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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
GENERAL LEASE NO. S-

THIS LEASE, made this _____ day of _____, 20____, 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 _____, whose address is _____, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor 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 Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises identified as " _____, " containing an area of _____, more or less, 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 twenty (20) years, commencing on the first day of January, 2009, up to and including the 31st day of December, 2029, unless sooner terminated as hereinafter provided.

Provided that the Lessee shall pay rent through December 31, 2009, upon execution of this lease and shall thereafter yield and faithfully pay to Lessor at the Office of the Department of Land and Natural Resources, State Parks Division, 1151 Punchbowl Street, Room 310, Honolulu, Hawai'i 96813, a annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal annual installments beginning on January 1, 2010, and on or before January 1 of each year during the term as follows:

A. For the first ten (10) years, the sum of _____ DOLLARS (\$ _____) per annum.

B. As of the end of December 2019, the annual rental reserved for the remaining ten (10) years of said term shall be

reopened and redetermined.

C. Determination of rental upon reopening of the annual rental. The rental for the remaining ten (10) year period shall be the fair market rental at the time of reopening or the rent for the previous period, whichever is greater. It is the intent and agreement of the parties that the rent shall never decrease during the term hereof, except as provided in paragraph 43 below. Except as provided herein, the provisions in Hawaii Revised Statutes chapter 658A (as this chapter or its successor is in effect at the time of determination), shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraiser or independent appraiser, as allowed by law, whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee'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 Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of chapter 658A, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

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

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

RESERVING UNTO THE LESSOR THE FOLLOWING:

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

Deleted: 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

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to cabins, residences, cesspools, water system(s) and piping, and fences located on the land prior to or on the commencement date of this lease or constructed during the term of this lease.

3. Timber stands. The right (with consultation with and notice to lessee) to designate areas of timber stand on the premises, which shall include all trees standing within said

designated areas; and the right to enter upon said areas, or to authorize others to do so, for the purpose of performing woodland management activities.

Deleted: , and the right to issue license for the harvest of said timber.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E and section 171-36.1, Hawaii Revised Statutes, over historic properties and prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. 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 of this lease.

3. 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 thereon, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee. This provision shall not be deemed to be a requirement for Lessor to provide utility services to Lessee, and Lessees are notified that the remote rural nature of premises and improvements means such utilities may not necessarily continue to be available.

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

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

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

7. 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, including but not limited to resource protection laws and regulations as applicable in state parks. Lessee shall not use or allow the property to be used for or in the course of any illegal activity. Specifically, but without limitation, growing or storing of marijuana on or from the premises (except as may be allowed by Haw. Rev. Stat. §§ 329-121 through 329-128) and any and all other manufacturing or growing of prohibited substances is strictly prohibited.

Lessee understands and acknowledges that the premises are located in the conservation district. Lessee shall obtain a conservation district use permit for any activity relating to the premises to the extent required by law.

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

9. Improvements. The Lessee shall not at any time during the term construct, place, or install on the premises any additional building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose in the Chairperson's sole discretion, provided that such condition shall not include any increase in rent.

Deleted: ing
Deleted: adjustment of

The Lessee shall not at any time during the term demolish, remove, modify, or relocate any existing building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose in the Chairperson's sole

discretion, including any adjustment of rent, unless otherwise provided in this lease.

Any new construction, improvement, rehabilitation, relocation, demolition, or major site work that affects the historic integrity of a historic recreation-residence or the historic district shall be strictly in compliance with residence design standards and guidelines ("Design Guidelines"). Lessee understands and acknowledges that the Design Guidelines have not yet been put into final form. Lessee acknowledges that it has been provided with a copy of or internet access to the present draft of the Design Guidelines. Lessor will advise Lessee in writing when the Design Guidelines are finalized. Lessee will have sixty (60) days from the date such notice is mailed within which to cancel this lease. If Lessee cancels the lease pursuant to this section, then this lease shall be terminated as of the date of Lessor's receipt of the notice and the parties shall have no further liabilities or duties hereunder except as otherwise provided herein as to the parties' duties upon termination, and Lessee shall have no right, title, or interest in and to the premises or any improvements thereon. Lessor shall return to Lessee the prorated portion of any lease rent paid in advance.

Lessee does not have the right to enforce, invoke, or attempt to enforce the Design Guidelines with respect to other leased properties.

Deleted: The Chairperson's interpretation of the Design Guidelines and grant or denial of approval shall be final, conclusive, and non appealable in any forum, except as otherwise provided in the Design Guidelines.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings, structures, improvements, and landscaping now existing or hereafter constructed or installed on the premises in substantially the same order, condition, and repair as upon the commencement of the lease.

Deleted:, all in strict compliance with the Design Guidelines.

11. 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.

12. Character of use. The Lessee shall use or allow the premises to be used solely for recreation-residence purposes as defined in paragraph 42 hereof and not as a principal place of residence. Lessee shall have and maintain a separate principal place of residence.

13. Assignments, etc. The Lessee shall not transfer or assign the premises, or any portion, or transfer or assign

this lease 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 approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and shall condition its consent to the assignment of the lease on payment by the Lessee of a premium determined as specified in the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as the same has been or may be amended from time to time, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall also be determined as specified in the above-mentioned Evaluation Policy.

If the Lessee or any assignee of the lease is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "C."

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises. No person other than Lessee shall use the premises or any portion thereof in return for any consideration or payment whatsoever.

15. 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 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.

Deleted: and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control,

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's 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.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, or its equivalent, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds on the premises.

Deleted: and all roadways or sidewalks

Deleted: or adjacent to

Deleted: in the use or control of the Lessee.

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

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

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full

and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

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

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty. In the alternative, Lessee may place with Lessor cash or equivalent in this amount.

19. Lessor's lien. The Lessor shall have a lien on all property kept or used on the premises, whether the same is exempt from execution or not for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease and any mortgage, hypothecation, or pledge shall be null and void.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at the address stated herein or at such other address as the Lessee shall state, in writing, and to each holder of record having a security interest in the premises, or 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 any assignment is made of the Lessee's property for the benefit of creditors, 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 and demand for cure, by personal service, registered mail or certified mail to the Lessee at the address stated herein or at such other address as the Lessee shall state, in writing and to each 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 Lessee shall have no right, title, or interest in and to the premises or any improvements thereon.

22. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage 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 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 redispense 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 Lessor 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 redispense shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispense;

second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redistribution which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

The rights stated in this paragraph are as stated in Haw. Rev. Stat. § 171-21 (1993) and in no way modify or limit the prohibition on mortgaging the premises or this lease.

23. 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 federal government agency, county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. All such condemnation proceeds shall be paid only to Lessor and shall be and remain the sole property of the Lessor. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor. Lessee may, at Lessee's own expense and in compliance with all applicable laws including obtaining any necessary conservation district use permit, relocate improvements to the remainder of the premises occupied by the Lessee. In the event of any such condemnation, the Lessee shall have the option to terminate this lease. If Lessee elects to do so and provides Lessor with notice of this election in writing, then this lease shall be terminated as of the date of Lessor's receipt of the notice and the parties shall have no further liabilities or duties hereunder except as otherwise provided herein as to the parties' duties upon termination, and Lessee shall have no right, title, or interest in and to the premises or any improvements thereon. Lessor shall return to Lessee the prorated portion of any lease rent paid in advance.

24. 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.

25. Inspection by appraisers and prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times for purposes of rent re-determination and at all reasonable times during the last two years of the term of the lease or during any holdover of the lease for purposes of appraising the demised premises or improvements or for purposes of informing and

apprising that person or persons of the condition of the lands and improvements thereon; provided, however, that any entry into any improvements on the premises shall be conducted during reasonable hours after notice to enter is first given to the Lessee. Lessee or designated agents of Lessee may accompany Lessor during any entry into improvements.

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

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, Lessor 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.

28. Justification of sureties. Any bonds required by this lease 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 by 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 Lessee 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 Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but

only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

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

30. 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 use 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.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises 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, said option to be exercised by the Lessor on or about the end of the term or sooner termination. Lessee understands and specifically agrees that Lessee does not own the improvements, has no rights in or to the improvements after the end of the lease, and under no circumstances is entitled to compensation for or relating to the improvements. Any personal property abandoned on the premises will be dealt with pursuant to Haw. Rev. Stat. § 171-31.5 as from time to time amended.

32. Non-warranty. The Lessor does not warrant the condition of the premises or of any improvements or structures thereon, as the same are being leased in strictly as is condition. Lessor does not warrant the exact boundaries or size of the premises. Lessee specifically agrees that the boundaries and size of the premises are not material and any variation in the same shall not affect the rent to be paid or otherwise excuse Lessee from performance of any of the covenants of this lease.

33. 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 with Lessor's written 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.

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.

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

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

36. 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.

37. 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.

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

39. Historic preservation. In the event any previously unidentified historic properties, burial sites, or human remains are discovered during land alteration or utilization activities on the premises, the Lessee or the Lessee's agents, employees, and representatives shall immediately stop all work or activities or both and contact the Historic Preservation Division. In the event that burial sites or human remains are discovered, the Lessee or the Lessee's agents, employees, and representatives shall comply with section 6E-43.6 (Inadvertent discovery of burial sites), Hawaii Revised Statutes, and any implementing regulations. Under section 6E-11(a) and (b), Hawaii Revised Statutes, it is unlawful to damage or alter historic properties or burial sites unless permitted by the State of Hawaii, Department of Land and Natural Resources.

40. Construction and installation of utilities. Lessee shall be solely responsible, at Lessee's own cost and expense, for the construction and installation of all necessary on-site utilities and improvements, including water and sewage, which shall be in conformance with prevailing State of Hawaii and County of Kauai building and health requirements applicable thereon.

In the event that use of the existing cesspool is prohibited or found to be contrary to existing law for any reason or if Lessor is subjected to any monetary fine or penalty of any kind based on or by reason of the existing cesspool, then Lessor may require Lessee at Lessee's sole expense and within one year from the date of written notice from Lessor, to close the existing cesspool on the premises and install an individual approved wastewater treatment system. Closure of the cesspool and installation of the treatment system shall be in conformance with all applicable laws and codes and accepted by the Department of Health of the State of Hawaii. Lessee shall apply for and obtain a conservation district use permit and any other required permits before beginning any such closure or installation.

Lesser may require closure of any cesspool and installation of an individual approved wastewater treatment system in order to protect the well head area or to comply with best management practices in connection with protecting the well head area. If Lessor does so require, then Lessor shall be responsible for closure and installation and shall bear all costs of doing so.

41. Maintenance of water pipelines. Lessee shall be responsible for maintenance of water supply laterals from the premises (including all pipes and fixtures on the premises) to

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Deleted: [With respect to lots in the Well Head Protection Zone]: Within one year from the date of this lease, Lessee shall, at its sole expense, close the existing cesspool on the premises and install an individual approved wastewater treatment

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Deleted: septic tank

Deleted: treatment system shall be in conformance with all applicable laws and codes and accepted by the Department of Health of the State of Hawaii. Lessee shall apply for and obtain a conservation district use permit and any other required permits before beginning any such closure or installation.¶

the point at which connection is made to the main water lines, three (3) inches in diameter or larger, or to such other point as may be directed by the Chairperson. Lessee's responsibility shall include the installation, maintenance and repair of all such laterals at no cost to the Lessor and, further, shall be in accordance with plans and specifications first submitted to and approved by the Lessor. Lessor makes no representation that water service will be available throughout the term of the lease.

Deleted: to and including all pipes and fixtures on the premises

42. Recreation-residence purposes defined. For purposes of paragraph 12, entitled "Character of use" herein, recreation-residence purposes is defined as being the use of the leased premises for occasional use, and for continuous occupancy not exceeding ninety (90) consecutive days by the Lessee, Lessee's family members, friends and guests.

Deleted: on weekends, recognized State and Federal holidays,

Any other provision of this lease notwithstanding, the premises shall not be occupied by the Lessee, Lessee's family members, friends, guests, caretaker, or any other person for more than a total of one hundred eighty (180) days during a one (1) calendar year period. Year-round occupancy of the leased premises is strictly prohibited.

The premises may not be advertised in any way, including on the internet or World Wide Web, for availability or rental. There shall be no commercial activity of any kind on the premises or any portion thereof.

Renting of the leased premises, for any period of time or for any amount of money or other valuable consideration is strictly prohibited.

Lessee shall make available to Lessor upon request copies of any and all of Lessee's tax records and returns for purposes of verifying compliance with these provisions. Documents requested pursuant to this paragraph may be reviewed and notes made upon review but shall not be copied unless Lessor explains in writing to Lessee why review is not sufficient and copying is required under the circumstances. Nothing in this paragraph limits any other right Lessor may have to obtain copies pursuant to any other law, rule, procedure, or agreement.

43. Character of the premises; limited services. Lessee acknowledges that the premises are in an isolated, rural, mountaintop area in a state park and that the structures on the premises are rustic and historic, suitable and intended for part time use only. Lessee shall not expect the level of services that might be available in more developed and accessible areas. Lessee shall expect that use of the premises will entail certain hardships and limitations, including but not limited to: unreliable water system, electrical system, and other utilities;

the need for Lessee to haul their own trash out of the park; lack of sewers; cabins which need significant repair work and that require the work to be done in a manner that maintains the character of the community; substandard roads that may not be suitable for all vehicles, that may limit the ability of emergency vehicles to access the area, and that may be completely closed for unpredictable periods.

Deleted: by weather or other conditions.

Specifically, but without limitation, Lessee acknowledges and agrees that Lessor does not guarantee or covenant to provide running water or potable water or electrical service. Lessee has been advised of problems with water quality. Lessor specifically reserves the right to shut down existing water service or electrical service rather than repair or update the service. In the event that Lessor decides to shut down existing water service or electrical service, Lessor will advise Lessee in writing. Lessee will have sixty (60) days from the date such notice is mailed within which to notify Lessor in writing of Lessee's election to cancel this lease. If Lessee does so, then this lease shall be terminated as of the date of Lessor's receipt of the notice and the parties shall have no further liabilities or duties hereunder except as otherwise provided herein as to the parties' duties upon termination, and Lessee shall have no right, title, or interest in and to the premises or any improvements thereon. Lessor shall return to Lessee the prorated portion of any lease rent paid in advance.

If existing water service is shut down and Lessee does not exercise its right to terminate the lease as provided in the preceding paragraph, then Lessee shall be responsible for obtaining water by catchment system. In such event Lessee's reasonable and properly documented costs of doing so shall be divided by the number of years remaining on the lease and the annual rent otherwise payable shall be reduced by this prorated amount, provided that the amount of the reduction shall in no event exceed the rent otherwise payable.

Deleted: or otherwise at Lessee's sole expense and without any liability or cost to Lessor.

44. Proof of principal place of residence. The Lessee shall, upon request by the Lessor, furnish evidence that Lessee maintains a full-time residence at a location other than the premises. Such information may include, but is not limited to a street address, a mailing address, or a telephone number for the Lessee at said principal place of residence. The Lessor may, at its option, require other and additional confirmation of principal residency at a location other than the premises.

45. Fire Prevention. Lessee shall consult with the Division of Forestry and Wildlife, Department of Land and Natural Resources, for advice on fire prevention and fire suppression equipment.

46. Dangerous animals. Lessee shall not place, keep and/or maintain on the premises, or the surrounding public lands, any animal that presents a threat or danger to life, property or to the environment, or whose presence constitutes a nuisance to others, as determined by the Chairperson. This provision shall include animals banned by the Department of Agriculture, State of Hawaii.

47. Prevention and control of noxious and exotic plants. The introduction of noxious and exotic plant species to the premises shall not be permitted, except with the prior written approval of Lessor. The Lessee shall be solely responsible for the removal, at no cost to the Lessor, of any and all noxious and exotic plant species introduced by Lessee on to the premises and which are found to have adverse impacts upon the environment, notwithstanding the fact that prior written approval may have been obtained from the Lessor.

48. Hunting and fishing. No hunting or fishing shall be allowed on the premises during the term of this lease.

49. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

50. Environmental regulations. Lessee 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.

51. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings, structures, and improvements on the premises in the joint names of Lessor and Lessee in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy. Provided that the Chairperson, in his or her sole discretion, may waive or modify this requirement in writing upon a satisfactory showing that such coverage cannot be obtained or can be obtained only at an excessive cost.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and

specifications approved in writing by Lessor; provided, however, that with the writing approval of the Lessor, the Lessee may instead elect to terminate this lease. If Lessee elects to do so and provides Lessor with notice of this election in writing, then this lease shall be terminated as of the date of the notice and the parties shall have no further liabilities or duties hereunder except as otherwise provided herein as to the parties' duties upon termination, and Lessee shall have no right, title, or interest in and to the premises or any improvements thereon. Lessor shall return to Lessee the prorated portion of any lease rent paid in advance.

Any and all insurance proceeds not used to rebuild or repair the buildings or improvements shall be paid to and retained by the Lessor.

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

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

52. Removal of trash. The Lessee shall be responsible for the removal of all trash upon the premises, whether or not placed on the premises by Lessee or with or without Lessee's consent, and whether or not placed on the premises prior to the term of this lease. There shall be no outdoor fires for burning of trash or any other purpose, except with the written approval of the Chairperson.

53. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the

provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

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

55. Easements. The Lessee shall cooperate as reasonably necessary in the issuance and documentation of easements in favor of Lessor or other lessees of easements for installation, repair, and maintenance of utilities.

56. Notice. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by certified mail, postage prepaid, unless another form of delivery is required in a specific section of this lease. In all cases, notice to Lessee shall be delivered or addressed to the address stated above. Unless otherwise specified, mailed notices to Lessee shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Notice to Lessor shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Unless otherwise specified, notices to Lessor shall be deemed given upon actual receipt. Either party may by notice to the other specify a different address for notice purposes, provided that Lessee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Lessees hereunder, notice to one Lessee at the address stated above (or any different address specified as permitted by this paragraph) shall be deemed notice to all Lessees.

57. Approvals. Any permission, approvals, or authorizations of any kind by the Lessor required by or relating to this lease shall be in writing signed by the chairperson with (where required) authorization of the Board.

58. Withdrawal. The Lessor shall have the right to withdraw the demised land, or any portion thereof, at any time during the term of this lease upon the giving of reasonable notice by the Board and without compensation, for public uses or purposes of any kind or nature, and Lessor shall have the right to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable and provided further that Lessee may, at Lessee's own expense, remove and relocate its

improvements to the remainder of the premises occupied by the Lessee. In the event of any such withdrawal, the Lessee shall have the option to terminate this lease. If Lessee elects to do so and provides Lessor with notice of this election in writing, then this lease shall be terminated as of the date of Lessor's receipt of the notice and the parties shall have no further liabilities or duties hereunder except as otherwise provided herein as to the parties' duties upon termination, and Lessee shall have no right, title, or interest in and to the premises or any improvements thereon. Lessor shall return to Lessee the prorated portion of any lease rent paid in advance.

59. Reservation of rights. It is expressly agreed and understood by the parties hereto that this lease is not intended to and shall not affect, alter, amend, increase, or decrease the rights of any party as to the issues raised in pending lawsuits entitled Carswell et al v. DLNR, Civil No. 06-1-0049, on appeal as App. No. 28730 and Locricchio et al v. Young et al, Civil No. 08-1-0054, whether or not Lessee is a party to either of those lawsuits. It is the express intention and agreement of the parties that this lease is without prejudice or waiver of any of the rights, interests, and positions of any party hereto which existed or accrued under any previous lease and that the parties expressly reserve all of their rights, interests, and positions which accrued under the any previous lease.

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 and each of them, if more than one.

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

(d) "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.

(e) "Days" shall mean calendar days, unless otherwise specified.

(f) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

(g) "Timber" means any trees standing within designated areas of the leased land which are covered by a woodland management plan.

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 July 25, 2008.

By _____
Chairperson
Board of Land and
Natural Resources

LESSOR

LESSEE

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

STATE OF HAWAII)
) SS.
COUNTY OF)

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

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF)

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

Notary Public, State of Hawaii

My commission expires: _____