortgage, hypothecation or pledge without the approval shall be null and void.

That upon due application and with the written consent of the Sublessor and the State of Hawaii Board of Land and Natural Resources, the Sublessee may mortgage this Sublease or any interest, or create a security interest in the subleasehold of the subleased premises. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, consent may extend to foreclosure and sale of Sublessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to sublease, own or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder at the foreclosure shall be freely assignable. However the use of the premises shall be limited to that as set forth in Exhibit 'A.' The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

37. Breach and termination

Time is of the essence of this agreement.

a) The Sublessor may give the Sublessee five business days' notice of intention to terminate this Sublease if a material breach or default shall occur. The occurrence of any of the following shall constitute a material breach or default of the Sublease by Sublessee:

(i) Sublessee shall fail to pay the rent, additional rent or other monetary obligation, or any part thereof at the times and in the manner provided in this Sublease within ten (10) calendar days after delivery by the Sublessor of a written notice of the breach or default, by personal service, registered mail, or certified mail to the Sublessee at its last known address and to each mortgagee or holder of record having a security interest in the subleased premises.

(ii) Sublessee shall become bankrupt, or if any assignment be made of the Sublessee's property for the benefit of creditors, or if this Sublease and the subleased premises shall be attached or taken by operation of law.

(iii) Sublessee uses the subleased premises for purposes other than as specified in this Sublease and in Exhibit "A", abandons the subleased premises, or ceases all activities for a period of three (3) months without the Sublessor's written consent.

(iv) Sublessee fails to comply with or otherwise obey all rules and regulations pertaining to the use and enjoyment of the premises and facilities, including, but not limited to the full compliance with NELHA's Facilities Use Manual, the Aquatic Species Health Management Program, the Natural Energy Laboratory of Hawaii and Hawaii Ocean Science and Technology Park Policy and Procedure Manual.

(v) Sublessee wholly ceases all activities on the subleased premises for a period of three (3) months without the written consent of Sublessor.

(vi) Sublessee fails to comply with any statutes, ordinances, laws, rules or regulations of the federal, state, municipal or county governments affecting the subleased premises.

(vii) Sublessee shall fail to observe and perform any covenant, term or condition contained in this Sublease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Sublessor of a written notice of the breach or default, by personal service, registered mail, or certified mail to the Sublessee at its last known address and to each mortgagee or holder of record having a security interest in the subleased premises; provided, that if Sublessor deems in its sole discretion that such default shall be of such nature that it cannot with due diligence be cured completely within such sixty (60) day period, Sublessee may be deemed not to be in default on the condition that the Sublessee shall within such period commence and thereafter diligently prosecute the cure to completion upon such terms and conditions as required by Sublessor at Sublessor's discretion.

b) Termination. In the event of any such material breach or default by Sublessee and with five business days' notice of termination given to Sublessee, the Sublessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, at once

re-enter the subleased premises or any part thereof, administratively and without the need for a court order, and upon or without this entry, at its option, terminate this Sublease and all rights of Sublessee hereunder, and shall have the right to terminate, at its election, any sublease then in effect without the consent of the Sublessee concerned and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination at the option of the Sublessor, all buildings and improvements shall remain and become the property of the Sublessor or shall be removed by Sublessee at the Sublessee's cost; furthermore, Sublessor shall retain all rent paid in advance to be applied to any damages. This does not prohibit the Sublessor from seeking further damages. Sublessor shall not be deemed guilty of trespass or become liable for loss or damage which may be occasioned thereby.

38. Right of holder of record of a security interest

In the event the Sublessor seeks to forfeit the privilege, interest, or estate created by this Sublease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within ten (10) days or any other default or breach within sixty (60) days, from the date of receipt of the Sublessor's notice, or within such additional period as the Sublessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Sublessor may: (a) pay to the holder from any moneys at its disposal, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the Sublessor or State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to dispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Sublessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Sublessor for costs and expenses in connection with the disposition; second to discharge in full any unpaid purchase price or other indebtedness owing the Sublessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market sublease value of the land as previously determined by the Sublessor's or State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

39. Condemnation

If at any time, during the term of this Sublease, any portion of the premises should be condemned or required for public purposes by the State, any county, or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. Sublessor shall be entitled to collect and receive all compensation and damages payable for or on account of all buildings, fixtures and other improvements existing and located on the premises at the commencement of the term of this Sublease. Sublessee shall be entitled to receive from the condemning authority the value of growing crops or animals, if any, which it is not permitted to

harvest. With respect to any improvements hereafter constructed or placed on the premises by Sublessee during the term of this Sublease, Sublessee shall be entitled to collect and receive from the condemning authority the proportionate value of such improvements so taken in the ratio in which the unexpired term of this Sublease from the effective date of condemnation bears to the whole term of this Sublease; and Sublessor's interest in such improvements so taken shall be the ratio in which the expired term of this Sublease from the effective date of condemnation bears to the whole term of this Sublease. The foregoing rights of the Sublessee shall be exclusive. Provided however, to the extent that the improvements hereafter constructed or placed on the premises by Sublessee during the term of this Sublease are not part of the aforesaid condemnation or required for public purpose, then Sublessee may, in the alternative, remove and relocate the aforesaid improvements to the remainder of the lands occupied by Sublessee under this Sublease. Sublessee shall not by reason of such condemnation be entitled to any claim against the condemning authority or Sublessor for condemnation or indemnity for the subleasehold interest or the land and all compensation payable or to be paid for or on account of the aforesaid subleasehold interest and the land shall be payable to and be the sole property of Sublessor. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was subleased, Sublessee shall have the option to surrender this Sublease and be discharged and relieved from any further liability provided further, Sublessor may, in its sole discretion, allow Sublessee to remove within a reasonable period of time the permanent improvements constructed, erected and placed on the premises by Sublessee during the term of this Sublease.

40. Right to enter

The State of Hawaii's Board of Land and Natural Resources or Sublessor or the County, or their respective agents or representatives, upon reasonable notice, shall have the right to enter and cross any portion of the subleased premises for the purpose of performing any public or official duties, provided, however, in the exercise of such rights, the Sublessor, the State of Hawaii Board of Land and Natural Resources or the County shall not interfere unreasonably with the Sublessee or Sublessee's use and enjoyment of the subleased premises. The Sublessor or its designated representative specifically reserves the right to enter the subleased premises or any part thereof for purposes related to the State of Hawaii's operation and maintenance of the Kona International Airport at Keahole, provided that such entry, operation, or maintenance does not unreasonably interfere with or hinder the use, occupancy, operation, and enjoyment of the subleased premises by the Sublessee. In the event Sublessor's executive director or such other designated representative determines that an emergency situation or potential emergency situation threatens the health, safety, or welfare of persons, property, or the environment, the Sublessor or its designated representative may enter the subleased premises or any part thereof without any notice whatsoever.

41. Inspection by prospective bidders

The Sublessor shall have the right to authorize any person or persons to enter upon and inspect the subleased premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and appraising that person or persons of the condition of the lands prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Sublessee, and shall, if the Sublessee so requires, be made in the company of the Sublessee or

designated agents of the Sublessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of the Sublease.

42. Acceptance of rent not a waiver

The acceptance of rent by the Sublessor shall not be deemed a waiver of any breach by the Sublessee of any term, covenant, or condition of this Sublease, nor the Sublessor's right of re-entry for breach of term, condition, or covenant, nor of the Sublessor's right to declare and enforce a forfeiture for any breach of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

43. Ingress and egress

Sublessee shall possess the right, by the most convenient route(s) as approved by the Sublessor, of ingress and egress from the subleased premises for utilities, roadway purposes and pipelines and related facilities necessary for Sublessee's operations and maintenance, subject to any reasonable safety requirements of the Sublessor. This right of ingress and egress shall inure to the benefit of the Sublessee and its duly authorized agents, representatives, contractors, employees, and invitees.

44. Extension of time

Notwithstanding any provision to the contrary contained in this Sublease, when applicable, Sublessor may for good cause shown, allow additional time beyond the time or times specified in this Sublease for the Sublessee to comply, observe, and perform any of the sublease terms, conditions, and covenants.

45. Justification of sureties

Any bonds required by this Sublease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Sublessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Sublessor security in certified checks, certificates of deposit (payable on demand or after such period as the Sublessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Sublessor a deed or deeds of trust of real property, all of such character which is satisfactory to the Sublessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Sublessor shall be determined by the Sublessor, and that the Sublessee may, with the approval of the Sublessor, exchange other securities or money for any of the deposited securities if in the judgment of the Sublessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of securities or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Sublessee, but only upon the written consent of the Sublessor and that until this consent is granted, which shall be discretionary with the Sublessor, no surety shall be released or relieved from any obligation.



46. Waiver, modification, reimposition of bond and liability insurance provisions

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

47. Suspension of operations

In the event of any disaster or pollution, or likelihood of either, having or capable of having a detrimental effect on public health, safety, welfare, or the environment caused in any manner or resulting from operations under this Sublease, the Sublessee shall immediately take corrective action, seek to mitigate any damage and promptly notify Sublessor and the State of Hawaii Board of Land and Natural Resources.

48. Quiet enjoyment

Sublessor hereby covenants and agrees with the Sublessee that upon payment of the rent at the times and in the manner provided and the observance and performance of the covenants, terms, and conditions on the part of the Sublessee to be observed and performed, the Sublessee may have, hold, possess and enjoy the subleased premises for the term of the Sublease, without hindrance or interruption by the Sublessor or any other person or persons lawfully claiming by, through or under it.

49. Surrender

The Sublessee shall, at the end of the term or other sooner termination of this Sublease, peaceably deliver unto the Sublessor possession of the subleased premises, together with all improvements existing or constructed thereon, or the Sublessee at its expense shall remove such improvements, at the option of the Sublessor. Unless otherwise agreed to in writing by Sublessor, any holding over after the expiration of the term provided for in this Sublease shall be deemed to be a tenancy from month to month at 120% of the monthly rental (i.e., 120% of both the fixed rental fee and percentage rent) and 120% of all other charges provided for in this Sublease. Provided further, if at the expiration of the term or other sooner termination of this Sublease, Sublessee fails and refuses to yield up possession of the subleased premises to Sublessor, Sublessee shall pay as liquidated damages an amount equal to 200% of the monthly rent (i.e., 200% of both the fixed rental fee and percentage rent) and 200% of all other charges provided for in this Sublease. Furthermore, upon the expiration, voluntary surrender, termination, and/or revocation of this Sublease, should the Sublessee fail to remove any and all of the Sublessee's personal property from the subleased premises, after notice thereof, the Sublessor may remove any and all personal property from the subleased premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of the Sublessee, and the Sublessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the Sublease.

50. Non-warranty

Sublessor does not warrant the conditions of the subleased premises, as the same is being subleased as is.

51. Hazardous materials

Sublessee shall not cause or permit the escape, disposal, or release of any hazardous materials, except as provided by law. Sublessee shall not allow the storage or use of such materials, nor allow to be brought onto the subleased 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 and upon Sublessor's consent, which consent may be withheld at Sublessor's sole and absolute discretion. Sublessor shall have the sole and absolute discretion to permit such materials to be brought onto and remain on the subleased premises. Sublessee's failure to comply with Sublessor's directions under this section shall constitute a breach of this Sublease. 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 Sublessee shall be responsible for the reasonable costs thereof. 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 subleased premises placed or released by Sublessee.

Sublessee agrees to indemnify, defend and hold Sublessor harmless, from any damages and claims resulting from the release of hazardous materials on the subleased premises occurring while Sublessee is in possession, or elsewhere if caused by Sublessee or persons acting under Sublessee. These covenants shall survive the expiration or earlier termination of the Sublease.

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.

52. Level one (1) hazardous waste evaluation

Prior to the termination of this Sublease or the assignment of the subleasehold, Sublessee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. The termination will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.

53. Fire and Extended Coverage Insurance

a) At all times during the term of this Agreement, Sublessee shall at Sublessee's own expense keep insured all improvements now situated, or hereafter constructed or erected on the premises against loss or damage of fire and the risks covered by the standard extended coverage endorsement policies as shall be issued by an insurance company or companies authorized to do business in the State of Hawaii and as approved by Sublessor and

Sublessee. If surplus insurance is obtained by the Sublessee for liability insurance, Sublessee shall procure the surplus insurance in accordance with the applicable laws of the State of Hawaii. Said policies shall be issued in the names of Sublessor, Sublessee and any mortgagee as their interests may appear and shall be in an amount as near as practicable to the full replacement cost of said improvements. Sublessee will pay all premiums thereon when due and from time to time upon receiving the same will promptly deposit with Sublessor a certificate of insurance coverage as described. Sublessor shall have the right to maintain any policy required under this paragraph 53 whereupon Sublessee shall promptly reimburse Sublessor for all premiums paid by Sublessor with respect thereto and Sublessor will promptly deposit with Sublessee a certificate of insurance coverage.

b) The aforesaid fire insurance policy shall be issued to Sublessee and Sublessor and shall contain an endorsement requiring thirty (30) days' written notice from the insurance company or companies to Sublessor and Sublessee before cancellation or change in the coverage, scope or amount of any policy.

c) Payment of Insurance Proceeds. Every policy of such insurance shall be issued to cover and insure all of the several interests in such buildings, fixtures and improvements of Sublessor, Sublessor's mortgagee, if any, Sublessee and any mortgagees under any mortgage of this Sublease, as their respective interests shall appear, and shall be made payable in case of loss or damage to any bank or trust company authorized by law to exercise corporate trust powers in the State of Hawaii and having its principal office in Honolulu as shall from time to time be designated by Sublessee with the approval of Sublessor, as trustee of all proceeds of such insurance. Such trustee shall have no obligation whatsoever to effect, maintain or renew such insurance, or to attend to any claim for loss or damage thereunder, or the collection of any proceeds thereof, or to incur any expenses therefor, and shall be responsible only for the proper custody and application as herein provided of all proceeds of such insurance that shall actually come into its possession, and Sublessee will pay all fees and expenses of such trustee for or in connection with its services. The respective interests of Sublessor, Sublessee and any mortgagees in any proceeds of such insurance payable for loss or damage to such buildings, fixtures and improvements shall be fixed and determined as of the date of such loss or damage as follows:

(i) Sublessor shall be entitled to collect and receive all proceeds payable for loss or damage to any building, fixtures or other improvements existing and located on the premises at the commencement of the term of this Sublease.

(ii) With respect to any proceeds payable for loss or damage to any building, fixtures or other improvements hereafter constructed and placed on the subleased premises by Sublessee, and at the cost and expense of Sublessee, the interest of Sublessor shall be a proportionate amount thereof in the ratio which the expired portion of the term of this Sublease from the date of such loss or damage, bears to the whole term of this Sublease. The interest of Sublessee therein shall be the balance of such proceeds.

(iii) The interest of any of Sublessee's mortgagees in any of such proceeds shall be limited to the amount of and encumber only the interest of Sublessee in such insurance proceeds. The respective interests and rights of two or more mortgagees in and to such interest of Sublessee shall be determined between them in accordance with the priority of and the unpaid amounts secured by their respective mortgages.

d) Use of Insurance Proceeds. In case such buildings, fixtures or other improvements, or any part thereof, shall be destroyed or damaged by fire or other casualty herein required to be insured against, then, and as often as the same shall happen, all proceeds of such insurance, including the interest therein of Sublessor, shall be available to and used with all reasonable dispatch by Sublessee in rebuilding, repairing or otherwise reinstating such buildings, fixtures and other improvements 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, fixtures and other improvements as shall be approved in writing by the parties hereto, and in case such proceeds shall be insufficient in amount to so rebuild, repair or reinstate such buildings, fixtures and other improvements, Sublessee shall make up the deficiency for such purpose out of Sublessee's own funds; PROVIDED, HOWEVER, that if such loss shall occur in the last ten (10) years of the term of this Sublease and such insurance proceeds shall be insufficient for rebuilding, repairing or otherwise reinstating such buildings, fixtures and other improvements as aforesaid, then Sublessee, in lieu of making up the deficiency, may request in writing to Sublessor within thirty (30) days after such destruction, damage or casualty, that Sublessee, at its own expense, be allowed to promptly remove from the subleased premises all remains of such buildings, fixtures, and other improvements and all debris resulting from such casualty and to restore the land to good and orderly condition and even grade. If approved in writing by Sublessor, and only after such prompt removal and restoration by Sublessee, then Sublessee shall be relieved of all further obligations hereunder with respect to such buildings, fixtures and other improvements.

e) Termination of Agreement. If Sublessee requests to terminate this Agreement and to remove from the subleased premises all remains of such buildings, fixtures and other improvements destroyed or damaged by fire or other such casualty and all debris resulting from such casualty and to restore the land to good and orderly condition and even grade as hereinabove provided, and if Sublessor approves such request in writing, then after such removal and restoration by Sublessee and upon the payment by Sublessee of the real property taxes for the whole tax fiscal year in which such damage or destruction shall occur, either party hereto shall have the right, at its option, by giving twenty (20) days' written notice to the other party, to terminate this Sublease. Upon such termination, Sublessee shall be relieved of all further obligations under this Sublease, and the insurance proceeds payable for loss or damage to such buildings and improvements, shall be payable to the parties in accordance with their interest in the proceeds set forth hereinabove.

f) No Abatement. No damage or destruction of the subleased premises or any portion thereof shall cause the rent or other charges to be abated, and Sublessee shall continue to pay Sublessor all such rents and other charges from the time of such damage or destruction to the time of completion of the repair work or reconstruction of the subleased premises.

Sublessee shall, at its own cost and expense at all times during the term hereof, maintain such insurance as appropriate and available at reasonable rates to cover the payment of such rent and other charges to Sublessor during the period of such damage or destruction; provided, however, such insurance shall be in a minimum amount sufficient to cover rental and other charges for a period of six (6) months.

g) All rights or claims of subrogation against Sublessor and the State of Hawaii, and their respective officers, directors, employees, and agents are hereby waived by Sublessee and any person or entity claiming by, through or under Sublessee.

#### 54. Withdrawal

The Sublessor shall have the right to withdraw the subleased premises, or any portion, at any time during the term of this Sublease upon giving **one (1) year notice if Sublessor has control over the timing of the withdrawal or upon giving reasonable notice if Sublessor does not have control over the timing of the withdrawal** and without compensation, except as provided in the Sublease, for public uses or purposes, including, but not limited to residential, commercial, industrial, or resort developments, for roadway and airport uses, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Sublessor to remove all soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the subleased premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally subleased to become unusable for the specific use or uses for which it was subleased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Sublessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid by the Sublessor based upon the unexpired term of the sublease as it bears to the whole term.

#### 55. Governmental permits

Sublessee shall comply with all applicable federal, state and county permitting requirements including those relating to shoreline management area, shoreline setback requirements, state conservation district requirements, subdivision permits and building standards. The Sublessor does not warrant or guarantee that the applicable federal, state or county authority will permit the construction or installation of improvements that may be required by Sublessee. All costs associated with obtaining the building and other permits or approvals will be borne by the Sublessee.

#### 56. Notices

Sublessor may give any notice or deliver any document hereunder to Sublessee by mailing the same by registered or certified mail addressed to Sublessee's address above or by delivering the same in person to any officer of Sublessee. Sublessee may give any notice or deliver any document hereunder to Sublessor by mailing the same by registered or certified mail addressed to Sublessor's address above or by delivering the same to Sublessor in person. For the purposes of this paragraph, either party may change its address by written notice to the other. In case of any notice or document delivered by certified or registered mail, the same shall be deemed

delivered when deposited in any United States post office, properly addressed as herein provided, with postage fully prepaid.

57. Bond, improvement

Prior to the start of any construction and upon receipt of the appropriate building permit, the Sublessee shall procure and deposit with the Sublessor a surety bond in an amount reasonably determined by the Sublessor, and in any case not to exceed the cost of construction, acceptable to the Sublessor, which bond shall name the State and Sublessor as obligees, conditioned upon the faithful observance, performance, and completion of any building requirement agreed to now or in the future, the completion of the building and improvements on or before the specified date of completion free from all liens and claims, and that the Sublessee shall hold the State and Sublessor harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to any building requirement.

58. No party deemed drafter: Headings

This Sublease has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel. The article and paragraph headings are inserted only for the convenience of the Sublessor and the Sublessee and are not intended to construe the intent or meaning of any of the provisions thereof.

59. Superseding agreement

This Sublease supersedes and terminates all prior leases, subleases, facilities rental agreements, facilities use agreements and option agreements previously made between the Sublessor and Sublessee, provided that Sublessee shall continue to remain liable to the Sublessor and the State for all monetary and insurance obligations incurred prior to the date of this Sublease.

60. Modification of sublease

Any modification, alteration, or change in this Sublease shall be made only by written agreement executed by the parties.

61. Net Agreement

Notwithstanding any provision herein to the contrary, it is the intention of the parties that the rent shall be net to Sublessor. All costs, expenses and obligations relating to the premises shall be paid by Sublessee.

62. "As-Is" Condition

Sublessee represents and warrants to Sublessor that Sublessee has fully inspected the premises and does hereby agree to accept the premises in its "as is" and "where is" condition.

63. Accord and Satisfaction

No payment by Sublessee or receipt by Sublessor of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor

shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Sublessor may accept such check or payment without prejudice to Sublessor's right to recover the balance of such rent or pursue any other remedy provided in this Agreement.

64. Entire Agreement

This Agreement and the Exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Sublessor and Sublessee concerning the premises, and there are no covenants, promises, agreements, conditions or understandings between them other than what is set forth herein. Unless otherwise provided for herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Sublessor or Sublessee unless reduced to writing and signed by all parties.

65. Governing law

This Sublease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

66. Exhibits – incorporated in Sublease

All exhibits referred to are attached to this Sublease and hereby are deemed incorporated by reference.

67. Partial invalidity

If any term, provision, covenant, or condition of this Sublease should be held 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.

68. Time is of the essence

Time is of the essence in the performance of each and every provision of this Sublease.

69. No partnership

The Sublessor is not a partner nor joint venturer with Sublessee in connection with the business carried on under this Sublease and shall have no obligation with respect to Sublessee's debts or other liabilities, and likewise shall not be entitled to share in the profits of any sale of Sublessee's business.

70. Authority

The persons who have executed this Sublease represent and warrant that they are duly authorized to execute this Sublease in their individual or representative capacity as indicated.

71. No waiver

Waiver by either party of strict performance or any provisions of this Sublease shall not be a waiver nor prejudice of the party's right to require strict performance of the same provision in the future or of any other provision.

72. Survey monuments

Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed by Sublessee, Sublessee shall reestablish them by a licensed land surveyor in accordance with U.S. General Land Office standards at Sublessee's own expense. Corners and/or reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this Sublease must be properly and adequately referenced and/or replaced. Such references must be approved by the Sublessor prior to removal of said corners, reference points or monuments.

73. Archaeological sites

In the event any unanticipated sites or remains such as shell, bone, charcoal deposits, human burials, rock or coral alignments, pavings or walls are found on the subleased premises, the Sublessee and the Sublessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at (808) 692-8015 in compliance with Chapter 6E, Hawaii Revised Statutes.

74. Environmental regulations

Sublessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

Sublessee shall also comply with NELHA's Aquatic Species Health Management Program, as may be amended from time to time in NELHA's sole and absolute discretion. The current version of NELHA's Aquatic Species Health Management Program is attached hereto as Exhibit "H" and incorporated herein by this reference. A violation of NELHA's Aquatic Species Health Management Program shall be deemed a material default under this Sublease, and Sublessor may, in its sole and absolute discretion elect to terminate this Sublease.

75. No third party beneficiary enforcement

It is agreed that enforcement of the terms and conditions of this agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Sublessor, the Board of Land and Natural Resources, the State of Hawaii, and the Sublessee, and nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other person on this agreement. The Sublessor and Sublessee intend that any entity, other than the Sublessor, the Board of Natural Resources, the State of Hawaii, or the Sublessee receiving services or benefits under this agreement, shall be deemed and incidental beneficiary only.

THIS SUBLEASE IS ALSO SUBJECT TO THE FOLLOWING SPECIAL TERMS AND CONDITIONS:

76. Design standards

The Sublessee shall comply with any applicable design standards of the Sublessor or the Board of Land and Natural Resources in the preparing, design and construction of structures and other site improvements.

77. Administrative rules



The Sublessee shall comply with all administrative rules adopted by Sublessor pursuant to Chapter 91 and Chapter 227D, Hawaii Revised Statutes, as amended, relating to the Natural Energy Laboratory of Hawaii Authority.

78. Restoration of subleased land

Upon termination, surrender, or expiration of this Sublease, the Sublessor may require the Sublessee to restore the lands covered herein to its original condition insofar as it is reasonable to do so within ninety (90) calendar days thereof, except for such roads, excavations, alterations or other improvements which may be designated for retention by the Sublessor or a State agency having jurisdiction over said lands. When determined by the Sublessor or such State agency, cleared sites and roadways shall be replanted with grass, shrubs, or trees by the Sublessee.

79. Sublease subject to master lease

This Sublease is subject to the terms and conditions of the master lease (including without limitation General Leases No. S-5619, S-4717, and S-5157) between the Board of Land and Natural Resources of the State of Hawaii and Sublessor, a copy of which is attached hereto as Exhibit "F." Any conflicts between the provisions of this Sublease and the foregoing master lease shall be resolved in favor of the master lease.

## **DEFINITIONS**

30. The use of any gender shall include all genders, and if there is more than one Sublessee, then all words used in the singular shall extend to and include the plural.

As used herein, unless clearly repugnant to the context:

- a) "County" means the County of Hawaii and any governmental agencies or authorities thereof.
- b) "Sublessee" means and includes the Sublessee, its officers, employees, invitees, successors or permitted assigns.
- c) "Holder of a record of a security interest" means any person who is the owner or possessor of a security interest in the land subleased and who has filed with the Natural Energy Laboratory of Hawaii Authority and with the Bureau of Conveyances of the State of Hawaii a copy of such interest.
- d) "Premises" means the subleased land and all buildings and improvements now or hereinafter constructed and installed on the subleased land.
- e) "Waste" includes, but is not limited to, (1) permitting the subleased premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in


noxious weeds in uncultivated portions of the subleased premises; and (3) failure to employ all of the usable portions of the subleased premises.

f) “Improved land” is defined as land that has been leveled or filled to allow the construction of tenant facilities. The installation of utilities into the property is not a requirement to categorize the property as improved.

g) “Unimproved land” is defined as land that has not been leveled or filled to allow the construction of tenant facilities. The installation of utilities to the boundary of the property alone does not categorize the property as improved.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed  
this 09 day of June, 2021.

“SUBLESSOR”:  
NATURAL ENERGY LABORATORY  
OF HAWAII AUTHORITY

By   
\_\_\_\_\_  
Gregory P. Barbour  
Its Executive Director

“SUBLESSEE”:  
Blue Ocean Barns, Inc.

By   
\_\_\_\_\_  
Joan Salwen  
Its CEO

APPROVED AS TO FORM:

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

Dated: 06/09/2021

Project Proposal

*As approved by NELHA Board of Directors on June 8, 2021.*

Exhibit “A”

Site Survey Description

*(Stamped and signed by professional surveyor)*

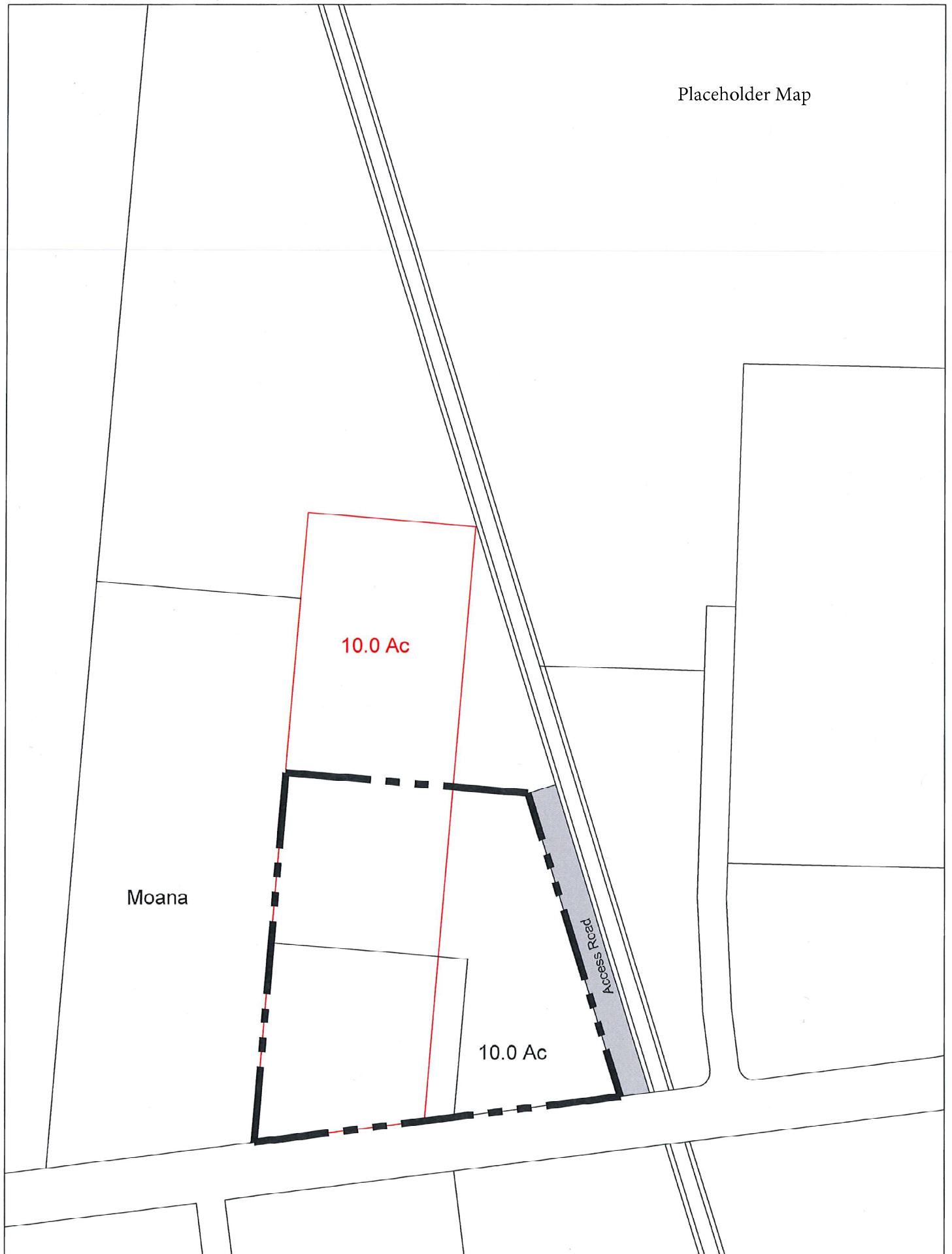
Exhibit “B”

Site Survey Map

*(Stamped and signed by professional surveyor)*

Exhibit "C"

Placeholder Map



FEDERAL AVIATION REGULATIONS  
PART 77

Exhibit "D"



14 CFR  
Aeronautics and Space  
CHAPTER I  
FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF  
TRANSPORTATION (CONTINUED)

SUBCHAPTER E -- AIRSPACE

PART 77 -- OBJECTS AFFECTING NAVIGABLE  
AIRSPACE

Special Federal Aviation Regulation No. 98

Subpart A -- General

- Sec.  
77.1 Scope.  
77.2 Definition of terms.  
77.3 Standards.  
77.5 Kinds of objects affected.

Subpart B -- Notice of Construction or Alteration

- 77.11 Scope.  
77.13 Construction or alteration requiring notice.  
77.15 Construction or alteration not requiring notice.  
77.17 Form and time of notice.  
77.19 Acknowledgment of notice.

Subpart C -- Obstruction Standards

- 77.21 Scope.

FEDERAL AVIATION REGULATIONS Part 77 Objects Affecting Navigable Airspace

- 77.23 Standards for determining obstructions.  
77.25 Civil airport imaginary surfaces.  
77.27 [Reserved]  
77.28 Military airport imaginary surfaces.  
77.29 Airport imaginary surfaces for heliports.

Subpart D -- Aeronautical Studies of Effect of Proposed Construction on  
Navigable Airspace

- 77.31 Scope.  
77.33 Initiation of studies.  
77.35 Aeronautical studies.  
77.37 Discretionary review.  
77.39 Effective period of determination of no hazard.

Subpart E -- Rules of Practice for Hearings Under Subpart D

- 77.41 Scope.  
77.43 Nature of hearing.  
77.45 Presiding officer.  
77.47 Legal officer.  
77.49 Notice of hearing.  
77.51 Parties to the hearing.  
77.53 Prehearing conference.  
77.55 Examination of witnesses.  
77.57 Evidence.  
77.59 Subpoenas of witnesses and exhibits.  
77.61 Revision of construction or alteration proposal.  
77.63 Record of hearing.  
77.65 Recommendations by parties.  
77.67 Final decision of the Administrator.  
77.69 Limitations on appearance and representation.

Subpart F -- Establishment of Antenna Farm Areas

- 77.71 Scope.  
77.73 General provisions.  
77.75 Establishment of antenna farm areas.

Authority: 49 U.S.C. 106(g), 40103, 40113-40114, 44502, 44701, 44718, 46101-46102, 46104.

Source: Docket No. 1882, 30 FR 1839, Feb 10, 1965, unless otherwise noted.

**Special Federal Aviation Regulation No. SFAR No. 98 – Construction or Alteration in the Vicinity of the Private Residence of the President of the United States**

Section 1. Construction or alteration near the private residence of the President. This section applies to:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including appurtenances and equipment or materials used therein.

(b) Any apparatus of a permanent or temporary character.

Section 2. Notice of Construction/Alteration. Proponents proposing construction or alteration of any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°34'&min;45 N, long. 97°32'&min;00 W shall notify the Administrator in the form and manner prescribed in 14 CFR 77.17.

Section 3. Obstruction Standard.

(a) Any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°34'&min;45N, long. 97°32'&min;00W is an obstruction and is presumed to adversely affect aviation safety and therefore is a hazard to air navigation.

(b) A Determination of No Hazard will be issued only when the FAA determines, based upon submitted information and in consultation with the USMC and the SSPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation.

Section 4. Termination. This rule will terminate at the end of President George W. Bush's term in office.

[Doc. No. FAA-2003-14972, 68 FR 19732, Apr. 22, 2003; 68 FR 23584, May 5, 2003]

**Subpart A – General**

**§77.1 Scope.**

This part:

- (a) Establishes standards for determining obstructions in navigable airspace;
- (b) Sets forth the requirements for notice to the Administrator of certain proposed construction or alteration;
- (c) Provides for aeronautical studies of obstructions to air navigation, to determine their effect on the safe and efficient use of airspace;
- (d) Provides for public hearings on the hazardous effect of proposed construction or alteration on air navigation; and
- (e) Provides for establishing antenna farm areas.

**§77.2 Definition of terms.**

For the purpose of this part:

**Airport available for public use** means an airport that is open to the general public with or without a prior request to use the airport.

**A seaplane base** is considered to be an airport only if its sea lanes are outlined by visual markers.

**Nonprecision instrument runway** means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved, or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document or military service military airport planning document.

**Precision instrument runway** means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan; a military service approved military airport layout plan; any other FAA planning document, or military service military airport planning document.

**Utility runway** means a runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

**Visual runway** means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, a military service approved military airport layout plan, or by any planning document submitted to the FAA by competent authority.

[Doc. No. 8276, 33 FR 5256, Apr. 2, 1968, as amended by Amdt. 77-9, 36 FR 5969, Apr. 1, 1971]

### §77.3 Standards.

- (a) The standards established in this part for determining obstructions to air navigation are used by the Administrator in:
- (1) Administering the Federal-aid Airport Program and the Surplus Airport Program;
  - (2) Transferring property of the United States under section 16 of the Federal Airport Act;
  - (3) Developing technical standards and guidance in the design and construction of airports; and
  - (4) Imposing requirements for public notice of the construction or alteration of any structure where notice will promote air safety.
- (b) The standards used by the Administrator in the establishment of flight procedures and aircraft operational limitations are not set forth in this part but are contained in other publications of the Administrator.
- [Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-9, 36 FR 5970, Apr. 1, 1971]

### §77.5 Kinds of objects affected.

This part applies to:

- (a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used therein, and apparatus of a permanent or temporary character; and
- (b) Alteration of any permanent or temporary existing structure by a change in its height (including appurtenances), or lateral dimensions, including equipment or materials used therein.

## Subpart B — Notice of Construction or Alteration

### §77.11 Scope.

- (a) This subpart requires each person proposing any kind of construction or alteration described in §77.13(a) to give adequate notice to the Administrator. It specifies the locations and dimensions of the construction or alteration for which notice is required and prescribes the form and manner of the notice. It also requires supplemental notices 48 hours before the start and upon the completion of certain construction or alteration that was the subject of a notice under §77.13(a).
- (b) Notices received under this subpart provide a basis for:
- (1) Evaluating the effect of the construction or alteration on operational procedures and proposed operational procedures;
  - (2) Determinations of the possible hazardous effect of the proposed construction or alteration on air navigation;
  - (3) Recommendations for identifying the construction or alteration in accordance with the current Federal Aviation Administration Advisory Circular AC 70/7460-1 entitled "Obstruction Marking and Lighting," which is available without charge from the Department of Transportation, Distribution Unit, TAD 484.3, Washington, DC 20590.
  - (4) Determining other appropriate measures to be applied for continued safety of air navigation; and
  - (5) Charting and other notification to airmen of the construction or alteration.
- (Sec. 6, 80 Stat. 937, 49 U.S.C. 1655)
- [Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-8, 33 FR 18614, Dec. 17, 1968; Amdt. 77-10, 37 FR 4705, Mar. 4, 1972]

### §77.13 Construction or alteration requiring notice.

- (a) Except as provided in §77.15, each sponsor who proposes any of the following construction or alteration shall notify the Administrator in the form and manner prescribed in §77.17:
- (1) Any construction or alteration of more than 200 feet in height above the ground level at its site.
  - (2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:
    - (i) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport specified in paragraph (a)(5) of this section

with at least one runway more than 3,200 feet in actual length, excluding heliports.

(ii) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport specified in paragraph (a)(5) of this section with its longest runway no more than 3,200 feet in actual length, excluding heliports.

(iii) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area of each heliport specified in paragraph (a)(5) of this section.

(3) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) (1) or (2) of this section.

(4) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed a standard of subpart C of this part.

(5) Any construction or alteration on any of the following airports (including heliports):

(i) An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(ii) An airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, and, except for military airports, it is clearly indicated that that airport will be available for public use.

(iii) An airport that is operated by an armed force of the United States.

(b) Each sponsor who proposes construction or alteration that is the subject of a notice under paragraph (a) of this section and is advised by an FAA regional office that a supplemental notice is required shall submit that notice on a prescribed form to be received by the FAA regional office at least 48 hours before the start of the construction or alteration.

(c) Each sponsor who undertakes construction or alteration that is the subject of a notice under paragraph (a) of this section shall, within 5 days after that construction or alteration reaches its greatest height, submit a supplemental notice on a prescribed form to the FAA regional office having jurisdiction over the region involved, if --

(1) The construction or alteration is more than 200 feet above the surface level

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of its site; or

(2) An FAA regional office advises him that submission of the form is required. [Doc. No. 8276, 33 FR 5256, Apr. 2, 1968, as amended by Amdt. 77-9, 36 FR 5970, Apr. 1, 1971; Amdt. 77-10, 37 FR 4705, Mar. 4, 1972]

### §77.15 Construction or alteration not requiring notice.

No person is required to notify the Administrator for any of the following construction or alteration:

(a) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.

(b) Any antenna structure of 20 feet or less in height except one that would increase the height of another antenna structure.

(c) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Administrator, or an appropriate military service on military airports, the location and height of which is fixed by its functional purpose.

(d) Any construction or alteration for which notice is required by any other FAA regulation.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-5, 33 FR 5257, Apr. 2, 1968; Amdt. 77-9, 36 FR 5970, Apr. 1, 1971]

### §77.17 Form and time of notice.

(a) Each person who is required to notify the Administrator under §77.13(a) shall send one executed form set (four copies) of FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the Manager, Air Traffic Division, FAA Regional Office having jurisdiction over the area within which the construction or alteration will be located. Copies of FAA Form 7460-1 may be obtained from the headquarters of the Federal Aviation Administration and the regional offices.

(b) The notice required under §77.13(a) (1) through (4) must be submitted at least 30 days before the earlier of the following dates:

(1) The date the proposed construction or alteration is to begin.

(2) The date an application for a construction permit is to be filed.

However, a notice relating to proposed construction or alteration that is subject to the licensing requirements of the Federal Communications Act may be

sent to FAA at the same time the application for construction is filed with the Federal Communications Commission, or at any time before that filing.

(c) A proposed structure or an alteration to an existing structure that exceeds 2,000 feet in height above the ground will be presumed to be a hazard to air navigation and to result in an inefficient utilization of airspace and the applicant has the burden of overcoming that presumption. Each notice submitted under the pertinent provisions of this part 77 proposing a structure in excess of 2,000 feet above ground, or an alteration that will make an existing structure exceed that height, must contain a detailed showing, directed to meeting this burden. Only in exceptional cases, where the FAA concludes that a clear and compelling showing has been made that it would not result in an inefficient utilization of the airspace and would not result in a hazard to air navigation, will a determination of no hazard be issued.

(d) In the case of an emergency involving essential public services, public health, or public safety that requires immediate construction or alteration, the 30-day requirement in paragraph (b) of this section does not apply and the notice may be sent by telephone, telegraph, or other expeditious means, with an executed FAA Form 7460-1 submitted within 5 days thereafter. Outside normal business hours, emergency notices by telephone or telegraph may be submitted to the nearest FAA Flight Service Station.

(e) Each person who is required to notify the Administrator by paragraph (b) or (c) of § 77.13, or both, shall send an executed copy of FAA Form 117-1, Notice of Progress of Construction or Alteration, to the Manager, Air Traffic Division, FAA Regional Office having jurisdiction over the area involved. (Sec. 6, 80 Stat. 937, 49 U.S.C. 1655)

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-2, 31 FR 9449, July 12, 1966; Amdt. 77-8, 33 FR 18614, Dec. 17, 1968; Amdt. 77-10, 37 FR 4705, Mar. 4, 1972; Amdt. 77-11, 54 FR 39292, Sept. 25, 1989]

#### § 77.19 Acknowledgment of notice.

(a) The FAA acknowledges in writing the receipt of each notice submitted under § 77.13(a).

(b) If the construction or alteration proposed in a notice is one for which lighting or marking standards are prescribed in the FAA Advisory Circular AC 70/7460-1, entitled "Obstruction Marking and Lighting," the acknowledgment contains a statement to that effect and information on how the structure should be marked and lighted in accordance with the manual.

(c) The acknowledgment states that an aeronautical study of the proposed construction or alteration has resulted in a determination that the construction or alteration:

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- (1) Would not exceed any standard of subpart C and would not be a hazard to air navigation;
- (2) Would exceed a standard of subpart C but would not be a hazard to air navigation; or
- (3) Would exceed a standard of subpart C and further aeronautical study is necessary to determine whether it would be a hazard to air navigation, that the sponsor may request within 30 days that further study, and that, pending completion of any further study, it is presumed the construction or alteration would be a hazard to air navigation.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-4, 32 FR 12997, Sept. 13, 1967; Amdt. 77-5, 33 FR 5257, Apr. 2, 1968]

### Subpart C -- Obstruction Standards

**§77.21 Scope.**

(a) This subpart establishes standards for determining obstructions to air navigation. It applies to existing and proposed manmade objects, objects of natural growth, and terrain. The standards apply to the use of navigable airspace by aircraft and to existing air navigation facilities, such as an air navigation aid, airport, Federal airway, instrument approach or departure procedure, or approved off-airway route. Additionally, they apply to a planned facility or use, or a change in an existing facility or use, if a proposal therefor is on file with the Federal Aviation Administration or an appropriate military service on the date the notice required by § 77.13(a) is filed.

(b) At those airports having defined runways with specially prepared hard surfaces, the primary surface for each such runway extends 200 feet beyond each end of the runway. At those airports having defined strips or pathways that are used regularly for the taking off and landing of aircraft and have been designated by appropriate authority as runways, but do not have specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At those airports, excluding seaplane bases, having a defined landing and takeoff area with no defined pathways for the landing and taking off of aircraft, a determination shall be made as to which portions of the landing and takeoff area are regularly used as landing and takeoff pathways. Those pathways so determined shall be considered runways and an appropriate primary surface as defined in § 77.25(c) will be considered as being longitudinally centered on each runway so determined, and each end of that primary surface shall coincide with the corresponding end of that runway.

(c) The standards in this subpart apply to the effect of construction or alteration proposals upon an airport if, at the time of filing of the notice required by § 77.13(a), that airport is --

- (1) Available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or
- (2) A planned or proposed airport or an airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, and, except for military airports, it is clearly indicated that that airport will be available for public use; or,

(3) An airport that is operated by an armed force of the United States.  
[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-5, 33 FR 5257, Apr. 2, 1968; Amdt. 77-9, 36 FR 5970, Apr. 1, 1971]

### §77.23 Standards for determining obstructions.

(a) An existing object, including a mobile object, is, and a future object would be, an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:

(1) A height of 500 feet above ground level at the site of the object.

- (1) A height of 500 feet above ground level at the base of the chimney.
- (2) A height that is 200 feet above ground level or above the established

(2) A height that is 200 feet above ground level or above the established reference point of an airport, excluding heliports, with its longest airport elevation, whichever is higher, within 3 nautical miles of the runway more than 3,200 feet in actual length, and that height increases in proportion of 100 feet for each additional nautical mile of distance from the airport up to a maximum of 500 feet.

airport up to a maximum of 500 feet.

(3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

4) A height within an en route obstacle clearance area, including turn and termination areas, of a Federal airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of an airport or any imaginary increase the minimum obstacle clearance surface established under § 77.25, § 77.28, or § 77.29. However, no part of the surface established under § 77.25, § 77.28, or § 77.29. However, no part of the take-off or landing area itself will be considered an obstruction.

(b) Except for traverse ways on or near an airport with an operative ground take-off or landing area itself will be considered as being used for the purpose of paragraph (a) of this section apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by:

(1) Seventeen feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance.

(2) Fifteen feet for any other public roadway.

(3) Ten feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(4) Twenty-three feet for a railroad and

(5) For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it

11. [Doc No. 10183-36 FR 5970, Apr. 1, 1971]



#### **§77.25 Civil airport imaginary surfaces.**

The following civil airport imaginary surfaces are established with relation to the airport and to each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end.

(a) Horizontal surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

- (1) 5,000 feet for all runways designated as utility or visual;
- (2) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(b) Conical surface. A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(c) Primary surface. A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is:

- (1) 250 feet for utility runways having only visual approaches.
- (2) 500 feet for utility runways having nonprecision instrument approaches.
- (3) For other than utility runways the width is:

- (i) 500 feet for visual runways having only visual approaches.
- (ii) 500 feet for nonprecision instrument runways having visibility minimums greater than three-fourths statute mile.
- (iii) 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways.

The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(d) Approach surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary

surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

- (i) 1,250 feet for that end of a utility runway with only visual approaches;
- (ii) 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

(iii) 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

(iv) 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(v) 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and

(vi) 16,000 feet for precision instrument runways.

(2) The approach surface extends for a horizontal distance of:

- (i) 5,000 feet at a slope of 20 to 1 for all utility and visual runways;
- (ii) 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways other than utility; and,
- (iii) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(3) The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(e) Transitional surface. These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

[Doc. No. 10183, 36 FR 5970, Apr. 1, 1971; 36 FR 6741, Apr. 8, 1971]

#### **§77.27 [Reserved]**

#### **§77.28 Military airport imaginary surfaces.**

(a) Related to airport reference points. These surfaces apply to all military airports. For the purposes of this section a military airport is any airport operated by an armed force of the United States.

- (1) Inner horizontal surface. A plane is oval in shape at a height of 150 feet

above the established airfield elevation. The plane is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.

(2) Conical surface. A surface extending from the periphery of the inner horizontal surface outward and upward at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.

(3) Outer horizontal surface. A plane, located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.

(b) Related to runways. These surfaces apply to all military airports.

(1) Primary surface. A surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet. However, at established bases where substantial construction has taken place in accordance with a previous lateral clearance criteria, the 2,000-foot width may be reduced to the former criteria.

(2) Clear zone surface. A surface located on the ground or water at each end of the primary surface, with a length of 1,000 feet and the same width as the primary surface.

(3) Approach clearance surface. An inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the approach clearance surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the primary surface, it flares uniformly, and the width at 50,000 is 16,000 feet.

4) Transitional surfaces. These surfaces connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the approach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface or other transitional surfaces. The slope of the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-1, 30 FR 6713, May 18, 1965; Amdt. 77-9, 36 FR 5971, Apr. 1, 1971]

§ 87.29 Airport imaginary surfaces for heliports.

a) Heliport primary surface. The area of the primary surface coincides in size and shape with the designated take-off and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.

b) Heliport approach surface. The approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil heliports and 10 to 1 for military heliports.

c) **Heliport transitional surfaces** These surfaces extend outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-9, 36 FR 5971, Apr. 1, 1971; 36 FR 6741, Apr. 8, 1971]



### §77.33 Initiation of studies.

(1) Upon the request of the sponsor or any construction or alteration for which a notice is submitted under subpart B of this part, unless that construction or alteration would be located within an antenna farm area established under subpart F of this part; or

(2) Wherever the FRA determines it appropriate.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-4, 32 FR 12997, Sept. 13, 1967]

(a) The Regional Manager, Air Traffic Division of the region in which the proposed construction or alteration would be located, or his designee, conducts the aeronautical study of the effect of the proposal upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace. This study may include the physical and electromagnetic radiation effect the proposal may have on the operation of an air navigation facility.

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(a) This subpart applies to the conduct of aeronautical studies of the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft. In the aeronautical studies, present and future IFR and VFR aeronautical operations and procedures are reviewed and any possible changes in those operations and procedures and in the construction proposal that would eliminate or alleviate the conflicting demands are ascertained.

(b) The conclusion of a study made under this support is normally a determination as to whether the specific proposal studied would be a hazard to air navigation.

**§77.37 Discretionary review.**

(a) The sponsor of any proposed construction or alteration or any person who has stated a substantial aeronautical objection to it in an aeronautical study, or any person who has a substantial aeronautical objection to it but was not given an opportunity to state it, may petition the Administrator, within 30 days after issuance of the determination under § 77.19 or § 77.35 or revision or extension of the determination under § 77.39(c), for a review of the determination, revision, or extension. This paragraph does not apply to any acknowledgment issued under § 77.19(c)(1).

(b) The petition must be in triplicate and contain a full statement of the basis upon which it is made.

(c) The Administrator examines each petition and decides whether a review will be made and, if so, whether it will be:

(1) A review on the basis of written materials, including study of a report by the Regional Manager, Air Traffic Division of the aeronautical study, briefs, and related submissions by any interested party, and other relevant facts, with the Administrator affirming, revising, or reversing the determination issued under § 77.19, § 77.35 or § 77.39(c); or

(2) A review on the basis of a public hearing, conducted in accordance with the procedures prescribed in subpart E of this part.

Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-3, 32 FR 6970,

May 6, 1967; Amdt. 77-11, 54 FR 39292, Sept. 25, 1989]

**§77.39 Effective period of determination of no hazard.**

- (a) Unless it is otherwise extended, revised, or terminated, each final determination of no hazard made under this subpart or subpart B or E of this part expires 18 months after its effective date, regardless of whether the proposed construction or alteration has been started, or on the date the proposed construction or alteration is abandoned, whichever is earlier.
  - (b) In any case, including a determination to which paragraph (d) of this section applies, where the proposed construction or alteration has not been started during the applicable period by actual structural work, such as the laying of a foundation, but not including excavation, any interested person may, at least 15 days before the date the final determination expires, petition the FAA official who issued the determination to:
    - (1) Revise the determination based on new facts that change the basis on which it was made; or
    - (2) Extend its effective period.
  - (c) The FAA official who issued the determination reviews each petition presented under paragraph (b) of this section, and revises, extends, or affirms the determination as indicated by his findings.
  - (d) In any case in which a final determination made under this subpart or subpart B or E of this part relates to proposed construction or alteration that may not be started unless the Federal Communications Commission issues an appropriate construction permit, the effective period of each final determination includes --
    - (1) The time required to apply to the Commission for a construction permit, but not more than 6 months after the effective date of the determination; and
    - (2) The time necessary for the Commission to process the application except in a case where the Administrator determines a shorter effective period is required by the circumstances.
  - (e) If the Commission issues a construction permit, the final determination is effective until the date prescribed for completion of the construction. If the Commission refuses to issue a construction permit, the final determination expires on the date of its refusal.
- [Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-5, 33 FR 5257, Apr. 2, 1968]

**Subpart E -- Rules of Practice for Hearings Under Subpart D**

**§77.41 Scope.**

This subpart applies to hearings held by the FAA under titles I, III, and X of the Federal Aviation Act of 1958 (49 U.S.C. subchapters I, III, and X), on proposed construction or alteration that affects the use of navigable airspace.

**§77.43 Nature of hearing.**

Sections 4, 5, 7, and 8 of the Administrative Procedure Act (5 U.S.C. 1003, 1004, 1006, and 1007) do not apply to hearings held on proposed construction or alteration to determine its effect on the safety of aircraft and the efficient use of navigable airspace because those hearings are factfinding in nature. As a factfinding procedure, each hearing is nonadversary and there are no formal pleadings or adverse parties.

**§77.45 Presiding officer.**

- (a) If, under §79.37, the Administrator grants a public hearing on any proposed construction or alteration covered by this part, the Director, Air Traffic Operations Service designates an FAA employee to be the presiding officer at the hearing.
  - (b) The presiding officer may:
    - (1) Give notice of the date and location of the hearing and any prehearing conference that may be held;
    - (2) Administer oaths and affirmations;
    - (3) Examine witnesses;
    - (4) Issue subpoenas and take depositions or have them taken;
    - (5) Obtain, in the form of a public record, all pertinent and relevant facts relating to the subject matter of the hearing;
    - (6) Rule, with the assistance of the legal officer, upon the admissibility of evidence;
    - (7) Regulate the course and conduct of the hearing; and
    - (8) Designate parties to the hearing and revoke those designations.
- [Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-11, 54 FR 39292, Sept. 25, 1989]

#### **§77.47 Legal officer.**

The Chief Counsel designates a member of his staff to serve as legal officer at each hearing under this subpart. The legal officer may examine witnesses and assist and advise the presiding officer on questions of evidence or other legal questions arising during the hearing.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended at 38 FR 26444, Sept. 17, 1973]

#### **§77.49 Notice of hearing.**

In designating a time and place for a hearing under this subpart the presiding officer considers the needs of the FAA and the convenience of the parties and witnesses. The time and place of each hearing is published in the "Notices" section of the FEDERAL REGISTER before the date of the hearing, unless the notice is impractical or unnecessary.

#### **§77.51 Parties to the hearing.**

The presiding officer designates the following as parties to the hearing --

- (a) The proponent of the proposed construction or alteration.
- (b) Those persons whose activities would be substantially affected by the proposed construction or alteration.

#### **§77.53 Prehearing conference.**

- (a) The presiding officer may, in his discretion, hold a prehearing conference with the parties to the hearing and the legal officer before the hearing.
- (b) At the direction of the presiding officer, each party to a prehearing conference shall submit a brief written statement of the evidence he intends to provide through his witnesses and by questioning other witnesses at the hearing, and shall provide enough copies of the statement so that the presiding officer may keep three for the FAA and give one to each other party.
- (c) At the prehearing conference, the presiding officer reduces and simplifies the subject matter of the hearing so far as possible and advises the parties of the probable order of presenting the evidence.

#### **§77.55 Examination of witnesses.**

- (a) Each witness at a hearing under this subpart shall, after being sworn by the presiding officer, give his testimony under oath.
- (b) The party for whom a witness, other than an employee of the FAA, is testifying shall examine that witness. After that examination, other parties to the hearing may examine the witness, in the order fixed by the presiding officer. The presiding officer and the legal officer may then examine the witness. The presiding officer may grant any party an additional opportunity to examine any witness, if that party adequately justifies the additional examination.
- (c) The legal officer examines each FAA employee who is a witness, before the other parties examine him. After that examination, the order prescribed in paragraph (b) of this section applies. An FAA employee may testify only as to facts within his personal knowledge and the application of FAA regulations, standards, and policies.

#### **§77.57 Evidence.**

- (a) The presiding officer receives all testimony and exhibits that are relevant to the issues of the hearing. So far as possible, each party shall submit enough copies of his exhibits that the presiding officer may keep three copies for the FAA and give one to each other party.
- (b) The presiding officer excludes any testimony that is irrelevant, unduly repetitious, or consists of statements made during an aeronautical study in an effort to reconcile or compromise aviation or construction or alteration requirements. A party to the hearing may object to the admission of evidence only on the ground that it is irrelevant.

#### **§77.59 Subpoenas of witnesses and exhibits.**

- (a) The presiding officer of a hearing may issue subpoenas for any witness or exhibit that he determines may be material and relevant to the issues of the hearing. So far as possible, each party to the hearing shall provide the witnesses and exhibits that he intends to present at the hearing.
- (b) If any party to the hearing is unable to provide his necessary witnesses and exhibits, he shall advise the presiding officer far enough in advance that the presiding officer can determine whether he should issue subpoenas for the desired witnesses or exhibits.

#### **§77.61 Revision of construction or alteration proposal.**

- (a) The sponsor of any proposed construction or alteration covered by this part may revise his proposal at any time before or during the hearing. If he revises it, the presiding officer decides whether the revision affects the proposal to the extent that he should send it to the Administrator for a redetermination of the need for a hearing.
- (b) If the presiding officer decides that it does not need to be resubmitted to the Administrator, he advises the parties of the revised proposal and takes the action necessary to allow all parties to effectively participate in the hearing on the revised proposal. Without limiting his discretion, the presiding officer may recess and reconvene the hearing, or hold another prehearing conference.

#### **§77.63 Record of hearing.**

- (a) Each hearing is recorded verbatim by an official reporter under an FAA contract. The transcript, and all exhibits, become a part of the record of the hearing.
- (b) Any person may buy a copy of the transcript of the hearing from the reporter at the price fixed for it.
- (c) The presiding officer may allow any party to withdraw an original document if he submits authenticated copies of it.
- (d) Any person may buy, from the FAA, photostatic copies of any exhibit by paying the copying costs.
- (e) A change in the official transcript of a hearing may be made only if it involves an error of substance. Any recommendation to correct the transcript must be filed with the presiding officer within 5 days after the hearing closes. The presiding officer reviews each request for a correction to the extent he considers appropriate and shall make any revisions that he finds appropriate as a result of that review.

#### **§77.65 Recommendations by parties.**

Within 20 days after the mailing of the record of hearing by the official reporter, or as otherwise directed by the presiding officer, each party may submit to the presiding officer five copies of his recommendations for a final decision to be made by the Administrator.

#### **§77.67 Final decision of the Administrator.**

After reviewing the evidence relevant to the questions of fact in a hearing,

including the official transcript and the exhibits, The Administrator resolves all these questions, based on the weight of evidence, and makes his determination, stating the basis and reasons for it. He then issues an appropriate order to be served on each of the parties.

#### **§77.69 Limitations on appearance and representation.**

- (a) A former officer or employee of the FAA may not appear on behalf of, or represent, any party before the FAA in connection with any matter to which this part applies, if he considered or passed on that matter while he was an officer or employee of the FAA.
  - (b) A person appearing before the FAA on any matter to which this part applies may not, in connection with that appearance, knowingly accept assistance from, or share fees with, any person who is prohibited by paragraph (a) of this section, from appearing himself on that matter.
  - (c) A former official or employee of the FAA may not, within 6 months after he ceases to be such an officer or employee, appear before the FAA on behalf of, or represent, any party in connection with any proceeding that was pending under this part while he was an officer or employee of the FAA, unless he obtains written consent from an appropriate officer of the FAA, based on a verified showing that he did not personally consider the matter concerned or gain particular knowledge of it while he was an officer or employee of the FAA.
- Subpart F -- Establishment of Antenna Farm Areas

#### **§77.71 Scope.**

- (a) This subpart establishes antenna farm areas in which antenna structures may be grouped to localize their effect on the use of navigable airspace.
- (b) It is the policy of the FAA to encourage the use of antenna farms and the single structure-multiple antenna concept for radio and television towers whenever possible. In considering proposals for establishing antenna farm areas, it considers as far as possible the revision of aeronautical procedures and operations to accommodate antenna structures that will fulfill broadcasting requirements.

#### **§77.73 General provisions.**

- (a) An antenna farm area consists of a specified geographical location with established dimensions of area and height, where antenna towers with a common impact on aviation may be grouped. Each such area is established by appropriate

rule making action.

(b) Each proposal for an antenna farm area is evaluated on the basis of its effect on the use of navigable airspace. The views of the Federal Communications Commission are requested on the effect that each establishment of an antenna farm area would have on its statutory responsibilities. Any views submitted by it are fully considered before the antenna farm concerned is established. If the Commission advises that the establishment of any proposed antenna farm area would interfere with its statutory responsibility, the proposed area is not established.

(c) The establishment of an antenna farm area is considered whenever it is proposed by:

- (1) The FAA;
  - (2) The Federal Communications Commission;
  - (3) The sponsor of a proposed antenna tower; or
  - (4) Any other person having a substantial interest in a proposed antenna tower.
- [Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-10, 37 FR 4705, Mar. 4, 1972]

#### §77.75 Establishment of antenna farm areas.

The airspace areas described in the following sections of this subpart are established as antenna farm areas.

Note: Sections 77.77 through 77.1100 reserved for descriptions of antenna farm areas.

Assignment of Lease Evaluation Policy

Exhibit "E"

## ASSIGNMENT OF LEASE EVALUATION POLICY

### 1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"...provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

### 2. Qualifying Leases.

This policy shall be applicable to the subject lease.

### 3. Prior Approval.

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

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

### 4. Qualifications of Assignee.

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



5. Consideration to be Paid.

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

6. Payment of Premium.

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

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

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



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

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

Only in cases where the lessee has essentially constructed or directed the construction of its own improvements, may the lessee be given the option of paying for an appraiser, but to be selected by the state, to determine the valuation of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

#### 7. Non-qualifying Deductions.

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

#### 8. Subsequent Assignments.

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

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the

assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

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

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

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest—Agricultural Leases only.

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

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

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

SCHEDULE A.      Adjusted Depreciated Cost of Improvements or Renovations

1.    Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)\* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2.    Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3.    Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

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

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1.	Adjusted Cost of Improve- ments or Renovations	Expired term: 57 mos. Whole term: 408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2.    Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3.    Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \$509,197$$

SCHEDULE B.      Adjusted Depreciated Cost of Trade Fixtures

1.    Adjusted Cost of Trade Fixture.

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

2.    Depreciation.

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

3.    Depreciated Cost of Trade Fixtures.

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

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

Example

Refrigerator

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1.    Adjusted Cost of Trade Fixture	Expired term:	57 months
	Whole term:	96 months
	(Anticipated life)	

$$\begin{array}{l} \text{Actual Cost X } \frac{\text{CPI (most recent)}}{\text{CPI (base year)}} \\ \$1,510 \text{ X } \frac{118.1}{104.6} + \$1,705 \end{array}$$

2.    Depreciation

$$\$1,705 \text{ X } \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3.    Adjusted Depreciated Cost of Trade Fixture

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

SCHEDULE C.      Premium Percentages

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

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

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

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

SCHEDULE D.Assignment of Lease Calculations

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

Example

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

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

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

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

SCHEDULE E.

Subsequent Assignment of Lease Calculations

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

Example

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

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

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

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



Master Lease

Exhibit "F"

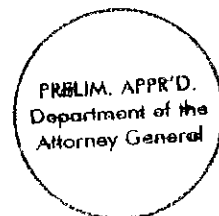
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Tax Map Key Nos. (3)7-3-043:005, 041,  
042, 051, 063, 066 to 094, inclusive,  
098, 100, 101, 102 and 106

THIS AGREEMENT, made and entered into this 10<sup>th</sup> day of January, 2013, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter referred to as the "Lessor," and NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, a body corporate and politic and an instrumentality and agency of the State of Hawaii, whose address is 73-4460 Queen Kaahumanu Highway, #101, Kailua-Kona, Hawaii 96740, hereinafter referred to as the "Lessee";

WHEREAS, Natural Energy Laboratory of Hawaii, a body corporate and politic and an instrumentality and agency of the State of Hawaii, is the present Lessee of unrecorded General Lease No. S-5619 dated July 13, 2001; and

464663 1.DOC



certain unrecorded Amendment of General Lease No. S-5619 dated December 11, 2006; and

WHEREAS, the Lessee desires that the general lease be amended; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on May 25, 2012, has approved the amendment to General Lease No. S-5619 for the purposes of extending the lease term for an additional twenty (20) years for a total of sixty-five (65) years, resulting in a new termination date of July 6, 2066, establishing annual lease rent plus net operating income (NOI) for the period July 3, 2011 through July 2, 2021, and modifying the "Character of use" provision to include telecommunication purposes.

NOW, THEREFORE, the Lessor and Lessee covenant and agree that:

1. Page 1, third paragraph being:

"TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of forty-five (45) years, commencing on the 3<sup>rd</sup> day of July, 2001, up to and including the 2<sup>nd</sup> day of July, 2046, unless sooner terminated as hereinafter provided."

is hereby deleted in its entirety and replaced with the following:

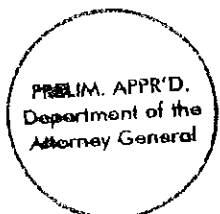
"TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65) years, commencing on the 3<sup>rd</sup> day of July, 2001, up to and including the 2<sup>nd</sup> day of July, 2066, unless sooner terminated as hereinafter provided."

2. Page 1, after the end of the last paragraph, add:

"The annual lease rent shall be FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00) plus fifty percent (50%) of the NOI for the period July 3, 2011, through July 2, 2021."

3. Page 4, paragraph 11, Character of use of General Lease No. S-5619, being:

"11. Character of use. The Lessee shall use or allow the premises leased to be used solely to develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the



development to become self-sufficient.",

is hereby amended to include telecommunication purposes to now read as follows:

"11. Character of use. The Lessee shall use or allow the premises leased to be used solely to develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient, and for telecommunication purposes."

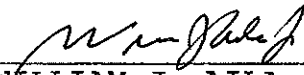
IN CONSIDERATION THEREOF, the Lessor and Lessee further agree that this Second Amendment of Lease Agreement is subject to all the covenants and conditions in the General Lease No. S-5619, as amended, except as herein provided.

This Second Amendment, read in conjunction with the General Lease No. S-5619, as amended, sets forth the entire agreement between the Lessor and Lessee; and the general lease as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Lessor and Lessee.

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

STATE OF HAWAII

Approved by the Board of  
Land and Natural Resources  
at its meeting held on  
May 25, 2012.

By   
WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and  
Natural Resources

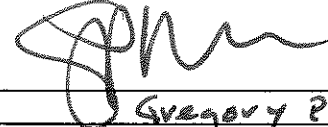
APPROVED AS TO FORM:

  
JULIE H. CHINA  
Deputy Attorney General

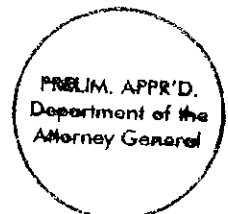
Dated: July 6, 2012

LESSOR

NATURAL ENERGY LABORATORY OF HAWAII  
AUTHORITY, a body corporate and  
politic and an instrumentality and  
agency of the State of Hawaii

By   
Gregory P. Barlow  
Its Executive Director

LESSEE



STATE OF HAWAII

COUNTY OF Hawaii

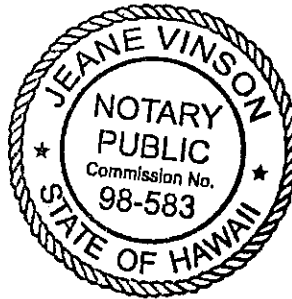
)  
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On this 20th day of August, 2012,  
before me personally appeared Gregory P. Barton,  
to me personally known, who, being by me duly sworn or affirmed,  
did say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.

Jeane Vinson  
Notary Public, State of Hawaii

My commission expires: NOV 9, 2014

Signed and Sworn To Me On This <u>29</u> Day of <u>Aug.</u> , 20 <u>12</u>	
State of <u>Hawaii</u> County of <u>Hawaii</u> Notary Public #98538	
<u>Jeane Vinson</u>	
Jeane Vinson My Commission Expires 09 Nov 2010	SEAL:
Doc. Date: <u>undated</u> # Pages: <u>5</u>	
Doc. Description: <u>2nd Amendment of General Lease</u>	
Third Circuit Court, Hilo, Hawaii	



MB  
2/2/84

WHEREAS, the Board of Land and Natural Resources, at its meetings held on June 23, 2006 and October 27, 2006, has approved the amendment to General Lease No. S-5619 for the purposes of waiving the lease requirement to obtain prior approvals for consents to its subleases, from the Board of Land and Natural Resources, its Chairperson, or its authorized representative.

NOW, THEREFORE, the Lessor and Lessee covenant and agree that paragraph 12 of General Lease No. S-5619, is hereby amended to waive the lease requirement of Lessee to obtain prior approvals for consents to its subleases, from the Board of Land and Natural Resources, its Chairperson, or its authorized representative, by deleting at page 4, paragraph 12, Subleases, last sentence being: "Any sublease is subject to Board approval or the approval of the Chairperson or employee the Board delegates its authority to." Said sentence shall be replaced with: "Effective May 31, 2002, any sublease which may include any of the following variations being, subleases (terms of one year to thirty years), sublease supplemental agreements, facility use agreements (FUA) (terms of one year or less), FUA Supplement Agreements, Facility Rental Agreements (FRA) (terms of one year or less), and FRA Supplement Agreements, are subject to the Lessee's Board and/or its authorized representative's review and approval to protect the interest of the State, and subject to further review and approval by the State of Hawaii, Department of the Attorney General."

IN CONSIDERATION THEREOF, the Lessor and Lessee further agree that this Amendment of Lease Agreement is subject to all the covenants and conditions in the General Lease No. S-5619, except as herein provided.

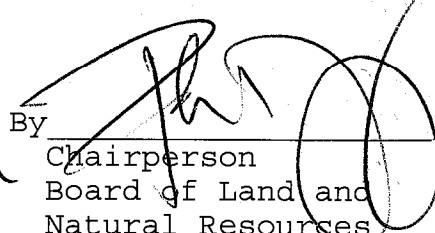
This Amendment, read in conjunction with the General Lease No. S-5619 sets forth the entire agreement between the Lessor and Lessee; and the general lease as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Lessor and Lessee.



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

Approved by the Board of  
Land and Natural Resources  
at its meetings held on  
June 23, 2006 and  
October 27, 2006.

STATE OF HAWAII

By   
Chairperson  
Board of Land and  
Natural Resources

LESSOR

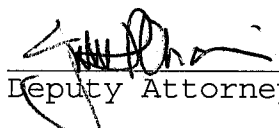
NATURAL ENERGY LABORATORY OF HAWAII  
AUTHORITY, a body corporate and  
politic and an instrumentality and  
agency of the State of Hawaii

BY   
Its 

Chief Executive Officer

LESSEE

APPROVED AS TO FORM:

  
Deputy Attorney General

Dated: Nov. 6, 2006

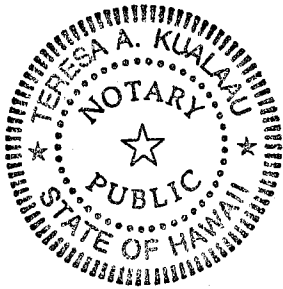
PRELIM. APPR'D.  
Department of the  
Attorney General

STATE OF HAWAII

COUNTY OF Hawaii

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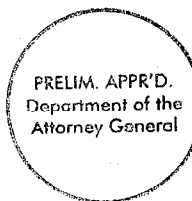
On this 27 day of November, 2006,  
before me personally appeared Ronald Nelson Baird,  
to me personally known, who, being by me duly sworn or affirmed,  
did say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.



Teresa A. Kualaa  
Notary Public, State of Hawaii

My commission expires: 10/24/2007

TERESA A. KUALAAU  
Notary Public, Third Judicial Circuit  
State of Hawaii



COPY

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5619

between

STATE OF HAWAII

and

NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY,  
a body corporate and politic and an instrumentality  
and agency of the State of Hawaii

covering

Natural Energy Laboratory of Hawaii Site  
Parts 1, 2, and 3

PRELIM. APPROV.  
Department of the  
Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5619

THIS LEASE, made this 13th day of July, 2001, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and the NATURAL ENERGY LABORATORY OF HAWAII, a body corporate and politic and an instrumentality and agency of the State of Hawaii, whose address is 73-4460 Queen Kaahumanu Highway, #101, Kailua-Kona, Hawaii 96740, hereinafter referred to as the "Lessee";

WITNESSETH:

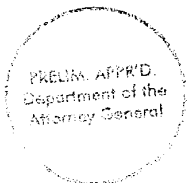
The Lessor, pursuant to section 171-95(a)(2), Hawaii Revised Statutes, and for and in consideration of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Hamanamana, Kalaoa 1<sup>st</sup> - 4<sup>th</sup> and Ooma 1<sup>st</sup> and 2<sup>nd</sup>, North Kona, Island of Hawaii, Hawaii, identified as "Natural Energy Laboratory of Hawaii Site, Parts 1, 2, and 3", more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of forty-five (45) years, commencing on the 3rd day of July, 2001, up to and including the 2nd day of July, 2046, unless sooner terminated as hereinafter provided.

The annual rent shall be fifty percent (50%) of the net operating income ("NOI"). NOI is the actual net income remaining after all adjusted operating expenses are deducted from the effective gross income including a reserve for replacement and for major repairs not covered in the operating budget. This does not include federal funds or other grants.

The Lessee shall be required to submit an annual report of its revenues and expenses with its NOI calculations, with a comparison against projections and a five (5) year projection.

The annual rent reserved shall be reopened and redetermined as of the day following the expiration of every tenth year of the term.



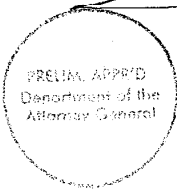
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

RESERVING UNTO THE LESSOR THE FOLLOWING:

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

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

3. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.



THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

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

2. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

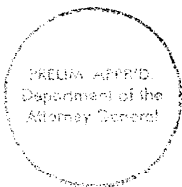
3. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

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

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

6. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

7. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the



lease term, to enter the premises and examine the state of its repair and condition.

8. Improvements. The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at its sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.

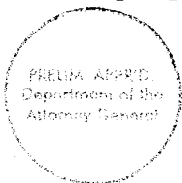
9. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

11. Character of use. The Lessee shall use or allow the premises leased to be used solely to develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient.

12. Subleases. The Lessee may sublease any portion of the property described in this lease, provided that all existing or pending subleases are honored by the Lessee, and provided that all existing or pending subleases are current as to rent and all other terms and conditions of the subleases. Any sublease is subject to Board approval or the approval of the Chairperson or employee the Board delegates its authority to.

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13. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

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

15. Breach. Time is of the essence in this agreement and if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property

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of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance as damages.

16. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises was leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

17. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

18. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

19. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold,

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possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

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

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

22. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee 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 onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

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For the purpose of this lease "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.

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

24. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

25. 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 lease.

26. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

27. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.



28. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

29. Non-use and abandonment. If the Lessee shall, at any time for a continuous period of one (1) year, fail or cease to use, or abandon all or any portion of said premises, this lease shall cease and terminate.

30. Building construction. All building construction shall be in full compliance with all laws, rules and regulations of the federal, state, and county governments and in accordance with plans and specifications submitted to an approved by the Chairperson prior to commencement of construction.

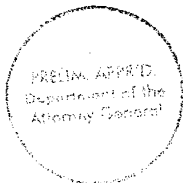
31. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

32. Time of essence Time is of the essence in all provisions of this lease.

33. Archaeological sites. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

34. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of sale of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.

35. Level one (1) hazardous waste evaluation. Prior to the termination of the subject general lease or the assignment of the leasehold, Lessee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. The termination will not be approved



by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.

36. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

37. Utilities. The cost of utilities, if desired, shall be the responsibility of the Lessee.

38. Non-Benefit. No member of the state legislature or state official shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

39. Master plan and improvements. The Lessee shall provide the Lessor with a master plan for the premises which must be approved by the Board of Land and Natural Resources. The master plan shall show all improvements and shall be updated from time to time to remain current with all future plans. The Lessee shall not at any time during said term construct, place, maintain, and install on the premises any building, structure, or improvement of any kind and description whatsoever except with the prior written approval of the Board or its designee, the Chairperson, and upon such conditions as the Board or the Chairperson may impose, including any adjustment of rent unless otherwise provided herein. The ownership of all improvements of whatsoever kind or nature located on the premises prior to or on the commencement date of this lease shall be in the Lessee until the expiration or termination pursuant to a breach of the lease, at which time the ownership thereof shall vest in the Lessor, except the Lessee may remove the improvements and within ninety days of the termination of the lease restore the premises to as good order and condition as upon the commencement of this lease.

40. Non-adverse effects. Any building, structure, or improvements erected or constructed by the Lessee on the premises, shall not in any way adversely affect the safe and efficient operations of the Keahole Airport and must be approved in writing by the Lessor or its designee.

41. Non-obstruction reservation. The conveyance of this lease shall be subject to the following reservations:

A. There is hereby reserved to the Department of Transportation, Airports Division, its successors and assigns,

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Department of the  
Attorney General

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for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause any noise inherent in the landing, departing, or operation of any aircraft used for navigation or flight through the airspace or on or about the Keahole Airport.

B. The erection of structures or growth of natural objects that would constitute an obstruction to air navigation is prohibited.

C. Any activity on the premises or along the adjacent coast that would interfere with or be a hazard to the flight of aircraft over the premises or to and from the Keahole Airport or interfere with air navigation and communication facilities serving the Keahole Airport is prohibited.

D. The height limitations above which no structure or growth shall be permitted shall be in accordance with the Airport Zoning Regulations, designated as Exhibit "C," attached hereto and made a part hereof.

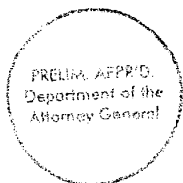
E. The filing notice of construction requirements in FAR Part 77 shall remain in effect.

42. Ingress and egress. The Lessee shall possess the right, by the most convenient route(s) as approved by the Lessor, of ingress to and egress from the premises for utilities and roadway purposes necessary for its operations and maintenance over adjoining land of the Lessor, subject to any reasonable safety requirements of the Lessor. Such right of ingress and egress shall inure to the benefit of the Lessee and its duly authorized agents, representatives, sublessees, contractors, employees, and invitees.

43. Commingling. Lessee shall have the right, at its election prior to transfer or sale, to commingle energy resources produced from the premises with that produced from other leases held by it or other lessees as specified in the Lessee's approved plan of operation. However, before there shall be such a commingling of energy resources production, the Lessee shall determine the quantities and value of such production and agrees that in making such determinations, all measurements and samples shall be made and taken in accordance with good industry practices.

44. Suspension of operations. In the event of any disaster or pollution, or likelihood of either, having or capable

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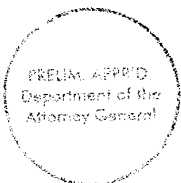
of having a detrimental effect on public health, safety, welfare, or the environment caused in any manner or resulting from operations under this lease, the Lessee shall suspend any testing or production operations, except those which are corrective or mitigative, and immediately and promptly notify the Chairperson. Such operations shall not be resumed until adequate corrective measures have been taken and authorization for resumption of operations has been made by the Chairperson.

45. Records and reports.

A. Lessee shall at all times maintain full and accurate records of production and payments relating to Lessee's operations and activities upon an in connections with the leased premises. All such records of Lessee shall be open for inspection at all reasonable times to the authorized representatives of the Lessor.

B. The Lessee shall keep records of all physical and factual results, logs, and surveys which may be conducted, test data, and other data resulting from operations under the lease. Such information shall be kept confidential as a trade secret unless by mutual agreement the information may be released. This prohibition shall not prohibit the Board or its duly authorized agent(s) from inspecting such reports on data for the purpose of monitoring this lease, or for the protection of the health, safety, or welfare of the public or to monitor environmental effects.

46. Force majeure. If the Lessee is rendered unable wholly or in part by force majeure to carry out its obligations under this lease, Lessee shall give to Lessor prompt written notice of the force majeure. Thereupon, any obligations of the Lessee to perform so far as they are affected by the force majeure shall be suspended during the continuance of the force majeure and the primary term of any continuation period shall be extended for a period equal to the period of suspended performance caused by the force majeure. Lessee shall use all possible diligence to remove or correct the force majeure, but this shall not require the settlement of strikes, lockouts, or other labor difficulties.



Definitions.

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

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

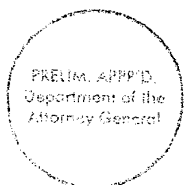
(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days unless otherwise specified. \_\_\_\_\_

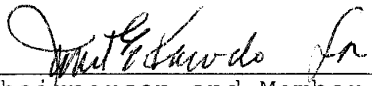




IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

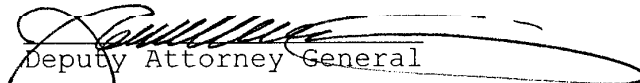
STATE OF HAWAII

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on November 19, 1999.

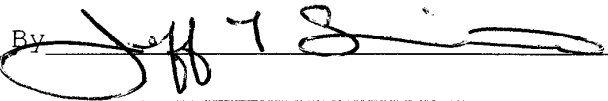
By   
Chairperson and Member  
Board of Land and  
Natural Resources

LESSOR

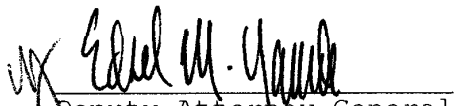
APPROVED AS TO FORM:

  
Deputy Attorney General  
Dated: 07-09-01

NATURAL ENERGY LABORATORY OF HAWAII  
a body corporate and politic and an  
instrumentality and agency of the  
State of Hawaii

By   
Its EXECUTIVE DIRECTOR

APPROVED AS TO FORM:

  
Deputy Attorney General  
Dated: 07-09-01

LESSEE

gls-4717&s-5157\nelha#1\tnk(3)7-3-43:03&42;7-3-09:23&24.1j3



-14-

DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

STATE OF HAWAII

COUNTY OF HAWAII

)  
) SS.  
)

On this 4<sup>th</sup> day of JUNE, 20 01,  
before me appeared JEFF L. SMITH, to me  
personally known, who, being by me duly sworn, did say that he is  
the EXECUTIVE DIRECTOR of NATURAL ENERGY LABORATORY OF  
HAWAII AUTHORITY, a body corporate and a public instrumentality  
of the State of Hawaii, and that the foregoing instrument was  
signed in behalf of said body corporate by authority of its Board  
of Directors, and the said EXECUTIVE DIRECTOR acknowledged  
said instrument to be the free act and deed of said body  
corporate.



Notary Public, State of Hawaii

My commission expires: 12/26/03

28

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PRELIM. APPROV.  
Department of the  
Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. NO. 23,013

September 12, 2000

NATURAL ENERGY LABORATORY OF HAWAII SITE

PARTS 1, 2 AND 3

Hamanamana, Kalaoa 1st - 4th and Ooma 1st and 2nd,  
North Kona, Island of Hawaii, Hawaii

PART 1:

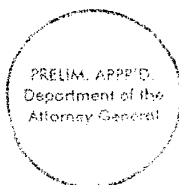
Comprising the following:-

1. Portions of the Government Lands of Hamanamana, Kalaoa 1st - 4th and Ooma 1st.
2. Portion of the Government Land of Kalaoa 1st - 4th set aside as Keahole Point Lighthouse Reservation by Governor's Proclamation No. 17 dated December 14, 1910 and subsequently conveyed to the State of Hawaii by the United States of America by deed dated October 31, 1962 and recorded in Liber 4407, Page 406 (Land Office Deed S-19826).

Being also a portion of Keahole Airport, Governor's Executive Order 3074.

Beginning at the southeast corner of this parcel of land and on the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II), the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 14,371.52 feet South and 22,220.58 feet West as shown on Government Survey Registered Map H.S.S. Plat 315-C, thence running by azimuths measured clockwise from True South:-

1. 89° 40' 40" 869.55 feet along Part 2 of Natural Energy Laboratory of Hawaii Site;
2. 89° 54' 20" 1485.83 feet along Part 2 of Natural Energy Laboratory of Hawaii Site;



**EXHIBIT "A"**

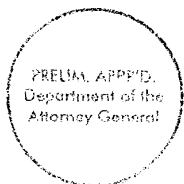
3. 90° 01' 30" 2473.30 feet along the northwest end of King's Highway (30.00 feet Roadway) and Part 3 of Natural Energy Laboratory of Hawaii Site;
4. 84° 44' 80.65 feet along Part 3 of Natural Energy Laboratory of Hawaii Site to the upper reaches of the wash of waves at seashore;

Thence along the upper reaches of the wash of waves at seashore for the next four (4) courses, the direct azimuths and distances between points along said upper reaches of the wash of waves at seashore being:

5. 146° 30' 12" 2986.52 feet;
6. 137° 02' 50" 1802.20 feet;
7. 143° 51' 2240.60 feet;
8. 208° 31' 50" 865.70 feet;
9. 115° 56' 100.07 feet along the Government Land of Kalaoa 1st - 4th to highwater mark at seashore;

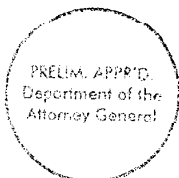
Thence along highwater mark at seashore for the next four (4) courses, the direct azimuths and distances between points along said highwater mark at seashore being:

10. 228° 50' 15" 3226.50 feet;
11. 162° 57' 10" 1794.20 feet;
12. 176° 55' 10" 2292.80 feet;
13. 227° 15' 46" 1917.81 feet;
14. 4° 50' 25" 10,359.19 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
15. 325° 36' 54" 3221.27 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
16. Thence along the remainder of Keahole Airport, Governor's Executive Order 3074 on a curve to the left with a radius of 160.00 feet, the chord azimuth and distance being:  
294° 16' 18.5" 166.45 feet;



17. 262° 55' 43" 1416.51 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
18. 184° 50' 25" 2825.42 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
19. 274° 50' 25" 1188.80 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
20. 184° 50' 25" 1199.61 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
21. 266° 47' 05" 2200.44 feet along the remainder of Keahole Airport, Governor's Executive Order 3074;
22. Thence along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II) on a curve to the right with a radius of 796.00 feet, the chord azimuth and distance being:  
351° 33' 09" 486.12 feet;
23. 9° 19' 55" 3240.56 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
24. 9° 19' 55" 80.00 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
25. 9° 19' 55" 593.61 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
26. Thence along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II) on a curve to the left with a radius of 5204.00 feet, the chord azimuth and distance being:  
5° 42' 13.3" 658.65 feet  
to the point of beginning and containing an  
AREA OF 726.43 ACRES, MORE OR  
LESS.

Access shall not be permitted into and from Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II) over and across Courses 22, 23, 25 and 26 of the above-described Part 1 of Natural Energy Laboratory of Hawaii Site.



September 12, 2000

Together with, Easement B for Electrical Purposes (50.00 feet wide) affecting Keahole Airport, Governor's Executive Order 3074, more particularly described as follows:

EASEMENT B:

Being a portion of Keahole Airport, Governor's Executive Order 3074.

Beginning at the northwest corner of this easement, the true azimuth and distance from the end of Course 13 of the above-described Part 1 of Natural Energy Laboratory of Hawaii Site being 4° 50' 25" 5704.73 feet, thence running by azimuths measured clockwise from True South:-

1. 274° 57' 51" 1916.22 feet;
2. 4° 57' 51" 50.00 feet;
3. 94° 57' 51" 1903.88 feet;
4. 42° 37' 45" 19.96 feet;
5. 184° 50' 25" 65.80 feet along Part 1 of Natural Energy Laboratory of Hawaii Site to the point of beginning and containing an AREA OF 2.202 ACRES.

Together, also with, Non-Exclusive Pipeline Easement, more particularly described as follows:

NON-EXCLUSIVE PIPELINE EASEMENT:

Being a portion of the submerged area fronting the lands of Kalaoa 1st - 4th and Ooma 1st.

Beginning at the upper reaches of the wash of waves at shoreline at the southeast corner of this easement and at the end of Course 4 of the above-described Part 1 of Natural Energy Laboratory of Hawaii Site, thence running by azimuths measured clockwise from True South:-

1. 84° 44' 299.99 feet;



September 12, 2000

2. 70° 00' 12,200.00 feet to a point, the geodetic position being:  
19° 42' 13.47" North Latitude and  
156° 05' 08.37" West Longitude;
3. 160° 00' 10,241.26 feet to a point, the geodetic position being:  
19° 43' 48.84" North Latitude and  
156° 05' 45.11" West Longitude;
4. 250° 00' 14,147.48 feet to the highwater mark at seashore;

Thence along Part 1 of Natural Energy Laboratory of Hawaii Site being also along highwater mark at seashore for the next two (2) courses, the direct azimuths and distances between points along said highwater mark at seashore being:

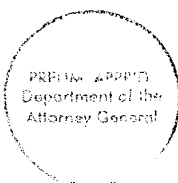
5. 342° 57' 10" 1794.20 feet;
6. 48° 50' 15" 3226.50 feet;
7. 295° 56' 100.07 feet along the Government Land of Kalaoa  
1st - 4th to the upper reaches of the wash  
of waves at seashore;

Thence along Part 1 of Natural Energy Laboratory of Hawaii Site being also along the upper reaches of the wash of waves at seashore for the next four (4) courses, the direct azimuths and distances between points along said upper reaches of the wash of waves at seashore being:

8. 28° 31' 50" 865.70 feet;
9. 323° 51' 2240.60 feet;
10. 317° 02' 50" 1802.20 feet;
11. 326° 30' 12" 2986.52 feet to the point of beginning and  
containing an AREA OF 2861  
ACRES, MORE OR LESS.

Subject, however, to a 40.00 feet shoreline setback line as shown on plan attached hereto and made a part hereof.

Reserving to the State of Hawaii, its successors and assigns, portion of Mamalahoa Trail (30.00 feet wide) over and across the above-described Part 1 of Natural Energy Laboratory of Hawaii Site as shown on plan attached hereto and made a part hereof.



PART 2:

Being portion of the Government Land of Ooma 2nd.

Beginning at the northeast corner of this parcel of land and at the southeast corner of Keahole Airport, Governor's Executive Order 3074, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 14,371.52 feet South and 22,220.58 feet West as shown on Government Survey Registered Map H.S.S. Plat 315-C, thence running by azimuths measured clockwise from True South:-

1. Along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II) on a curve to the left with a radius of 5204.00 feet, the chord azimuth and distance being:  
357° 56' 50.9" 749.21 feet;
2. 78° 25' 16" 1749.00 feet along Grant S-15665 to American Trust Co. of Hawaii, Inc. as Trustee under unrecorded Trust Agreement No. 90-01646 and Trust dated December 28, 1982;
3. 148° 31' 30" 1280.90 feet along the northeast side of King's Highway (30.00 Feet Roadway);
4. 269° 54' 20" 1485.83 feet along Part 1 of Natural Energy Laboratory of Hawaii Site;
5. 269° 40' 40" 869.55 feet along Part 1 of Natural Energy Laboratory of Hawaii Site to the point of beginning and containing an AREA OF 44.211 ACRES.

Access shall not be permitted into and from Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II) over and across Course 1 of the above-described Part 2 of Natural Energy Laboratory of Hawaii Site.

Reserving to the State of Hawaii, its successors and assigns, portion of Mamalahoa Trail (30.00 feet wide) over and across the above-described Part 2 of Natural Energy Laboratory of Hawaii Site as shown on plan attached hereto and made a part hereof.





PART 3:

Being a portion of Grant 4536 to John A. Maguire conveyed to the State of Hawaii by American Trust Co. of Hawaii, Inc. as Trustee under unrecorded Trust Agreement No. 90-01646 and Trust dated December 28, 1982 by deed dated December 30, 1986 and recorded in Liber 20766, Page 628 (Land Office Deed S-27628).

Beginning at the southeast corner of this parcel of land and on the southwest side of King's Highway (30.00 Feet Roadway), the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 15,474.96 feet South and 23,940.04 feet West, as shown on Government Survey Registered Map H.S.S. Plat 315-C, thence running by azimuths measured clockwise from True South:-

1. 83° 39' 44" 2986.02 feet along the remainder of Grant 4536 to John A. Maguire to the upper reaches of the wash of waves at seashore;
2. Thence along the upper reaches of the wash of waves at seashore, the direct azimuth and distance being:  
171° 07' 16" 1436.61 feet;
3. 264° 44' 80.65 feet along Part 1 of Natural Energy Laboratory of Hawaii Site;
4. 270° 01' 30" 2438.16 feet along Part 1 of Natural Energy Laboratory of Hawaii Site;
5. 328° 31' 30" 1285.20 feet along the southwest side of King's Highway (30.00 Feet Roadway) to the point of beginning and containing an AREA OF 82.21 ACRES, MORE OR LESS.



C.S.F. No. 23,013

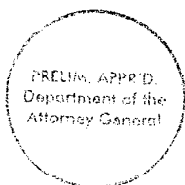
September 12, 2000

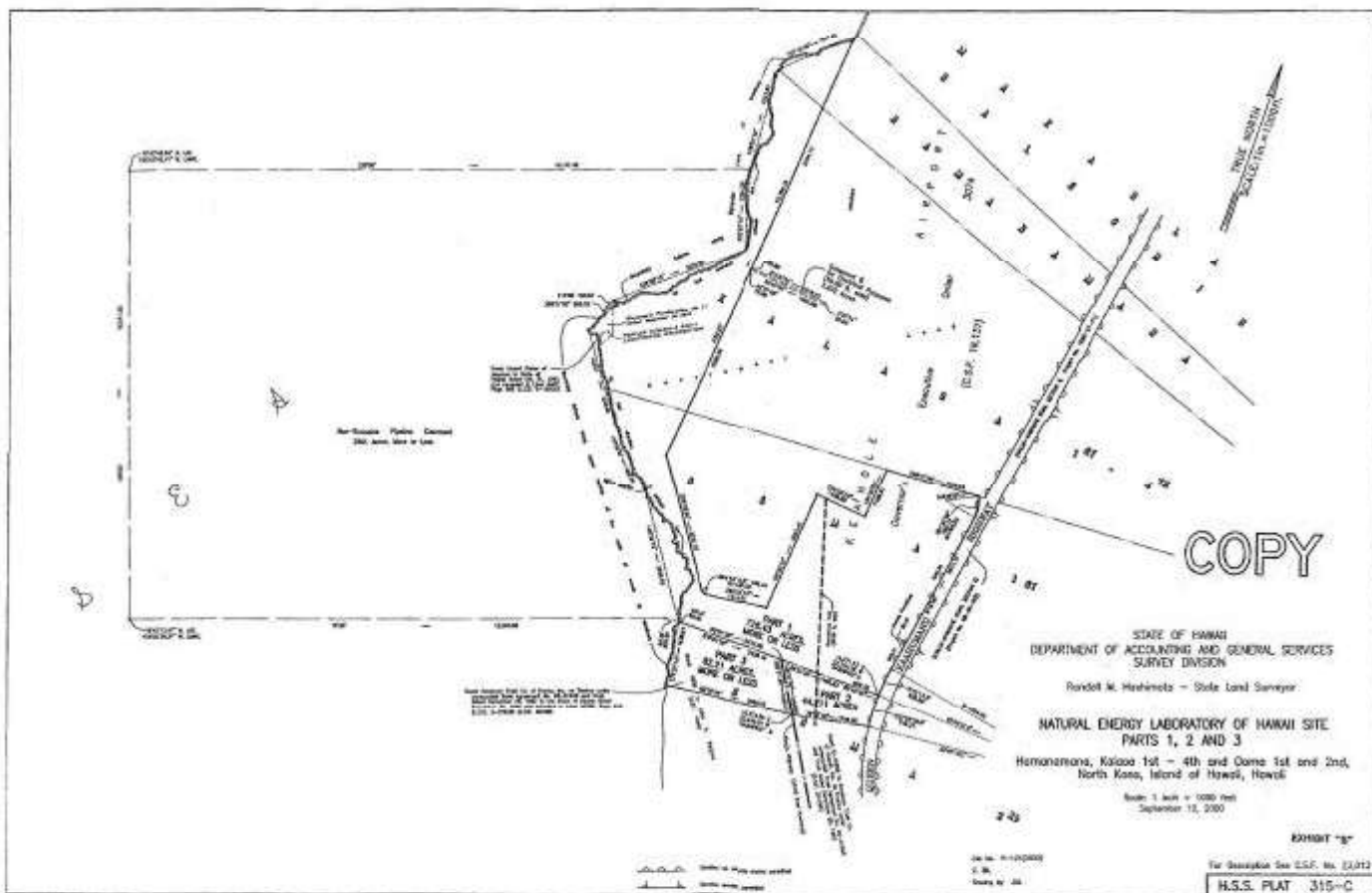
Subject, however, to a 40.00 feet shoreline setback line as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Glenn J. Kodani  
Glenn J. Kodani  
Land Surveyor gm

Compiled from CSFs 19137,  
19934, 20121, 20459, 21142,  
21636, 22987 and other Govt.  
Survey Records.  
TMK: 7-3-09:23 and 24  
7-3-43





UCC-1 Form

Exhibit "G"

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. **COLLATERAL:** This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

6b. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

☐ Agricultural Lien ☐ Non-UCC Filing

7. **ALTERNATIVE DESIGNATION** (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licenser

8. **OPTIONAL FILER REFERENCE DATA:**

## Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Send completed form and any attachments to the filing office, with the required fee.

### ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.

C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. **Organization Debtor Name.** "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. **Individual Debtor Name.** "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

1c. Enter a mailing address for the Debtor named in item 1a or 1b.

2. **Additional Debtor's name.** If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. For additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.

3. **Secured Party's name.** Enter name and mailing address for Secured Party or Assignee who will be the Secured Party of record. For additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP). If there has been a full assignment of the initial Secured Party's right to be Secured Party of record before filing this form, either (1) enter Assignor Secured Party's name and mailing address in item 3 of this form and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Assignee's name and mailing address in item 3 of this form and, if desired, also attach Addendum (Form UCC1Ad) giving Assignor Secured Party's name and mailing address in item 11.

4. **Collateral.** Use item 4 to indicate the collateral covered by this financing statement. If space in item 4 is insufficient, continue the collateral description in item 12 of the Addendum (Form UCC1Ad) or attach additional page(s) and incorporate by reference in item 12 (e.g., See Exhibit A). Do not include social security numbers or other personally identifiable information.

**Note:** If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

5. If collateral is held in a trust or being administered by a decedent's personal representative, check the appropriate box in item 5. If more than one Debtor has an interest in the described collateral and the check box does not apply to the interest of all Debtors, the filer should consider filing a separate Financing Statement (Form UCC1) for each Debtor.

6a. If this financing statement relates to a Public-Finance Transaction, Manufactured-Home Transaction, or a Debtor is a Transmitting Utility, check the appropriate box in item 6a. If a Debtor is a Transmitting Utility and the initial financing statement is filed in connection with a Public-Finance Transaction or Manufactured-Home Transaction, check only that a Debtor is a Transmitting Utility.

6b. If this is an Agricultural Lien (as defined in applicable state's enactment of the Uniform Commercial Code) or if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 6b and attach any other items required under other law.

7. **Alternative Designation.** If filer desires (at filer's option) to use the designations lessee and lessor, consignee and consignor, seller and buyer (such as in the case of the sale of a payment intangible, promissory note, account or chattel paper), bailee and bailor, or licensee and licensor instead of Debtor and Secured Party, check the appropriate box in item 7.

8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

Aquatic Species Health Management Program

Exhibit "H"

Natural Energy Laboratory of Hawaii Authority



## **NELHA AQUATIC SPECIES HEALTH MANAGEMENT PROGRAM**

**Biosecurity Policies and Guidelines for Businesses and Organizations Operating at  
the Hawaii Ocean Science and Technology Park**

**v. 7.0  
March 2016**



**AQUATIC SPECIES HEALTH MANAGEMENT PROGRAM  
(ASHMP)**

**Biosecurity Policies and Guidelines  
for  
Businesses and Organizations Operating at the  
Hawaii Ocean Science and Technology Park**

**Version 7.0**



**Natural Energy Laboratory of Hawaii Authority  
Kailua-Kona, Hawaii**

**March 2016**

# **NELHA AQUATIC SPECIES HEALTH MANAGEMENT PROGRAM**

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# **NELHA AQUATIC SPECIES HEALTH MANAGEMENT PROGRAM**

## **1. Purpose and Goals**

The Natural Energy Laboratory of Hawaii Authority (NELHA) strongly believes it is in the best interest of all businesses in Hawaii Ocean Science and Technology Park (HOST Park) to maintain a high quality and quarantine environment. Central to environmental quality is the maintenance and management of the health of the aquatic animals, plants, and microorganisms grown at the facility for research and commercial purposes. NELHA is responsible to the State, County of Hawaii and all businesses and organizations in the park to maintain awareness of the aquatic species being transported onto the site and between tenant sites, as well as the health status of species being cultured at each facility.

The goal of this Aquatic Species Health Management Program (ASHMP) is to:

- 1.1 Establish a policy and procedural framework to reduce the risk and prevent the introduction of harmful pathogens into the facility and tenant properties from outside sources.
- 1.2 Establish basic tenant guidelines for the documentation and maintenance of animal health, including specific sanitation procedures.
- 1.3 Elaborate certain requirements and guidelines for action and containment in case of a disease event.

It is important to realize that the risk of infectious disease outbreaks by introduction or on site epidemics can never be reduced to zero. There will always be some risk associated with each new introduction, as well as with ongoing operations. Therefore, it is essential that NELHA businesses and organizations adopt their own comprehensive health management program specific to the organisms they are culturing on their property. To minimize the risk of infectious diseases and their potential negative impacts, these health management practices should be a continuing part of each tenant's everyday operations.

## **2. Objectives**

NELHA desires to have tenants maintain high standards of aquatic animal and plant health on all sites. NELHA believes that the maintenance of such standards will help optimize the profitability and reduce the production costs of all aquaculture operations at the facility, while maintaining the desired environmental quality. Cooperating and

complying with the ASHMP can be expected to achieve the following mutually desirable objectives:

- 2.1 Assist in protecting tenant aquaculture businesses from the risk of infectious disease.
- 2.2 Minimize the need for State regulatory actions that could result from the introduction of infectious diseases.
- 2.3 Assist in optimizing profitability and production efficiency, and minimizing operating costs by maintaining healthy stocks.
- 2.4 Minimize the occurrence, spread, and impact of any infectious animal or plant diseases between project sites.
- 2.5 Contribute to the maintenance of high environmental health standards and water quality at the facility.
- 2.6 Allow same-species and different species businesses to coexist.
- 2.7 Maintain NELHA's status as a quarantinable facility for importation of regulated species and as an environmentally compatible location for aquaculture business development.
- 2.8 Protect the marketability of HOST Park and the products produced therein.
- 2.9 Maintain NELHA's status as an approved special pathogen free (SPF) facility for shrimp. Additional detailed guidelines for any business or organization holding or growing shrimp at HOST Park are listed in Appendix B.

### **3. Implementation Process**

NELHA's ASHMP biosecurity policies are overseen by the Biosecurity Officer. The BSO shall monitor NELHA's and the tenant's implementation of the ASHMP disease control and elimination protocols. The specific responsibilities and activities of BSO shall be as follows:

- 3.1 Review written requests from tenants to import of any regulated plants or animals. After review of biosecurity risk and neighboring tenant comments, respond in writing as to approval or denial of these requests.

- 3.2 Review and verify that tenant BMP's are in conformance with NELHA biosecurity policies prior to approval of the importation of any regulated plants or animals to NELHA which require DoA approval.
- 3.3 Review and approve tenant site design to assure conformance with NELHA biosecurity policies prior to arrival of any regulated plants or animals at NELHA that require Hawaii Department of Agriculture (DoA) approval.
- 3.4 Act as the point of contact for DoA with regard to biosecurity issues.
- 3.5 Accompany DoA official(s) during initial site visit prior to any regulated species shipments to assure facility design is in compliance with permit requirements and conditions
- 3.6 Collect and maintain records of tenant's import (regulated plants, animals and feedstock) permit applications, permits, periodic test reports and onsite inspections on an ongoing basis.
- 3.7 Obtain tenant written agreement that they will follow and maintain compliance with the NELHA ASHMP rules and regulations prior to the importation of any regulated plants or animals to NELHA.
- 3.8 Review DoA importation permit, document, and approve all transfers of regulated plants and animals between sites at NELHA and between tenants at NELHA prior to actual transfer.
- 3.9 Accompany DoA Plant Quarantine Branch (PQB) official(s) during facility site inspections for Import or Possession Permit compliance verification.
- 3.10 In the case of shrimp, accompany DoA Animal Disease Control (ADC) officials(s) on tenant site visits to obtain samples of shrimp tissue for disease analysis testing and verification of health status. NELHA BSO may be trained and delegated by ADC to obtain shrimp tissue samples for disease analysis. Additional information regarding the Hawaii Shrimp Surveillance & Certification Program (HSSCP) is available at the [Hawaii Department of Agriculture](#).
- 3.11 In the case of shrimp, conduct bi-annual review of tenants records, BMP's, etc. Depending on timing, this may be performed in conjunction with ADC HSSCP testing.
- 3.12 Monitor NELHA vector exclusion activities such as trapping of feral vertebrates.
- 3.13 Responsible for monitoring NELHA and tenant solid waste management plans as they pertain to biosecurity including waste and mortalities.

- 3.14 Monitor and respond to unusual morbidity and mortality events. Report severe events to ADC and PQB officials. Maintain confidentiality of these events between tenant, NELHA and DOA until test results have been confirmed.
- 3.15 In the case of shrimp, notify other shrimp growers at NELHA that DoA has confirmed the presence of an OIE listed crustacean disease and that transfers of shrimp are temporarily prohibited between tenants until USDA and DoA mandated disease response has been implemented and the diseased site has been decontaminated.
- 3.16 In the event of a confirmed shrimp disease outbreak, order the immediate screening of all shrimp stocks at NELHA by ADC HSSCP.
- 3.17 Work closely with DoA and U.S. Department of Agriculture (USDA) APHIS to coordinate response to reported infection outbreaks. In case of a reported infection outbreak, inspection of treated sites post-infection and verification of cleanup measures will be completed.

The State Department of Agriculture (DOA) has the statutory authority over importation of aquatic species into the State of Hawaii (Chapter 150 HRS as amended and Title 4-71 HRS as amended). The species importation permit process administered by DOA's Plant Quarantine Branch (DOA - PQB) specifies the procedures for introduction and transfer of organisms and the specific conditions for culture (e.g. containment of species and disposal of water). The second tier of review for importation of aquatic species (native & non-native) into NELHA are the provisions of the site agreement (FUA, FRA, Sub-Lease) signed by each tenant operating at the facility. Each agreement should specify by scientific name all aquatic animals and plants under cultivation at each tenant site. Tenants are responsible for obtaining permission from NELHA in advance of proposed changes to the species composition of their site, entry onto the site of all regulated species, and any changes to the disease free status of the site. Failure to comply with these responsibilities and requirements may lead to termination of the lease agreement with NELHA.

NELHA will maintain a confidential (to the extent permitted by law), computerized database for managing this program and tracking all DOA permits issued to tenants. A site facility map will be regularly updated to indicate "at a glance", where each aquatic species is located on the NELHA property. In order to maintain the high health and quarantine environment that presently exists at NELHA and achieve the overall program objectives, the NELHA Board of Directors has adopted the following policies and guidelines for implementation by NELHA staff.

#### **4. Policies for Aquatic Species Health Management**

- 4.1 Only the aquatic organisms listed by scientific name and approved in a NELHA tenant rental agreement or sub-lease, and amendments thereto, are allowed to be on site. No aquatic animals, plants or microorganisms should be allowed on NELHA property or a tenant site without NELHA's written prior notification. Unless further action is required by the NELHA Board of Directors, the NELHA Executive Director shall respond to all requests for the importation of new or additional aquatic animals, plants or microorganisms within 30 calendar days of receipt of written request.
- 4.2 The NELHA Executive Director reserves the right to request further information or refuse the importation to a site or transfer of any aquatic animal or plant from one site to another when the Executive Director after consultation with experts has reasonable justification that such importation or transfer may pose a risk to established tenants or the environment. The experts who will advise the Executive Director shall be recognized disease experts in aquaculture with credentials recognized by the European Association of Fish Pathologists, the American Fisheries Society – Fish Health Section, or the Association of Aquatic Animal Medicine, or the American Veterinary Medical Association.
- 4.3 The DOA - PQB has statutory authority for the importation or transfer of regulated species into and within the State of Hawaii. NELHA and its tenants are bound by the laws and regulations of Federal, State and County government. A permit application must be submitted to the DOA and a site inspection conducted before required the permit is officially issued. All tenants should be aware that DOA Importation Permits are also required for shipments of regulated species within the State of Hawaii, between sites on the same and prospective tenant's island, and between project sites within NELHA. NELHA believes prior consultation by businesses located at NELHA with DOA on all species importation issues is necessary to successfully implement this program.
- 4.4 Prior to submission of a DOA Import Permit Application, tenants must consult with NELHA staff to confirm that culture or containment of the desired species is approved. These discussions can be kept confidential to the extent permitted by law. These pre-application discussions will give NELHA opportunity to address any concerns.
- 4.5 A copy of each Importation Permit issued to a tenant by DOA for existing and new species introductions shall be submitted to NELHA for review within seven (7) working days of receipt. The location of new tenant aquaculture projects and new species introductions within established tenant sites will be closely coordinated in advance of approval with neighboring tenants and the Keahole Point Association to minimize disease transfer risks. Each prospective tenant and new species

introduction will be reviewed by NELHA on a case by case basis to determine compatibility. Confidentiality will be observed to the extent permitted by law as required by the prospective tenant and situation.

- 4.6 As necessary, NELHA will consult with the State Aquaculture Disease Specialist and other authorities to obtain professional advice concerning disease and environmental compatibility issues relating to the location of new tenants, as well as the transport of regulated aquatic species to and between tenant sites.
- 4.7 Specific to marine shrimp species (Family Penaeidae), all stocks entering NELHA shall be certified Specific Pathogen Free (SPF) by an authority approved by the State Department of Agriculture, Aquaculture Disease Specialist. If the shrimp stock is to be imported from a source outside of the state of Hawaii, it must pass through a quarantine and pathogen screening process under the supervision of the State Agriculture Disease Specialist at a location outside of NELHA. Documentation certifying that the shrimp stock is SPF must be supplied to NELHA prior to shipment to the tenant's site. Additional detailed guidelines for for any business or organization holding or growing shrimp at HOST Park are listed in Appendix B.
- 4.8 Concerning the distribution, use, and discharge of seawater at each tenant location, the following conditions should be provided and maintained by tenants at all times. These conditions will be incorporated into all present and future agreements. NELHA may periodically inspect the seawater distribution system at each tenant location to assure that the following conditions are present:
  - 4.81 Back flow control devices (e.g. check valves, etc.), suitable plumbing breaks, or air gaps must be installed in all influent plumbing to prevent culture tanks and holding vessels from back siphoning into NELHA's delivery piping.
  - 4.82 All disposal water shall be discharged into disposal systems that are specified and approved by NELHA and shall be in compliance with all applicable government regulatory agencies.
  - 4.83 No disposal water shall be allowed to flow onto neighboring property or outside the confines of a tenant's leased property unless approved in writing by NELHA.
  - 4.84 No cross connections between surface and deep seawater delivery pipes will be allowed without the installation of check valves or other anti-siphoning devices.
- 4.9 Upon confirmation of a disease outbreak by the tenant at a project site, the entire site shall be considered under quarantine. Appropriate signs shall be posted



indicating restricted access to the facility. The tenant shall make best efforts to contain the disease until a management and mitigation plan has been established. Visitation to the quarantined site shall be limited to tenant staff and the mitigation team.

- 4.10 Once a site has been quarantined, no live animals or plants potentially infected by the disease will be permitted to leave the site without written approval from NELHA. No new introductions of like or related aquatic species will be allowed by NELHA until the site has been certified to be decontaminated by the State Aquaculture Disease Specialist.
- 4.11 Within seven (7) calendar days of confirmation of a disease outbreak, a meeting must be scheduled between NELHA and the affected tenant to review and discuss the tenant's plan to treat the outbreak.
- 4.12 All applicable Federal, State and County regulations must be followed during normal facility operations and during quarantine conditions.
- 4.13 Failure to follow these policies during a disease event may necessitate eradication of affected farm stock by DOA and/or termination of the tenant's use agreement with NELHA.
- 4.14 In the event that disputes between NELHA staff and the tenant develops concerning interpretations and actions relating to the Aquatic Species Health Management Program, tenants may request a hearing before the NELHA Board of Directors, who will render a decision. Tenants may also consult with experts and industry officials and petition the NELHA Board for reconsideration of any action taken by NELHA.
- 4.15 The ASHMP shall be reviewed, modified, and updated on an "as needed basis." Any request for such changes shall be submitted to the NELHA Executive Director in writing and may be implemented by NELHA, but only after approved by the NELHA Board of Directors.

## **5. Guidelines for Management and Documentation of Aquatic Species Health**

Maintaining aquatic animal and plant health by a tenant will benefit of all tenants at NELHA and the NELHA administration. Each tenant should practice a basic level of environmental management at its facility. It is in the best interest of each tenant and NELHA that the following recommended guidelines be implemented and practiced to the best of each tenant's ability:

- 5.1 A routine evaluation of the aquatic animal, plant, or microorganism's health status at the facility should be made on a continuous basis by staff trained in biosecurity and by the State Aquatic Disease Specialist at DOA on a semi-annual basis.
- 5.2 Projects operating at NELHA should limit the importation of new stocks from new sources to essential requirements to lessen the overall risk of disease introduction and contamination.
- 5.3 Introductions of new aquatic specie stocks regulated or unregulated should be free of all attached organisms (e.g. parasites, epiphytes, algae, shellfish, etc).
- 5.4 Unless otherwise specified by the tenant, tenant sites at NELHA will be considered private property subject to tenant visitation policies. NELHA should be informed of tenant visitation policies so that they can, if needed, be communicated to prospective visitors.
- 5.5 Procedures for maintaining high health and hygiene conditions at each aquaculture facility should be developed and followed by each NELHA tenant. Assistance for developing these procedures can be obtained from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) or from the Aquatic Disease Specialist of the State of Hawaii's Department of Agriculture. It should be noted that common potential vectors for contamination include: people, groundwater use, transfer of stock, movement of equipment, birds, feral cats, rodents, insects, and airborne sprays or marine aerosol.
- 5.6 Physical barriers (gates, walls, fencing, etc.) as allowed by NELHA development guidelines should be erected and signs posted around tenant properties to prevent unauthorized access to the premises.
- 5.7 In consideration of the research or commercial goals of each tenant and the sensitivity of the aquatic animals and/or plants being cultured by a particular tenant, the following guidelines must be adopted in order to maintain high standards of sanitation:
  - 5.71 Placement of disinfectant foot baths at the entry to containment areas for new animal, plant, and microorganism importation or areas used for isolation of diseased organisms.
  - 5.72 Use of gloves, boots, and aprons or other adequate protective garments in all containment or isolation areas. These must not be carried to other parts of the facility.
  - 5.73 Bird and rodent control programs must be in place.
  - 5.74 Feral cats and dogs must be controlled.

- 5.75 All equipment (brushes, nets, scoops, etc.) should be soaked in Iodophor. Tenants should consult the Aquatic Animal Code and Aquatic Manual of the Organization of International Epizootics (OIE). The manual chapter that describes appropriate disinfection procedures can be accessed at:  
<http://www.oie.int/>
- 5.8 Proper disposal of carcasses (mortalities) according to permit conditions should be undertaken, so as to prevent the spread of infectious agents. Incineration, chemical disinfecting, or other methods approved by State Department of Health should be followed at all times, when disposing of dead aquatic animal, plant or microorganism material.
- 5.9 The tenant's comprehensive health management program should provide proper training to its employees in aquatic organism health regulatory requirements and aquatic species policies. Suggested training programs can be obtained through the following:
- 5.9.1 University of Arizona – School of Animal and Comparative Life Sciences  
<http://acbs.cals.arizona.edu/>
  - 5.9.2 American Fisheries Society - Fish Health Section (offers courses)
  - 5.9.3 UH-Hilo Institutional Animal Care and Use Committee (IACUC @ courses available)
- 5.10 Tenants are encouraged to develop written operational procedures related to management of aquatic species health that are appropriate to each operation. These procedures should address at a minimum; health management of all aquatic animal, plant and microorganism stocks used in live feeds, broodstock, hatchery, and grow out phases. Facility water quality maintenance and effluent disposal should also be addressed through written company procedures.
- 5.11 Tenants are encouraged to develop and maintain accurate and up to date records. To document such important information, the following records information should be collected: numbers and locations of aquatic species on site; permits obtained for importation, collection and culture; results of regular health examinations; stock morbidity and mortality; employee training; disease occurrences; and mitigation & disinfecting actions taken to address disease outbreaks.
- 5.12 Tenants must develop (in advance of a disease event) emergency disease management and mitigation plans.

## 6. Disease Event

Quick action and prevention is the best remedy for disease outbreaks. It is in the best interest of the tenants who have specific pathogen free stocks to ensure that there is a containment area around their own site to prevent transmission of disease from infected stocks at another site. For further guidelines, please reference C.S. Lee and P.J. O'Brian (eds.) Biosecurity in Aquaculture Production Systems: Exclusion of Pathogens and Other Undesirables, World Aquaculture Society publication, 2001.

The following are recommended basic operations procedures and best management practices that should be implemented as part of each tenants health management program as soon as a disease outbreak has occurred. The basic procedures are as follows:

- 6.1 Report the disease event immediately upon confirmation to DOA, if required by permit or law and contact the State Aquaculture Disease Specialist.
- 6.2 Report the disease event immediately upon confirmation to NELHA.
- 6.3 Obtain professional assistance, if not available within the tenant's staff.
- 6.4 Establish a disease containment area around the affected stocks.
- 6.5 After consultation with aquatic disease professionals, utilize appropriate disinfecting procedures to prevent transfer of the disease to organisms outside of the affected area and to decontaminate the tenant facility.
- 6.6 Ensure that dead animal carcasses and plant material are properly stored and disposed of to prevent the spread of infectious diseases. It is noted that freezing does not destroy most viruses. Incineration or chemical disinfecting of the dead material is the preferred methods.
- 6.7 Ensure that contaminated water is disinfected and not allowed to come into contact with groundwater or a neighboring site.
- 6.8 Ensure that all drugs and chemicals for the treatment of the disease are used in accordance with federal and state regulations.

## **Appendix A**

### **Definitions**

Approved Discharge Method – An NELHA-approved method of seawater, brackish water, or freshwater disposal consistent with applicable permits with the County and State of Hawaii.

Aquatic Animal or Plant - Any aquatic organism (animal, plant, bacteria, microorganism, etc.), either regulated or un-regulated, that is held in captivity at a tenant site. The species may be regulated under DOA, DOH, County of Hawaii, EPA and other applicable laws, statutes, and regulations.

Backflow Preventer (Air Gap) - Any device or plumbing method which prevents water from back flowing into the delivery piping of NELHA's seawater or freshwater distribution systems from tenant holding tanks, totes, vessels, ponds, raceways, or other structures used to store or culture aquatic species.

County of Hawaii (COH) - The governing body of the Island of Hawaii for local government affairs.

Department of Agriculture (DOA) - State of Hawaii government department whose Plant Quarantine Branch (PQB) controls the importation of aquatic animals, plants and microorganisms and issues permits for regulated aquatic species. For further information see the [Hawaii Department of Agriculture](#) website.

Department of Health (DOH) - State of Hawaii government department whose Sanitation Branch is responsible for and regulates the discharge of refuse, sewage, and dead animal or plant material. The Clean Water Branch regulates wastewater discharges that affect ocean water quality. For further information see the [Hawaii Department of Health](#) website.

Department of Land and Natural Resources (DLNR) - State of Hawaii government department whose Division of Aquatic Resources (DAR) authorizes the taking, possession, and sale of local Hawaiian aquatic species that are restricted or prohibited by law. The DLNR-DAR issues licenses to interested parties who wish to operate as a commercial aquaculture facility for specific restricted or prohibited local species. For further information see the [DLNR-DAR](#) website.

Environmental Protection Agency (EPA) - Federal government agency responsible for regulating terrestrial and oceanic water quality within NELHA's boundaries. The State of Hawaii, DOH has been delegated authority for most EPA issues.

Equipment - Any equipment used in the culture or holding of aquatic species such as pumps, blowers, compressors, heat-exchangers, metering devices, sensors, probes, and other associated inventory.

Holding Tanks - Vessels used to store or culture aquatic species such as tanks, totes, tubs, ponds, raceways, aquariums, etc.

Native Species - Naturally occurring aquatic Hawaiian species which do not require a DOA importation permit for shipping or transfer between holding sites. Other permits and regulations may be required for the collection, holding, and culture of native species (e.g., DLNR Aquatic Resources Division issues permits for scientific collection and commercial aquaculture).

Non-Native Species - Regulated aquatic species, which require a DOA, Plant Quarantine Branch, Import Permit or Intra-State Shipping Permit. For further information see [Hawaii Department of Agriculture](#) website.

Quarantine Condition - The condition of controlled access imposed on a tenant site that has been determined by an appropriate authority to contain a diseased organism or pathogen that may pose a threat outside of the confines of the facility.

Scientific Name – The Latin name of an organism according to standard scientific taxonomy, identified to genus and species.

State Aquaculture Disease Specialist - The State of Hawaii aquatic animal, plant, and microorganism disease specialist working for the Aquaculture Development Program office within the Department of Agriculture.

Tenant Agreement - Any land, site, or variable service agreement between NELHA and an established Tenant. NELHA land use agreements include: Facilities Rental Agreement (FRA), Facilities Use Agreement (FUA), Sublease, or amendment to such agreements.

## **Appendix B**

### **Policy and Procedures for Shrimp Holding and Growing Operations at NELHA**

- 1.0 **Introduction:** NELHA has seen numerous applications for businesses requesting approval to add shrimp mariculture to their lease in 2015. Some estimate that as much as two-thirds of the world's farm raised shrimp production begins here in Hawaii, much of it at NELHA and protecting the biosecurity of these existing businesses is paramount to our worldwide image as a specific pathogen free (SPF) facility.

We have determined that the best course of action at this time is to add new language specifically for shrimp to the NELHA biosecurity plan as Appendix B. The following represents actions for data collection, best practices for SPF mariculture, detailed biosecurity protocols, site design, separation, reporting procedures and new responsibilities for the Water Quality Laboratory at NELHA to monitor actions by businesses at HOST Park and oversee NELHA's activities in this area.

- 2.0 **NELHA Biosecurity Officer (BSO):** The BSO shall monitor NELHA's and the tenant's implementation of the ASHMP disease control and elimination protocols. The specific responsibilities and activities of BSO shall be as follows:
- 2.1. Review written requests from tenants to culture shrimp or to obtain new transfers of shrimp. After review of biosecurity risk and neighboring tenant comments, respond in writing as to approval or denial of these requests.
  - 2.2. Review and verify that tenant BMP's (in the case of shrimp) are in conformance with NELHA biosecurity policies prior to approval of the importation of any regulated plants or animals to NELHA which require DoA approval.
  - 2.3. Review and approve tenant site design to assure conformance with NELHA biosecurity policies prior to arrival of any regulated plants or animals at NELHA that require Hawaii Department of Agriculture (DoA) approval.
  - 2.4. Act as the point of contact for DoA with regard to biosecurity issues.
  - 2.5. Accompany DoA official(s) during initial site visit prior to any regulated species shipments to assure facility design is in compliance with permit requirements and conditions.
  - 2.6. Collect and maintain records of tenant's import (regulated plants, animals and feedstock) permit applications, permits, periodic test reports and onsite inspections on an ongoing basis.
  - 2.7. Obtain tenant written agreement that they will follow and maintain compliance with the NELHA ASHMP rules and regulations prior to the importation of any regulated plants or animals to NELHA.
  - 2.8. Review DoA importation permit, document, and approve all transfers of regulated plants and animals between sites at NELHA and between tenants at NELHA prior to actual transfer.

- 2.9. Accompany DoA Plant Quarantine Branch (PQB) official(s) during facility site inspections for Import or Possession Permit compliance verification.
- 2.10. Accompany DoA Animal Disease Control (ADC) officials(s) on tenant site visits to obtain samples of shrimp tissue for disease analysis testing and verification of health status. NELHA BSO may be trained and delegated by ADC to obtain shrimp tissue samples for disease analysis. See attached Hawaii Shrimp Surveillance & Certification Program (HSSCP) description document and outline.
- 2.11. Conduct bi-annual review of tenants records, BMP's, etc. Depending on timing, this may be performed in conjunction with ADC HSSCP testing.
- 2.12. Monitor NELHA vector exclusion activities such as trapping of feral vertebrates.
- 2.13. Responsible for monitoring NELHA and tenant solid waste management plans as they pertain to biosecurity including waste and mortalities.
- 2.14. Monitor and respond to unusual morbidity and mortality events. Report severe events to ADC and PQB officials. Maintain confidentiality of these events between tenant, NELHA and DOA until test results have been confirmed.
- 2.15. Notify other shrimp growers at NELHA that DoA has confirmed the presence of an OIE listed crustacean disease and that transfers of shrimp are temporarily prohibited between tenants until USDA and DoA mandated disease response has been implemented and the diseased site has been decontaminated.
- 2.16. In the event of a confirmed shrimp disease outbreak, order the immediate screening of all shrimp stocks at NELHA by ADC HSSCP.
- 2.17. Work closely with DoA and U.S. Department of Agriculture (USDA) APHIS to coordinate response to reported infection outbreaks. In case of a reported infection outbreak, inspection of treated sites post-infection and verification of cleanup measures will be completed. See attached ADC Foreign Animal Disease Response Flowchart.

**3.0 Rules, Regulations and Documentation:** The following shall apply to all shrimp holding or growing operations at NELHA, regardless of their purpose for culturing shrimp:

- 3.1 All tenants at NELHA must include this Appendix B – Policy and Procedures for Shrimp Holding and Growing Operations of NELHA's ASHMP – as an attachment to their DoA import or possession permit applications.
- 3.2 Participation in the ADC HSSCP program which requires screening for the [World Organization of Animal Health \(OIE\)](#) listed diseases at least every six months.
- 3.3 Tenants intending to export live brood stock from NELHA shall meet all the requirements as stipulated by USDA and DoA rules and regulations.
- 3.4 All transfers of live shrimp between sites at NELHA and between tenants at NELHA require a DoA possession permit and NELHA prior written approval.
- 3.5 Maintain and provide the following information:
- 3.6 Site-specific BMP/SOP plans.
  - 3.6.1 Specify a point of contact to communicate with NELHA BSO
  - 3.6.2 DoA importation permit applications;



- 3.6.3 PQB importation and possession permits (issued);
- 3.6.4 ADC HSSCP testing and disease certification reports;
- 3.6.5 Records of transfers of frozen, fresh or live shrimp between sites at NELHA;
- 3.6.6 Records of transfers of frozen, fresh, or live shrimp to/from other NELHA tenants;
- 3.6.7 Records of disease events & positive pathogen test results; and
- 3.6.8 Report all positive disease test results.
- 3.7 Tenant shall submit to NELHA for prior review and approval, site design plans and culture system descriptions in conformance with this document.
- 3.8 In the event of a disease event (as defined by the USDA or DoA), tenant shall immediately report to the USDA, PQB and ADC, as well as BSO on the process and progress of implementation of disease control and elimination procedures.

**4.0 Tenant Facility Design:** For any shrimp holding or growing operations at NELHA, regardless of their purpose for culturing shrimp;

- 4.1. The following facility design features are mandatory:
  - 4.1.1 A 6-foot high perimeter fence with lockable gates is required at lease boundary.
  - 4.1.2 All shrimp culture tanks shall be at least 10 feet from the lease boundary. In the event of a shared fence line, all shrimp culture tanks shall be at least 20 feet apart. In the event that existing shrimp tanks are less than 10 ft. from the lease boundary, the burden of complying with the 20 ft. separation policy will be on the new tenant or project;
  - 4.1.3 All outdoor cultures shall be covered by overhead and side netting sufficient to prevent the capture of live shrimp by birds and other predators and to prevent shrimp from jumping out of culture tanks;
  - 4.1.4 Passive drainage of all culture area floors (no standing water) shall be provided;
  - 4.1.5 All water used for shrimp culture shall either be from the NELHA seawater distribution system or from a source approved in writing by NELHA;
  - 4.1.6 Backflow prevention devices such as check valves shall be installed immediately downstream of the tenant's main source shutoff valve or main branch lines to prevent tenants seawater from back flowing/siphoning into NELHA's seawater distribution system piping. Acceptable alternatives would be for tenants to install air gaps or check valves on individual tank influent lines.
  - 4.1.7 Filters and/or screens shall be installed on all tank discharge pipes to prevent animals from escaping or being flushed into the ground disposal system; and
  - 4.1.8 All water discharged from the shrimp culture area shall enter a NELHA approved dispersion system located on the tenant's property. Disposal water shall not be allowed to flow outside the tenant's lease boundary.
- 4.2. The following facility design features are suggested and strongly recommended:
  - 4.2.1. Culture systems should be designed to incorporate features that allow for physical isolation of culture phases, separation of age groups and of generations, as well as single brood stock source stocking;

- 4.2.2. Culture area for broodstock should be in an enclosed building with a washable solid roof;
- 4.2.3. As a minimum, all culture areas shall be enclosed with sidewalls of dust fencing material or better;
- 4.2.4. The floors of all culture areas should be hard-scape (paved);
- 4.2.5. Employee changing rooms with showers for disinfection purposes should be made available to all employees who handle shrimp;
- 4.2.6. Dip-baths for disinfection should be installed at the entrance to all activity centers;
- 4.2.7. Hand washing stations should be installed at key locations;
- 4.2.8. Burglar, intrusion and surveillance devices should be installed for theft, vandalism and intentional harm;
- 4.2.9. Screened entry doors to enclosed facilities should be installed so that they can be deployed as needed during the day when routine work is being conducted; and
- 4.2.10. Entry gates and doors to shrimp culture areas and enclosed facilities should be kept closed and locked at all times to discourage unauthorized entry.
- 4.3. The following activities are strictly prohibited without NELHA prior written approval:
  - 4.3.1. Use of groundwater, as its quality cannot be guaranteed;
  - 4.3.2. Sharing of tenant discharge systems or effluent;
  - 4.3.3. Pets are to be contained within tenants leased property and not allowed to wander onto other tenant's property;
  - 4.3.4. No fresh, frozen or live crustaceans from a source outside of NELHA are allowed on NELHA tenant property without prior written approval from NELHA;
  - 4.3.5. Sharing of equipment or tools between tenants; and
  - 4.3.6. Sharing of employees between tenant culturing sites without proper decontamination measures occurring both ways.

**5.0 Importation and Movement of Shrimp Stocks or Herds:** For all shrimp operations at NELHA, the importation of shrimp stocks or herds to NELHA and movement within NELHA are subject to the following conditions and requires prior written approval of the BSO.

- 5.1. Prior to the shipment of any new SPF shrimp stocks or herds to NELHA, the following mandatory actions must be completed:
  - 5.1.1. Tenant must obtain prior written permission from NELHA to import SPF shrimp to their facility.
  - 5.1.2. Tenant must obtain a shrimp Import or Possession Permit from PQB.
  - 5.1.3. Tenant must provide NELHA with a ADC HSSCP issued written Certificate of Origin for the shrimp stock or herd to be shipped to NELHA and a copy of the Certificate of Health from the shipper certifying the shrimp to be sent to NELHA are SPF. The Certificate of Health shall include the results of complete disease testing and screening for OIE listed shrimp diseases and pathogens of the shrimp stock to be

- sent to NELHA within 21 days of the introduction to NELHA by a USDA certified disease lab and a chain of custody of samples by a USDA certified veterinarian.
- 5.1.4. In the case of shrimp shipments/importations from stocks other than those enrolled in the ADC HSSCP, then HSSCP supervised primary and secondary quarantine at a site outside of NELHA is required.
  - 5.1.5. The tenant's shrimp culture facility must be inspected and approved by PQB for culture of shrimp prior to shipping any SFP shrimp to the facility.
  - 5.1.6. The tenant's shrimp culture facility must be enrolled in and ultimately certified by ADC as being a facility with SPF shrimp status and certification. DoA ADC Branch certification must be obtained demonstrating that shrimp are free of all OIE listed diseases and classified as SPF;
  - 5.1.7. A copy of ADC HSSCP certification must be received by the NELHA BSO at least 7 calendar days prior to shipment of animals to NELHA;
  - 5.1.8. After HSSCP certification has been obtained, shrimp must be quarantined at a site outside of NELHA for a period of time that allows for one offspring (F-1). Only F-1 offspring SPF shrimp with ADC HSSCP certification from a facility location outside of NELHA shall be allowed into NELHA; and
  - 5.1.9. Arrival of the shrimp shipment to NELHA shall be overseen by DoA officials and witnessed by the BSO.
- 5.2. Upon arrival of shrimp stocks or herds at NELHA the following actions must occur:
    - 5.2.1. Shrimp must be immediately placed in a PQB/ADC certified SPF approved and inspected facility;
    - 5.2.2. Shrimp will be subject to the ADC HSSCP testing certifying that the shrimp maintain SPF status as all times;
    - 5.2.3. All tenants must obtain NELHA prior written approval to transfer fresh, frozen or live shrimp to other facilities in the park;
    - 5.2.4. The tenant receiving live shrimp from a NELHA SPF shrimp facility, must obtain a Possession Permit from PQB and provide NELHA with a copy of this permit prior to receiving SPF shrimp.
    - 5.2.5. The tenant receiving dead or frozen shrimp from a NELHA SPF shrimp facility must obtain NELHA's written permission prior to receiving these shrimp.
    - 5.2.6. No shrimp shall be transferred between tenant sites at NELHA unless the source shrimp are certified to be of SPF status.
  - 5.3. All live shrimp transferred within NELHA shall be subject to the following conditions:
    - 5.3.1. Participation in the ADC HSSCP program is mandatory;
    - 5.3.2. Shrimp shall be tested every six months by ADC; and
    - 5.3.3. Tenants who culture shrimp and remove these shrimp entirely from their site within six months and drain and dry out their shrimp culture tanks for period of at least 14 calendar days period, do not have to participate in the ADC HSSCP or be tested after the initial testing. However, after the minimum 14 calendar days, tenant must obtain prior written approval from NELHA before resuming the holding or growing of any shrimp at this facility.

- 6.0 **Importation of Feedstocks & Biological Materials:** For all shrimp operations at NELHA, the importation of feedstocks and biologic materials are subject to the following conditions and requires prior written approval of the NELHA BSO.
- 6.1. Only feedstocks from certified US Manufacturers, or suppliers from areas that are known to be pathogen free for OIE listed shrimp pathogens will be allowed;
  - 6.2. New sources of live or wet feedstocks and probiotics require written proof of SPF certification for OIE listed diseases from a USDA certified laboratory or prior written approval from NELHA before they arrive;
  - 6.3. No live, wet or dry feedstocks or probiotics whatsoever shall be imported from regions outside of the United States that are known to have had a history of disease and pathogen concerns unless written proof of SPF certification for OIE listed diseases is provided to NELHA prior to shipment;
  - 6.4. For feedstocks imported into the USA, USDA import permits and a Certificate of Origin validated by an official government authority must be provided to NELHA within 30 days of arrival; and
  - 6.5. NELHA reserves the right to ban in the future any feedstocks, probiotics or biologic materials from any worldwide region if the area is on OIE's watch list for shrimp diseases.
- 7.0 **Best Management Practices (BMPs) Program:** All tenants are required to follow schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to mitigate the risk of disease and to minimize the spread of disease incidents as they occur, and to contain and eliminate disease outbreaks.
- 7.1. The BMP Program must include standard operating procedures for the following:
- 7.1.1. A written BMP manual;
  - 7.1.2. Pathogen exclusion;
  - 7.1.3. Feed storage;
  - 7.1.4. A Disease Incident Response program. Tenant shall review and revise the BMP and Incident Response manual with the BSO after each disease incident;
  - 7.1.5. Ensuring decontamination measures are sufficient to disinfect those entering the facility from an outside source. In this regard, it is important to note that shrimp facilities at NELHA should be attentive to the possibility that employees working at more than one site, or for more than one NELHA tenant, have significant potential to transfer diseases between sites;
  - 7.1.6. Tenant shall name a Point of Contract person responsible for reporting a disease incident and coordinating the incident response with the NELHA BSO.
  - 7.1.7. A Solid Waste Management Program – special attention shall be given to the handling and the off-site disposal of dead animals. All shrimp mortalities shall be removed from culture tanks and immediately placed in chlorine, autoclaved, or frozen, and disposed of in a County of Hawaii approved disposal facility or landfill

on a weekly basis. Shrimp mortalities are not to be thrown away in a tenants disposal dumpster or trash container on site;

- 7.1.8. Sterilization such as using dip-baths and hand washing stations should be implemented between all activities and all locations. Specifically, all equipment (brushes, nets, scoops, etc.) should be sterilized on a routine basis;
- 7.1.9. Training of employees regarding the BMP's and especially how new hires will be trained;
- 7.1.10. Record-keeping including but not limited to the following:
  - 7.1.10.1.1. Daily staff activity log (who did what where);
  - 7.1.10.1.2. Chain of custody for all (live or dead) animals entering and leaving a facility;
  - 7.1.10.1.3. Staff training records;
  - 7.1.10.1.4. Importation or Possession Permits (DoA/PQB);
  - 7.1.10.1.5. Copies of DoA PQB or ADC branch authorizations and inspection reports;
  - 7.1.10.1.6. Supply source for all feedstocks and biological culture materials;
  - 7.1.10.1.7. Stored (frozen) tissue inventories;
  - 7.1.10.1.8. Stock transfer records – including from sale of meat; and in the case of disease incident, environmental and water quality records such as temperature, DO, pH, turbidity, water exchange, etc.;
  - 7.1.10.1.9. Recording historical survival data for all phases of the shrimp growing process;
  - 7.1.10.1.10. Transient vector control including but not limited to feral vertebrate trapping (mice, rats, cats, and mongoose), insects, vehicle traffic between other sites at NELHA, and visitors; and,
  - 7.1.10.1.11. Handling of shrimp from outside sources.

7.2. Procedures for the following activities are strongly suggested for inclusion in the BMP Program include the following:

- 7.2.1. Training of employees after a disease incident and procedures for monitoring and reviewing staff compliance with the BMP's;
- 7.2.2. Bolstering transient vector control by limiting visitor access to certain areas, visitor training, enforcing visitor uniforms;
- 7.2.3. Periodic inspections for vector control effectiveness;
- 7.2.4. Requiring employees change into work uniforms when on-site;

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**FOR MORE INFORMATION PLEASE CONTACT**

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