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TMK No.:

ENVIRONMENTAL COVENANT

SITE:

This Environmental Covenant (“Covenant”) is made on this _____ day of _____, 20____ by and between _____ (“Grantor”), the address of which is _____ and the State of Hawai‘i Department of Health (“Holder”). Owner and Holder are collectively the “Parties” to this Covenant.

1. Background.

1.1 On July 6, 2006, the Uniform Environmental Covenants Act, Hawaii Revised Statutes Chapter 508C (“UECA”) became law in the State of Hawai‘i. Land use restrictions, environmental monitoring requirements, and engineering controls known as Activity and Use Restrictions are tools to inform and protect the public and the environment from the contamination that remains on the property.

1.2 Grantor is the owner of real property corresponding to Tax Map Key (“TMK”) _____, located at _____ (the “Property”). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

1.3 Based on the information reported by _____, reflected in the Environmental Hazard Management Plan (the "EHMP") and hereby incorporated by reference (Exhibit B), impacted media at the Property consists of the following:

2. **Intent.** The Parties executing this Covenant intend it to be an "environmental covenant" created and executed pursuant to UECA. Grantor is the "grantor" of this Covenant and the Holder is designated a "holder" as those terms are defined by, and in accordance with the provisions of, the UECA. The Property shall be burdened by the Activity and Use Restrictions described in paragraph 4 to the benefit of the Holder and in accordance with the Covenant, and use of this Property shall be subject to this Covenant. For purposes of this Covenant, "use restrictions" has the same meaning as "use limitations" under the UECA and "institutional controls" in the EHMP. This Covenant is to be governed by and construed in accordance with Hawai'i law, and courts sitting in the State of Hawai'i, including the United States District Court for the District of Hawai'i to the extent it has jurisdiction.
3. **Affected Property.** This Covenant applies to the Property, identified as TMK _____.
4. **Activity and Use Restrictions.** The Grantor shall comply with the following Activity and Use Restrictions for the Property, as described more fully in the EHMP, which shall run with the land and shall be enforceable against any of the Grantor's heirs, assigns or successors in interest as set forth in paragraph 6 below:

5. **Reporting Requirements.** Grantor shall comply with the reporting requirements set forth in the EHMP.
6. **Obligations of the Grantor and All Future Owners and Users of the Property.** Grantor for itself and on behalf of its heirs, successors, assigns and all persons acquiring or owning any right, title, or interest in the Property and their respective heirs, successors, assigns, lessees, licensees, executors, administrators, devisees and any users of the Property, now agrees to comply with the Activity and Use Restrictions and Reporting Requirements, and incorporate either in full or by reference the restrictions of this Covenant in any deed, lease, license or other instruments granting a right to use the Property and any mortgage.
7. **Duration.** This Covenant shall be perpetual unless amended, terminated or modified pursuant to and in compliance with UECA.
8. **Effective Date.** This Covenant shall be effective at such time as all of Grantor and the Holder have executed this Covenant.
9. **Representations and Warranties.** Each person signing this Covenant warrants that, to the best of his or her knowledge, he or she is the appropriate individual to represent his or her own interest or the interest of the entity on whose behalf the person is signing this Covenant in matters related to this Covenant. Each person signing also warrants that he or she possesses the proper authority to enter into this Covenant in the capacity stated in the applicable signature block. Additionally, Grantor warrants that to its knowledge, there are no recorded or unrecorded interests in the Property that have not been disclosed.
10. **Termination or Modification of this Covenant.** This Covenant may be amended or modified or terminated only by a recorded document signed by Grantor and Holder and only in accordance with applicable provisions of UECA.
11. **Enforcement.** This Covenant is subject to the enforcement provisions of UECA.
12. **Rights of Access to the Property.** The Holder shall have the right to enter the Property at reasonable times without prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Holder may otherwise have to enter and inspect the Property. No confidential information secured by an official, agent, or employee of the Holder within the scope and course of his or her inspection shall be disclosed by them except as it relates directly to Property contamination and then, only in connection with their official duties and employment.
13. **Recording and Registry.** This Covenant and any modification, amendment or termination instrument shall be recorded with the State of Hawai'i Bureau of Conveyances or Office of the Assistant Registrar of the Land Court of the State of Hawai'i, or both as applicable. The Grantor shall provide a copy of the final recorded Covenant, any amendments, any termination documentation, and documentation of any other matters related to this Covenant to the Holder. The validity of this Covenant is not affected by failure to provide a copy of the Covenant. This Covenant is, however, subject to the laws of the State of Hawai'i governing recording and priority of interests in real property. A copy of this Covenant and any modification, amendment

or termination instrument shall be available at the Holder's Registry of Environmental Covenants.

14. This Covenant represents the complete understanding of the Parties as a product of negotiation between them, the preparation of which was performed in good faith and with attention to avoiding ambiguities. Should any provisions of this Covenant later be found to harbor ambiguity, any perceived ambiguity is to be construed in accordance with the purpose and intent of the UECA and the best interest of public welfare.
15. **Execution.** This Covenant may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties hereby execute this covenant as of this ____ day of 20 ____.

Grantor

By: _____

Name: _____

Title: _____

**STATE OF HAWAI'I DEPARTMENT OF
HEALTH
Holder**

By: _____

Name: _____

Title: _____

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

On this the _____ day of _____, 20____, before me personally appeared _____, who is the _____ of _____
☐ personally known to me **-OR-** ☐ proved to me on the basis of satisfactory evidence 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

(Official Stamp or Seal)

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Environmental Covenant

Doc. Date: _____

No. of Pages: _____ Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

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

On this the _____ day of _____, 20____, before me personally appeared _____, who is the _____ of **STATE OF HAWAII DEPARTMENT OF HEALTH** ☐ personally known to me **-OR-** ☐ proved to me on the basis of satisfactory evidence 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

(Official Stamp or Seal)

My commission expires: _____

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(Official Stamp or Seal)

Exhibit A

Legal Description of the Property

Exhibit B

Environmental Hazard Management Plan
Address:

TMK:

Dated:

Prepared by: