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U. S. Army Engineer Division,
Pacific Ocean

STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ M. Adachi

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RETURN BY: MAIL () PICKUP (X)
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE GENERAL LEASE NO. S-3848
U. S. LEASE, CONTRACT NO. DA-94-626-ENG-79

1. THIS LEASE, made and entered into this 17th day of August, in the year one thousand nine hundred and sixty-four, by and between the STATE OF HAWAII, represented by its Board of Land and Natural Resources, whose address is P. O. Box 621, Honolulu, Hawaii, 96809, and whose interest in the property hereinafter described is that of fee simple owner, for itself, its administrators, successors, and assigns, hereinafter called the "Lessor", and THE UNITED STATES OF AMERICA, hereinafter called the "Government":

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government two (2) parcels of land described on Exhibit "A" attached hereto and hereby made a part hereof, all to be used for the following purpose: Military purposes.

3. TO HAVE AND TO HOLD the said premises for a term of sixty-five (65) years beginning August 17, 1964, and ending August 16, 2029; subject, however, to the rights

of the Lessor and the Government respectively to terminate this lease in accordance with provisions 6 and 13 hereof.

4. The Government shall pay the Lessor rent at the following rate: ONE DOLLAR (\$1.00) for the term of the lease, the receipt and sufficiency whereof is hereby acknowledged.

5. The Government shall have the right, during the existence of this lease, to attach fixtures, and erect structures or signs, in or upon the premises hereby leased, which fixtures and structures or signs, so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. In addition, the Government shall post and maintain signs on roads and trails entering dangerous areas to provide a warning of any dangerous or hazardous activities; provided, that the information placed on the posted signs anywhere within the demised premises shall not be incompatible with the terms of this lease and, in those instances where joint use of an area is permitted, the information placed on the signs may include the permitted joint activities.

6. The Government may terminate this lease at any time by giving thirty (30) days' notice in writing to the Lessor.

7. The Lessor will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Federal Government in connection with the Federal Government's use of the premises described herein.

8. Except as otherwise provided herein, the Government shall have unrestricted control and use of the demised premises, including the right to fire all combat weapons therefrom into the designated Makua Impact Area; provided, however,

the Government shall not use any portion of the demised premises as an impact area for explosive or incendiary munitions of any type and, in recognition of public use of the demised premises, upon completion of a training exercise or prior to entry thereon by the general public, whichever is sooner, the Government shall make every reasonable effort to stockpile supplies and equipment in an orderly fashion and away from established roads or trails and to remove or deactivate all live or blank ammunition from the areas where the general public is permitted under the terms of this lease.

9. The Government shall obtain the written consent of the Lessor prior to constructing any road or building of the type for which design and construction plans are normally required; provided, however, that such consent shall not be arbitrarily withheld. The Government agrees that its training roads which provide primary access within or across the demised premises will be maintained to normal standards for training area roads with due regard for preventing unnecessary erosion; provided, however, that the Government shall be under no obligation to maintain roads during periods when the necessary engineer troops are absent from Oahu.

10. The Government shall take every reasonable precaution to prevent the start of any fire in the areas herein demised and shall take immediate and continuing action to extinguish any and all fires started by or resulting from Government activities. Further, the Government shall establish and at all times maintain a standard operating procedure for fighting fires within or adjacent to the subject leased property resulting from Government training activities during its use and occupancy of the premises; provided, further, that Government

personnel actually using the premises shall be familiar with said standard procedure including the means of implementation.

11. In recognition of the limited amount of land available for public use, of the importance of forest reserves and watersheds in Hawaii, and of the necessity for preventing or controlling erosion, the Government hereby agrees that, commensurate with training activities, it will take reasonable action during its use of the premises herein demised to prevent unnecessary damage to or destruction of vegetation, wildlife and forest cover, geological features and related natural resources and improvements constructed by the Lessor, help preserve the natural beauty of the premises, avoid pollution or contamination of all ground and surface waters and remove or bury all trash, garbage and other waste materials resulting from Government use of the said premises.

12. Except as required for defense purposes in times of national emergency, the Government shall not deliberately appropriate, damage, remove, excavate, disfigure, deface or destroy any object of antiquity, prehistoric ruin or monument.

13. In the event that the leased property is not used by the Government for a period of three (3) consecutive years, this lease may be terminated upon ninety (90) days' written notice from the Lessor to the Government, provided, however, that if prior to the expiration of the aforesaid 90-day period the Secretary of the Army shall find and determine that the leased property is required for military purposes and shall notify the Lessor in writing of this finding and determination, this lease will continue in effect; provided, further, that periods during which a national emergency has been declared by the President or the Congress of the United States and periods

during which major combat elements are temporarily deployed away from the State of Hawaii shall not be included in the said three-year period. During such period of temporary deployment the parties hereto shall discuss and give consideration to and provide for the additional public use of the demised premises compatible with then existing military training requirements. The Government will assure that current military standards concerning adequate utilization are applied to these premises and will assure that such use is known and is a matter of record and available to the Lessor upon request.

14. That portion of the demised premises situate between the ocean and the beach road (Farrington Highway extension) or any realignment thereof approved by the Government agency exercising control of the training area shall be fully available for use by the general public, except during periods when the public will interfere with training activities or training will endanger the said public, whereupon the Government shall publish a notice in two papers of general circulation at least three (3) days prior thereto except when prohibited therefrom due to overriding military contingencies, post necessary signs, other markings and/or guards, and shall have the right to restrict public use of the premises and to control traffic access over the said beach road during all periods of danger. In connection with such public use of the premises, the Lessor shall have the right to construct or place thereon public sanitary facilities, picnic tables, etc., provided that such construction is planned, sited and completed as agreed to by the local military commander having control and accountability of said leased premises, and, provided further, that notwithstanding any other provision of this lease to the

contrary, the Government hereby accepts the responsibility and liability for repairs of any damage which can be demonstrated to have been the direct result of military activities, to improvements constructed by the Lessor subsequent to the date of this lease; provided, however, that the Lessor shall be responsible for exercising proper control of the public during periods when public use is permitted and the Government shall have no liability for maintaining grounds used by the public except for removing any litter, refuse or trash resulting from Government activities.

15. The Lessor hereby agrees that, commensurate with the public use of the premises herein demised, it will take reasonable action during the use of the said premises by the general public, to remove or bury trash, garbage and other waste materials resulting from use of the said premises by the general public.

16. The Government shall have the right to fire over and maneuver across Farrington Highway and, in the interest of public safety, the right to interrupt traffic thereon during such training activities; provided, however, that the Government shall minimize interference with traffic by limiting stoppages thereof to 15-minute periods except when prohibited therefrom due to overriding military operations.

17. In connection with public use of the beach area, the Lessor shall also have the right to develop and use for public purposes Kaneana Cave, commonly called Makua Cave, together with an access foot trail thereto and a parking area adjacent to Farrington Highway.

18. Subject to obtaining advance clearance from the plans and training office of the Government's controlling agency,

or any other designated Government agency, officials and employees of the Lessor and any person or persons duly authorized by the Lessor shall have the right to enter upon the demised premises at all reasonable times to conduct any operations that will not unduly interfere with activities of the Government under the terms of this lease; provided, however, that such advance clearance shall not be unreasonably withheld.

19. All persons legally entitled under the provisions of this lease to be on the said premises shall have a nonexclusive right to use all Government roads and trails except when such use will interfere with the training activities of the Government or said roads and trails have been restricted, by a duly posted sign, as security or danger areas by the Government.

20. The Lessor reserves unto itself all ground and surface water, ores, minerals and mineral rights of every description on, in or under the demised premises but shall exploit or permit others to exploit the said ores, minerals and mineral rights only with the consent of the Government. Notwithstanding the foregoing reservation, the Government shall have the right to develop and use for road construction projects on the demised premises sources of coral, rock and similar materials occurring naturally on the said premises and to use said ground and surface waters for purposes incident to the rights granted by this lease.

21. The Government will not be responsible for any loss, liability, claim or demand for any property damage, property loss, or personal injury, including but not limited to death, arising out of injury or damage caused by or resulting from any act or omission of the Lessor or the general public in connection with their use of the premises described herein.

22. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at P. O. Box 621, Honolulu, Hawaii, 96809, and if given by the Lessor shall be addressed to the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Building 96, Fort Armstrong, Honolulu, Hawaii, Attention: Real Estate Division, or at such location and to such other agency as may be mutually agreed upon by the parties hereto.

23. The Government hereby agrees that the use and enjoyment of the land herein demised shall not be in support of any policy which discriminates against anyone based upon race, creed or color.

24. The Government shall not sublease or grant any interest in the demised premises; provided, however, that the Government shall have the right to grant the use of portions of the premises for temporary activities of Governmental agencies or their contractors in which case any land rental derived from such use of the premises shall be covered into the Treasury of the State of Hawaii.

25. Subject to obtaining the prior approval of the Government, the Lessor reserves the right to grant rights or privileges to others not inconsistent with the terms of this lease affecting the whole or any portion of the demised premises.

26. The Government shall surrender possession of the premises upon the expiration or sooner termination of this lease and, if required by the Lessor, shall within sixty (60) days thereafter, or within such additional time as may be mutually agreed upon, remove its signs and other structures; provided that in lieu of removal of structures the Government may abandon

them in place. The Government shall also remove weapons and shells used in connection with its training activities to the extent that a technical and economic capability exists and provided that expenditures for removal of shells will not exceed the fair market value of the land.

27. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Honolulu, Hawaii, hereinafter referred to as said officer, who shall within a reasonable time reduce his decision and the reasons therefor to writing and mail or otherwise furnish a copy thereof to the Lessor. The decision of the said officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessor mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

(b) This condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) That all appeals under this provision shall be processed expeditiously.

28. The Government's compliance with all obligations placed on it by this lease shall be subject to the availability of funds.

29. The Lessor's compliance with any obligations which may be placed on it by this lease shall be subject to the availability of funds and/or personnel.

30. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purposes of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

31. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

32. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or

representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such lease; provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three or more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

33. This lease is not subject to Title 10, United States Code, Section 2662.

IN WITNESS WHEREOF, the parties hereto have hereunto
subscribed their names as of the date first above written.

STATE OF HAWAII

By: *Jim P. Long*
Chairman and Member
Board of Land and Natural Resources

And By: *L. L. Summers*
Member
Board of Land and Natural Resources

THE UNITED STATES OF AMERICA

By: *Eugene H. Merrill*
Eugene H. Merrill
Deputy Assistant Secretary of the Army (I&L)
(Installations)

APPROVED AS TO FORM:

Bert T. Kobayashi
BERT T. KOBAYASHI
Attorney General
State of Hawaii

Peter C. Lewis
PETER C. LEWIS
Deputy Attorney General
State of Hawaii