

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
**HAWAIIAN HOMES COMMISSION MEETING AGENDA**  
Hale Kūhiō, 64-756 Māmalahoa Highway, Kamuela, HI 96743,  
Interactive Conference Technology (ICT)- Zoom  
Wednesday, October 13, 2021 at 1:30 p.m.  
*Livestream available at [www.dhhl.hawaii.gov/live](http://www.dhhl.hawaii.gov/live)*

*Note: Commission Meeting Packets will be available at [dhhl.hawaii.gov](http://dhhl.hawaii.gov), by Friday, October 8, 2021.*

**I. ORDER OF BUSINESS**

- A. Roll Call
- B. Approval of Agenda
- C. Public Testimony on Agendized Items- see information below

**II. EXECUTIVE SESSION**

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on these matters.

- 1. Kalaoa Community-Based Renewable Energy Solar Project
- 2. Kawaihae Community-Based Renewable Energy Solar Project

**III. ITEMS FOR DECISION MAKING**

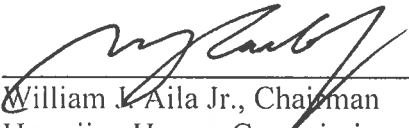
**A. REGULAR AGENDA**

Land Management Division

- F-1 Approval to Issue a Right-of-Entry Permit (for up to three years) and Conditional Approval for a General Lease to Nexamp Solar, LLC, a Delaware limited liability company, for due diligence purposes and a long-term General Lease (25-years with options to extend) to develop a solar plus battery storage project on 27.6-acres of Hawaiian Home Lands, TMK No. (3) 7-3-010:007 (por.), Kalaoa, Hawai'i Island.
- F-2 Approval to Issue a Right-of-Entry Permit (for up to three years) and Conditional Approval for a General Lease to Nexamp Solar, LLC, a Delaware limited liability company, for due diligence purposes and a long-term General Lease (25-years with options to extend) to develop a solar plus battery storage project on 21.0-acres of Hawaiian Home Lands, TMK No. (3) 6-1-006:003, Kawaihae, Hawai'i Island.

**IV. ANNOUNCEMENTS AND ADJOURNMENT**

- A. Next Meeting – October 18 & 19, 2019, Kapolei, Oahu
- B. Adjournment

  
\_\_\_\_\_  
William J. Aila Jr., Chairman  
Hawaiian Homes Commission

## COMMISSION MEMBERS

Randy K. Awo, Maui  
Patricia A. Teruya, O'ahu  
Pauline N. Namu'o, O'ahu  
Michael L. Kaleikini, East Hawai'i

Zachary Z. Helm, Moloka'i  
David B. Ka'apu, West Hawai'i  
Dennis L. Neves, Kaua'i  
Russell K. Ka'upu, O'ahu

Pursuant to the Governor's Proclamation Relating to the COVID-19 Delta Response, Hawai'i Revised Statutes Chapter 92 regarding public agency meetings and records is currently suspended in part through till November 30, 2021 to the extent necessary to minimize the potential spread of COVID-19 and its variants.

If you need an auxiliary aid/service or other accommodation due to a disability, contact Michael Lowe at 620-9512, or michael.l.lowe@hawaii.gov, as soon as possible, preferably by October 8, 2021. If a response is received after October 8, 2021, we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request, this notice is available in alternate formats.

**Public Testimony on Agendized Items** can be provided either as: (1) written testimony or (2) live, oral testimony online by submitting a form **at least 24 hours prior**, at <https://dhh.hawaii.gov/hhc/testimony/>, with your name, phone number, email address, and the agenda item on which you would like to testify. Once your request has been received, you will receive an email with the Zoom link via which to testify. You will need a computer with internet access, video camera and microphone to participate. If you require access by phone only, please indicate that in your request. Testimony will be limited to a maximum of three (3) minutes per person.


# ITEM F-1

Approval to Issue a Right-of-Entry Permit to Nexamp Solar, LLC, a Delaware limited liability company, for due diligence purposes and a long-term General Lease (2 TMK No. (3) 7-3-010:007 (por.), Kalaoa, Hawaii Island.

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

October 13, 2021

To: Chairman and Members, Hawaiian Homes Commission

From: Peter "Kahana" Albinio, Jr., Acting Administrator  
Land Management Division 

Subject: Approval to Issue a Right-of-Entry Permit (for up to three years) and Conditional Approval for a General Lease to Nexamp Solar, LLC, a Delaware limited liability company, for due diligence purposes and a long-term General Lease (25-years with options to extend) to develop a solar plus battery storage project on 27.6-acres of Hawaiian Home Lands, TMK No. (3) 7-3-010:007 (por.), Kalaoa, Hawai'i Island

APPLICANT:

NEXAMP SOLAR, LLC "NEXAMP"

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission authorize the following:

1. Issuance of a Right -of-Entry Permit ("ROE") to NEXAMP that demising a portion of approximately 27.6-acres of Hawaiian Home Lands identified more specifically by TMK No. (3) 7-3-010:007 (por.), situated at Kalaoa, Hawaii Island as shown in Exhibit "A" attached hereto. The ROE shall be for due diligence activities to assess the potential of developing a solar project ("project") that will generate 9 Megawatts of energy;
2. Conditional approval of the General Lease to NEXAMP or its authorized assignee for the development, construction, operation, management, and maintenance of the project on said parcel as identified, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit "B";
4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and General Lease with NEXAMP, and ancillary documents reasonably necessary or contemplated in connection with the project; and



5. Prescribe such terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission.

LOCATION:

Hawaiian Home Lands situated at Kalaoa, Island of Hawaii, identified as TMK No.: (3) 7-3-010:007(por.) (See Exhibit “A”) .

AREA:

Containing approximately 27.6 acres

DISCUSSION:

Pursuant to the Hawaiian Home Commission authorization and approval of LMD’s Agenda Item No. F-1 dated August 18, 2020, a Public Notice for Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu, Molokai, and Hawaii Island was released on August 31, 2020. The public solicitation offered lands whereby a Right-of-Entry Permit would be issued to a successful applicant or applicants(s) who received the highest total points for due diligence activities with the option for a long-term general lease to develop, construct, operate, manage, and maintain a respective renewable energy project that would generate a revenue stream for the DHHL Trust and provide community benefits for the beneficiary community as well.

After release of the Public Notice, DHHL issued three (3) separate addendums to the offering. To note, information for the addendums issued by date are as follows:

- Addendum No. 1 - September 18, 2020:  
DHHL responses to questions DHHL received by the 2:00 p.m. (HST) Tuesday, September 15, 2020 deadline
- Addendum No. 2 – October 13, 2020:  
**IMPORTANT NOTICE TO ALL PROSPECTIVE APPLICANTS:**  
October 16, 2020 deadline to submit applications, as specified in Section 3.3.3 of the August 31, 2020 Information Packet, has been postponed until further notice. The postponement is to accommodate changes in the timing of HECO’s RFPS which are in a state of flux.
- Addendum No. 3 – November 3, 2020:  
Application deadline specified in Section 3.1.1 of the August 31, 2020 Information Packet has been **extended to December 18, 2020 at 2:00 p.m. HST**. All the terms, requirements, and conditions remain the same except for the information provided below.

An Evaluation Committee which was comprised of five (5) respective members (three (3) DHHL and two (2) Non-Governmental) were selected to review the applications received in response to the August 31, 2020 Solicitation for renewable energy projects.

For the Hawaii Island sites, two (2) applicants responded for the Kawaihae site and three (3) responded for the Kalaoa site (see table below.) All the applicants proposed solar plus battery projects. There was no application received for the Hoolehua, Molokai site.

Kawaihae Applicants

Arion Energy, LLC  
Nexamp Solar, LLC

Kalaoa Applicants

Arion Energy, LLC  
Nexamp Solar, LLC  
O'oma Homestead Alliance, LLC

Following its final review and evaluation, the Evaluation Committee's Scoring Summary (see table below) was determined as prescribed under DHHL's solicitation. As such, applicants for each site would be subject to further scrutiny and negotiations in order of its respective rankings during the selection process.

**DHHL 2020 Renewable Energy Projects Solicitation**

	Kawaihae (Hawaii Island)		Kalaoa (Hawaii Island)		
	Arion Energy, LLC	Nexamp Solar, LLC	Arion Energy, LLC	Nexamp Solar, LLC	O'oma Homestead Alliance, LLC
<b>Total Score</b>	231	354	235	344	239
<b>Average Score</b>	46.2	70.8	47	68.8	47.8
<b>Rank</b>	2	1	3	1	2

**Nexamp Solar, LLC's** parent company, Nexamp was founded in 2007 to build the future of energy so that it is clean, simple, and accessible. Today, Nexamp is a leader in the clean energy space, offering solar and energy storage solutions. They own and operate all of its solar storage projects and manage every stage of the process: financing, project development and acquisition, design, construction, operations and maintenance, and energy sales. They foster accountability, passion, empathy, open communication, transparency, and belongingness as well as allocates time and resources to serve its host communities from early-stage development through the life of the project. Additionally, they value long relationships to the highest degree and strive to be the best possible neighbors, including a willingness to hire locally and offer training to new employees.

DHHL conducted *virtual beneficiary consultation meetings* and the mandatory two (2) public hearing for the respective Kalaoa, and Kawaihae, Hawaii Island sites. The table below reflects information from the Kalaoa Beneficiary Consultation meeting.

<u>Date</u>	<u>Invitations Mailed</u>	<u>Comments</u>	<u>HHC Acceptance</u>
12/8/2021 and 7/13/2021	975 Post Cards – with 96740 and 96745 Zip Codes	18 comments over the course of the BC meeting were noted and 2 written comments were received	9/20-21/ 2021 – Agenda Item No. G-5

Prior to decision-making by the HHC scheduled for Wed., 10/13/2021 at 1:30 p.m., the HHC will have conducted two virtual public hearings with in-person and virtual attendance options on Hawaii Island where the project is located to meet the requirements under Section 171-95.3(c), HRS. The public hearings were scheduled as follows:

**Public Hearing # 1**

Date: Mon., 10/11/2021

Time: 6:00 p.m.

Location: In person - Laiopua 2020  
Community Center Complex, 74-5210  
Keanalehu Dr., Kailua-Kona, Hawaii 96740

**Public Hearing #2**

Date: Wed., 10/13/2021

Time: 8:30 a.m.

Location: In Person - Hale Kuhio, 64-756  
Mamalahoa Highway, Kamuela, Hawaii  
96743

Public Hearing notices were published on Monday, September 27, 2021, in respective statewide print media editions.

LMD believes that Nexamp's project as proposed is in the best interest of the Hawaiian Home Lands Trust for the following reasons:

- ✓ The project as proposed will generate a revenue stream for the Hawaiian Home Land Trust over at least twenty-five (25) years on land that currently lacks infrastructure, has use restrictions and limitations for development and has not generated revenue.
- ✓ The project will add another renewable energy resource for Hawaii Island and will be DHHL's contribution to help achieve the State's goal of 100% renewable energy by the Year 2045.

**PLANNING AREA:**

Kalaoa, Island of Hawaii

**LAND USE DESIGNATION:**

Industrial Use, Hawaii Island Plan (2002), Figure 8 – West Hawaii – Hawaii Land Inventory

**CURRENT STATUS:**

The vacant northern half of the parcel has been designated for general agriculture use while the southern half, comprising 100 acres, has been designated for industrial use, preserving it for possible other future uses such as for farming and ranching, and in this particular case, for a renewable energy project. The parcel frontage along Queen K Highway and is across from the Kona International Airport. Under DHHL's Hawaii Island Plan (2002), the parcel has been designated for general agriculture and industrial use. The parcel is lava land sparsely covered in scrub grass, trees, and shrubs in a dry and arid climate, typical of coastal Kona. The project area elevation varies between 150 feet in the west to 250 feet in the east with a western-facing slope.

### CHARACTER OF USE:

Due diligence studies to assess the potential for a solar project under a ROE and if the option for the long- term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a solar production facility.

### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

#### Issuance of ROE:

Upon issuance of the ROE Permit, NEXAMP will conduct due diligence studies including studies related to the preparation of an HRS Chapter 343 environmental assessment for the renewable energy project.

#### Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL's exemption list. NEXAMP will be preparing an environmental assessment in accordance with HRS Chapter 343 for this renewable energy project which will be subject to HHC approval.

### CONSISTENCY WITH DHHL PLANS, POLICIES AND PROGRAMS

#### **DHHL General Plan (2002)**

The recommended disposition is consistent with the following General Plan goals and objectives:

#### **Land Use Planning**

##### Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

##### Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities, and community services in a native Hawaiian-friendly environment.
- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

##### Goals:

- Be responsible, long-term stewards of the Trust's lands and the natural, historic and community resources located on these lands.

##### Objectives:

- Manage land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.

- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

### **Economic Development**

Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust's mission.

Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.

### **Kealakehe-La'i'Opua -Regional Plan Update (2020)**

The recommended disposition is consistent with the following elements of the Kealakehe-La'i'Opua Regional Plan Update: 8.5 Renewable Energy Initiative – PV Farm in 'O'oma (pgs. 46-49)

### **Program Plans**

Ho'omaluku Energy Policy (2009) - Objectives

- ✓ Ko'o: Facilitate the use of diverse renewable energy resources – Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide “firm” renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump storage hydropower, solar-thermal and second priority to “as-available” renewable energy power such as wind, solar-photovoltaic, and wave.)

### **AUTHORIZATION:**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended,

Sections 10-4-21 and 10-4-22, Hawaii Administrative Rules, as amended

§171-55, §171-95, and §171-95.3, Hawaii Revised Statutes, as amended

### **RECOMMENDATION:**

Land Management Division respectfully requests approval of the motion as stated.





# Kalaoa Project: Terms of Agreement For Right-of-Entry and General Lease

TERMS OF AGREEMENT	DATE	PAYMENT AMOUNT
1. Right-of-Entry Fee for 2-year term	Upon Issuance Oct 2021	\$30,000
2. Right-of-Entry Extension Fee for 1-year	If needed –Oct 2023	\$10,000
3. Fee to Exercise General Lease	Upon completion of EA and PPA with HECO	\$30,000
4. Construction Term: 2 years, option to extend 1 year		0
5. Operational Term: 25 years For 27.6 acres, Annual lease rent increases to be discussed	Jan 24, 2023	\$2,500/acre/year= \$70,000/year
6. Commencement of Commercial Operations Fee	Jan. 24, 2023	\$25,000
7. Community Donation	Jan. 24, 2023	\$20,000

## Other Terms:

- No subscription fees will be charged to DHHL beneficiaries.
- Upon termination of lease, DHHL may require Nexamp to remove improvements.

**APPENDIX C**  
**SAMPLE RIGHT-OF-ENTRY FORM**

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY NO. \_\_\_\_\_

This RIGHT-OF-ENTRY NO. \_\_\_\_\_ ("ROE") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707, ("PERMITTOR" or "DHHL"), and \_\_\_\_\_, a [jurisdiction] [entity], whose place of business is \_\_\_\_\_ ("PERMITTEE").

1. **RIGHT OF ENTRY.** PERMITTOR hereby grants to PERMITTEE and its employees, agents, representatives, contractors, and subcontractors (collectively, "Permittee Representatives"), a revocable, non-exclusive right to enter upon the portion of that certain parcel of Hawaiian home lands, located at \_\_\_\_\_, Island of \_\_\_\_\_, identified by Tax Map Key No(s). (\_\_\_\_)\_\_\_\_\_, delineated by the area outlined on the map attached hereto as Exhibit "A", and incorporated herein by reference, comprising approximately \_\_\_\_ acres, and all improvements or fixtures permitted thereon (the "Premises"), only for the Permitted Uses (defined below) and in connection with assessing the feasibility for PERMITTEE to develop a renewable energy project ("Project").
2. **TERM.** The initial term of this ROE shall be for two (2) years, commencing on the Effective Date and expiring on \_\_\_\_\_. PERMITTEE may negotiate an extension of the term of this ROE by providing PERMITTOR with prior written notice at least 180 days prior to the expiration of the initial term. Notwithstanding the foregoing, this ROE shall automatically terminate upon the effective date of a general lease PERMITTOR may enter into with PERMITTEE (*see* Paragraph 14 below).

Notwithstanding the foregoing, PERMITTEE in its sole and absolute discretion, may immediately terminate this ROE upon at least 30 days' prior written notice thereof to PERMITTOR and this ROE shall immediately terminate upon PERMITTOR's receipt of such notice.

3. **PERMITTED USE.** The Premises (further defined below) shall be used only for due diligence activities and investigation related to the development of the Project and for no other purpose(s), which due diligence activities shall include only those exempt classes of action under Hawai'i Revised Statutes Chapter 343.
4. **FEE.** Within thirty (30) days after the Effective Date of this ROE, PERMITTEE shall pay PERMITTOR a non-refundable fee, for the first two years, in the amount of \_\_\_\_\_.



\_\_\_\_\_ DOLLARS and XX/100  
(\$\_\_\_\_\_). This fee shall be inclusive of PERMITTEE's initial deposit of TEN  
THOUSAND DOLLARS (\$10,000.00). For any extension, PERMITTEE shall pay  
PERMITTOR a non-refundable fee in the amount of  
\_\_\_\_\_ and XX/100 DOLLARS  
(\$\_\_\_\_\_), to be paid in advance on or prior to the start of any such extension.

5. CONSTRUCTION AND MAINTENANCE. During the term of this ROE, PERMITTEE shall keep the Premises in good and orderly condition consistent with good industry practice but in no case less than reasonable practice. PERMITTEE shall not make or allow any waste, spoil, nuisance, or unlawful, improper, or offensive use of the Premises. PERMITTEE and Permittee Representatives shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or federal rule, regulation, or authority applicable to the Premises.
6. RIGHT TO ENTER. PERMITTOR, the State of Hawaii, and the employees, agents, and representatives thereof (collectively, "Permittor's Representatives") may access and inspect the Premises at all reasonable times to determine whether the covenants herein are being fully observed and performed and for the performance of any public or official duties; provided, however, that in the exercise of such rights, PERMITTOR and Permittor Representatives shall not unreasonably interfere with PERMITTEE's use of the Premises.
7. BREACH. It is expressly agreed that the PERMITTOR may terminate this ROE following written notice to the PERMITTEE of its failure to comply with the specified term(s) of the ROE and the failure of the PERMITTEE to cure its breach within thirty (30) days of receipt of the notice of breach. If PERMITTOR, in its discretion, determines that PERMITTEE has abandoned the Premises, PERMITTOR shall immediately terminate this ROE and thereupon take immediate possession of the Premises without prejudice to any additional remedy or right of action PERMITTOR may have under the law.
8. NO TRANSFER, MORTGAGE, OR SUBLEASE. This ROE is non-transferrable. PERMITTEE may not assign, sublease, sublicense, transfer, mortgage, pledge, or devise any of its rights or interests under this ROE, except to another wholly-owned subsidiary of PERMITTEE with PERMITTOR's prior written consent.
9. EXPIRATION. Upon the expiration of this ROE, or its sooner termination, PERMITTEE shall peaceably and quietly surrender and deliver up to PERMITTOR possession of the Premises as provided in and subject to Paragraph 15D (below).
10. TERMINATION/ABANDONMENT. Upon cancellation, termination, or expiration of this ROE, all interests granted by this ROE and any permitted improvement constructed by PERMITTEE on the Premises, and which PERMITTOR expressly accepts, shall revert to, and become the property of PERMITTOR. In the event operations cease for reasons beyond PERMITTEE's control, such as fire or other casualty that renders the facilities unusable, PERMITTEE shall have a reasonable period of time in which to resume operations.

11. INSURANCE. PERMITTEE shall, at its own expense, effect, maintain and keep in force throughout the term of this ROE, the following minimum insurance coverages:
- A. Comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, including property damage, personal injury and advertising injury; (b) \$100,000.00 for fire damages to the Premises for any one fire; \$10,000.00 in medical expenses for any one person, and an aggregate limit of \$2,000,000.00 per policy year.
  - B. Workers Compensation Insurance to include Employer's Liability. Such coverage shall apply to all of its employees.
  - C. Automobile Insurance, covering all owned, non-owned and hired automobiles in the following amounts: Bodily Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence; Property Damage: \$1,000,000.00 per accident; or a combined single limit of \$1,000,000.00

Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the Chairman, Hawaiian Homes Commission; (b) name the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, as an additional insured; (c) provide that the DEPARTMENT OF HAWAIIAN HOME LANDS shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PERMITTEE or Permittee Representatives in connection with PERMITTEE'S use or occupancy of the Premises.

PERMITTEE shall insure during the term of this ROE the entire Premises, including all buildings now existing and hereafter built or located on the Premises, improvements and grounds, and all roadways and sidewalks on or adjacent to the Premises in the control or use of the PERMITTEE. The insurance shall cover loss or damage by fire and other hazards, casualties, and contingencies, including vandalism and malicious mischief. The insurance shall be for the full insurable value of such improvements.

PERMITTEE shall furnish to PERMITTOR upon the execution of this Permit, certificates showing such insurance policy or policies to be in favor of PERMITTOR and to be in force and shall furnish like certificates upon each renewal thereof. In the event of loss, damage or destruction, PERMITTOR shall retain from the proceeds of the policies such amounts deemed by it to be necessary to cover the loss, damage or destruction of or to the improvements and the balance of such proceeds, if any, shall be delivered to PERMITTEE. Failure of PERMITTEE to provide and keep in force such insurance shall be regarded as material default under this ROE. PERMITTOR shall be entitled to exercise any or all of the remedies provided in this ROE for default of PERMITTEE.

The procuring of such required insurance coverages shall not be construed to limit PERMITTEE'S obligation to indemnify PERMITTOR under this ROE, nor limit, restrict, release, or relieve PERMITTEE of any liability arising under this ROE.

PERMITTEE'S insurance shall be primary. Any insurance maintained by PERMITTOR and/or the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by PERMITTEE.

12. HAZARDOUS MATERIAL. PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials used by PERMITTEE on the Premises. PERMITTEE shall not store or use such materials on the Premises 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 PERMITTEE's employees or agents to do so, or to bring or allow PERMITTEE's employees or agents to bring onto the Premises any such materials except to use in the ordinary course of PERMITTEE'S business, and then only after written notice is given to the PERMITTOR of the identity of such materials and upon PERMITTOR'S written consent, which consent may be withheld at the PERMITTOR'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 PERMITTEE, then PERMITTEE shall be responsible for the costs thereof. In addition, PERMITTEE shall execute affidavits, representations, and the like from time to time at PERMITTOR's request concerning PERMITTEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PERMITTEE.

PERMITTEE agrees to indemnify, defend, and hold harmless PERMITTOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands therefore, directly arising out of, or resulting from, any use or release of hazardous materials on the Premises or adjacent property by PERMITTEE or PERMITTEE's agents, and occurring while PERMITTEE is in possession of the Premises. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive, or consequential damages in contract, tort, warranty, strict liability or otherwise. These covenants shall survive the expiration or earlier termination of this ROE.

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment. Prior to the termination of this ROE (except where termination is due to the issuance and execution of the General Lease), PERMITTEE may be required to 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, the Department of Health and PERMITTOR; provided however, that this provision shall not be applicable if the ROE is terminated pursuant to Paragraph 14, below.

13. DEFENSE AND INDEMNITY. PERMITTEE shall, defend, indemnify and hold harmless PERMITTOR, its officers, and employees, from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, directly arising out of or resulting from personal injury or death of persons and property damage to the extent arising from the acts or omissions of PERMITTEE and/or PERMITTEE'S officers, employees, agents, or contractors and occurring during or in connection with the exercise of this ROE. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive, or consequential damages in contract, tort, warranty, strict liability or otherwise. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.
14. GENERAL LEASE. PERMITTOR may lease to PERMITTEE the Premises or a portion of the Premises upon such terms and conditions of a general lease, based on the term sheet attached in Exhibit "B" (the "General Lease"), and provided that PERMITTOR determines, in its sole discretion, that: (a) PERMITTEE is not in default under this ROE; and (b) PERMITTEE has satisfied (or PERMITTOR has expressly waived in writing) all of the conditions below or which PERMITTOR may require. Upon the effective date of any such General Lease, this ROE shall automatically terminate.
  - A. PERMITTEE shall submit a written request to PERMITTOR for the issuance of a general lease ("Request for General Lease") no less than ninety (90) days prior to the expiration of this ROE, with a non-refundable payment of \_\_\_\_\_ DOLLARS and XX/100 (\$\_\_\_\_\_) (the "Option Fee").
  - B. All applicable requirements of Hawaii Revised Statutes Chapter 171 have been met, and specifically pursuant to Hawaii Revised Statutes Section 171-95.3 for renewable energy producers.
  - C. PERMITTOR's beneficiary consultation process for PERMITTEE has been completed.
  - D. PERMITTEE provides PERMITTOR written assurance from a utility company to purchase the energy that will be generated from the Project.
  - E. All requirements of Hawaii Revised Statutes Chapter 343 have been met, including but not limited to, the preparation, at PERMITTEE's sole expense, of an environmental assessment and/or environmental impact statement, and the issuance of a Finding of No Significant Impact or an acceptance of final environmental

impact statement, as the case may be. All mitigation measures prescribed pursuant to Chapter 343, if any, shall be included as material terms of the General Lease.

- F. PERMITTOR shall have approved a site plan depicting the locations within the Premises of any facilities, roads, and other infrastructure and improvements required for the Project.
- G. PERMITTEE shall prepare a metes and bounds survey of the portions of the Premises to be demised under the General Lease
- H. PERMITTEE shall submit the following documents to PERMITTOR:
  - i. A copy of PERMITTEE's Articles of Incorporation.
  - ii. Evidence reasonably acceptable to PERMITTOR of PERMITTEE's financial ability to develop, operate, and maintain the Project, and to make rent payments as required under the General Lease.

15. SPECIAL CONDITIONS.

- A. PERMITTEE shall keep and maintain the Premises and any and all equipment and personal property of PERMITTEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris, and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the Premises.
- B. PERMITTEE accepts the Premises as-is, where-is, with all faults. PERMITTEE understands and acknowledges that there are no existing utility services to the Premises. PERMITTEE is solely responsible for obtaining and paying for any and all utility services required by PERMITTEE to use or make use of the Premises as contemplated under this ROE.
- C. PERMITTEE may grub and clear the existing vegetation on the Premises only to the extent needed for the Permitted Uses, provided further that Permittee has obtained all necessary permits or approvals to conduct such activities.
- D. RESTORATION OF PREMISES. Upon surrender or abandonment of the Premises, Permittee shall restore, at its own cost and risk, the Premises to a condition as good as or better than that which existed before the Effective Date, reasonable and ordinary wear and tear and damage by acts of God excepted, and peacefully surrender possession thereof to PERMITTOR. This includes the removal of any Improvements that PERMITTOR elects to not accept. If PERMITTEE fails to restore the Premises, PERMITTOR may undertake all work it deems necessary or appropriate to restore the Premises on Permittee's behalf and expense, whether by its own employee or contractor(s), and may charge all such costs and expenses to PERMITTEE. PERMITTEE shall remit payment for all such

costs and expenses to PERMITTOR within thirty (30) days. This provision shall not be applicable if the ROE is terminated pursuant to Paragraph 14, above.

- E. All associated construction costs under this ROE shall be borne solely by the PERMITTEE and shall not, in any case, be reimbursable by PERMITTOR.
- F. PERMITTEE shall take all precautions to minimize disturbance to the areas surrounding the site of an activity being undertaken for study or exploration and to avoid spreading the seeds of invasive species when entering areas of native vegetation.
- G. Should any activity involve substantial construction, or extensive excavation or drilling during the term of this ROE, PERMITTEE will contact PERMITTOR in advance for written approval to proceed.
- H. PERMITTEE shall provide copies of all reports or studies performed to evaluate the Project to PERMITTOR, including data collected, archaeological and environmental surveys, and biological studies.
- I. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to PERMITTEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to PERMITTOR:

Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707  
Attention: Land Management Division

And a copy to:

Department of the Attorney General

425 Queen Street  
Honolulu, HI 96813  
Attention: AG PSHH

- J. This ROE may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.
- K. This ROE shall be construed in accordance with the laws of the State of Hawaii, without regard or application to its principles of conflicts of laws. PERMITTEE submits to the jurisdiction of the State of Hawaii. Any dispute arising under or in connection with this ROE shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawaii, and PERMITTEE irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return receipt requested, to the address(es) set forth above or as PERMITTEE shall furnish to PERMITTOR in writing.

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first written above.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

By \_\_\_\_\_,  
\_\_\_\_\_, Chairman  
Hawaiian Homes Commission

PERMITTOR

\_\_\_\_\_  
Deputy Attorney General  
State of Hawai'i

COMPANY NAME

By \_\_\_\_\_  
Printed Name and Title

PERMITTEE

STATE OF HAWAII )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
Printed Name of Notary Public  
My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: \_\_\_\_\_

\_\_\_\_\_  
Doc. Date: \_\_\_\_\_ or ✕ Undated at time of notarization.

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

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary



**EXHIBIT A**

[MAP OUTLINING THE PARCEL OR A PORTION  
OF THE PARCEL AS THE PREMISES]

**EXHIBIT B**

[TERM SHEET FOR GENERAL LEASE TO BE ATTACHED]


# ITEM F-2

Approval to Issue a Right-of-Entry Permit  
Nexamp Solar, LLC, a Delaware limited  
liability company, for due diligence  
purposes and a long-term General Lease  
TMK No. (3) 6-1-006:003, Kawaihae,  
Hawaii Island

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

October 13, 2021

To: Chairman and Members, Hawaiian Homes Commission

From: Peter "Kahana" Albinio, Jr., Acting Administrator  
Land Management Division 

Subject: Approval to Issue a Right-of-Entry Permit (for up to three years) and Conditional Approval for a General Lease to Nexamp Solar, LLC, a Delaware limited liability company, for due diligence purposes and a long-term General Lease (25-years with options to extend) to develop a solar plus battery storage project on 21.0-acres of Hawaiian Home Lands, TMK No. (3) 6-1-006:003, Kawaihae, Hawai'i Island

APPLICANT:

NEXAMP SOLAR, LLC "NEXAMP"

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission authorize the following:

1. Issuance of a Right -of-Entry Permit ("ROE") to NEXAMP that demising a portion of approximately 21.0-acres of Hawaiian Home Lands identified more specifically by TMK No. (3) 6-1-006:003, situated at Kawaihae, Hawaii Island as shown in Exhibit "A" attached hereto. The ROE shall be for due diligence activities to assess the potential of developing a solar project ("project") that will generate 9MW of energy;
2. Conditional approval of the General Lease to NEXAMP or its authorized assignee for the development, construction, operation, management, and maintenance of the project on said parcel as identified, to be more fully described in a metes and bounds survey, and necessary non-exclusive licenses for access, maintenance, and other project purposes upon exercising the option for the General Lease;
3. Issuance of the ROE and the General Lease shall be upon the proposed terms and conditions attached hereto as Exhibit "B";
4. Delegate authority to the HHC Chairman to negotiate the final terms and conditions of the ROE and General Lease with NEXAMP, and ancillary documents reasonably necessary or contemplated in connection with the project; and

5. Prescribe such terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission.

LOCATION:

Hawaiian Home Lands situated at Kawaihae, Island of Hawaii, identified as TMK No.: (3) 6-1-006:003 (See Exhibit “A”).

AREA:

Containing approximately 21.0 acres

DISCUSSION:

Pursuant to the Hawaiian Home Commission authorization and approval of LMD’s Agenda Item No. F-1 dated August 18, 2020, a Public Notice for Disposition of Hawaiian Home Lands by General Leases for Renewable Energy Projects on Oahu, Molokai, and Hawaii Island was released on August 31, 2020. The public solicitation offered lands whereby a Right-of-Entry Permit would be issued to a successful applicant or applicants(s) who received the highest total points for due diligence activities with the option for a long-term general lease to develop, construct, operate, manage, and maintain a respective renewable energy project that would generate a revenue stream for the DHHL Trust and provide community benefits for the beneficiary community as well.

After release of the Public Notice, DHHL issued three (3) separate addendums to the offering. To note, information for the addendums issued by date are as follows:

- Addendum No. 1 - September 18, 2020  
DHHL responses to questions DHHL received by the 2:00 p.m. (HST) Tuesday, September 15, 2020 deadline
- Addendum No. 2 – October 13, 2020  
**IMPORTANT NOTICE TO ALL PROSPECTIVE APPLICANTS:**  
October 16, 2020 deadline to submit applications, as specified in Section 3.3.3 of the August 31, 2020 Information Packet, has been postponed until further notice. The postponement is to accommodate changes in the timing of HECO’s RFPS which are in a state of flux.
- Addendum No. 3 – November 3, 2020  
Application deadline specified in Section 3.1.1 of the August 31, 2020 Information Packet has been **extended to December 18, 2020 at 2:00 p.m. HST**. All the terms, requirements, and conditions remain the same except for the information provided below.

An Evaluation Committee which was comprised of five (5) respective members (three (3) DHHL and two (2) Non-Governmental) were selected to review the applications received in response to August 31, 2020 Solicitation for renewable energy projects.

For the Hawaii Island sites, two (2) applicants responded for the Kawaihae site and three (3) responded for the Kalaoa site (see table below.) All the applicants proposed solar plus battery projects. There was no application received for the Hoolehua, Molokai site.

Kawaihae Applicants

Arion Energy, LLC  
Nexamp Solar, LLC

Kalaoa Applicants

Arion Energy, LLC  
Nexamp Solar, LLC  
O'oma Homestead Alliance, LLC

Following its final review and evaluation, the Evaluation Committee's Scoring Summary (see table below) was determined as prescribed under DHHL's solicitation. As such, applicants for each site would be subject to further scrutiny and negotiations in order of its respective rankings during the selection process.

**DHHL 2020 Renewable Energy Projects Solicitation**

	Kawaihae (Hawaii Island)		Kalaoa (Hawaii Island)		
	Arion Energy, LLC	Nexamp Solar, LLC	Arion Energy, LLC	Nexamp Solar, LLC	O'oma Homestead Alliance, LLC
<b>Total Score</b>	231	354	235	344	239
<b>Average Score</b>	46.2	70.8	47	68.8	47.8
<b>Rank</b>	2	1	3	1	2

**Nexamp Solar, LLC's** parent company, Nexamp was founded in 2007 to build the future of energy so that it is clean, simple, and accessible. Today, Nexamp is a leader in the clean energy space, offering solar and energy storage solutions. They own and operate all of its solar storage projects and manage every stage of the process: financing, project development and acquisition, design, construction, operations and maintenance, and energy sales. They foster accountability, passion, empathy, open communication, transparency, and belongingness as well as allocates time and resources to serve its host communities from early-stage development through the life of the project. Additionally, they value long relationships to the highest degree and strive to be the best possible neighbors, including a willingness to hire locally and offer training to new employees.

DHHL conducted *virtual beneficiary consultation meetings* and the mandatory two (2) public hearings for the respective Kalaoa, and Kawaihae, Hawaii Island sites. The table below reflects information from the Kawaihae Beneficiary Consultation meeting.

<u>Date</u>	<u>Invitations Mailed</u>	<u>Comments</u>	<u>HHC Acceptance</u>
12/8/2020 And 7/26/2021	187 Post Cards – Kawaihae Lessees	20 comments over the course of the BC meeting were noted	9/20-21/ 2021 – Agenda Item No. G-6

Prior to decision-making by the HHC scheduled for Wed., 10/13/2021 at 1:30 p.m., the HHC will have conducted two public hearings with in-person and virtual attendance options on Hawaii Island where the project is located to meet the requirements under Section 171-95.3(c), HRS. The public hearings were scheduled as follows:

**Public Hearing # 1**

Date: Tue., 10/12/2021

Time: 6:00 p.m.

Location: In person - Kailapa Community Center, 61-4016 Kai Opae Place, Kamuela, Hawaii 96743

**Public Hearing #2**

Date: Wed., 10/13/2021

Time: 12: p.m.

Location: In Person - Hale Kuhio, 64-756 Mamalahoa Highway, Kamuela, Hawaii 96743

Public Hearing notices were published on Monday, September 27, 2021, in respective statewide print media editions.

LMD believes that Nexamp's project as proposed is in the best interest of the Hawaiian Home Lands Trust for the following reasons:

- ✓ The project as proposed will generate a revenue stream for the Hawaiian Home Land Trust over at least twenty-five (25) years on land that currently lacks infrastructure, has use restrictions and limitations for development and has not generated revenue.
- ✓ The project will add another renewable energy resource for Hawaii Island and will be DHHL's contribution to help achieve the State's goal of 100% renewable energy resources by the Year 2045.

**PLANNING AREA:**

Kawaihae, Island of Hawaii

**LAND USE DESIGNATION:**

Industrial Use, Hawaii Island Plan (2002), Figure 8 – West Hawaii – Hawaii Land Inventory

**CURRENT STATUS:**

The subject parcel is vacant and is located in Kawaihae on the northwest side of Hawaii Island where the climate is dry and arid, typical of coastal North Kona. The land is flat at approximately the 100-foot elevation with a mild 10-15% southwest slope. Industrial, commercial, and general agriculture uses, as well as residential communities surround the parcel in a zone that contains electric service. Direct access to the parcel from Akoni Pule Highway is uncertain, although access through the nearby industrial subdivisions via easements obtained through DHHL from Maluokalani Place may be an alternative

### CHARACTER OF USE:

Due diligence studies to assess the potential for a solar project under a ROE and if the option for the long-term general lease is exercised, for the eventual development, construction, operations, management, and maintenance of a solar plus battery production facility.

### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

#### Issuance of ROE: Exhibit

Upon issuance of the ROE Permit, NEXAMP will conduct due diligence studies including studies related to the preparation of an HRS Chapter 343 environmental assessment for the renewable energy project.

#### Issuance of the General Lease:

The issuance of the General Lease is subject to the terms and conditions of the ROE, including, but not limited to, compliance with HRS Chapter 343 and HAR Chapter 11-200, and is not exemptible under DHHL's exemption list. NEXAMP will be preparing an environmental assessment in accordance with HRS Chapter 343 for this renewable energy project which will be subject to HHC approval.

### CONSISTENCY WITH DHHL PLANS, POLICIES AND PROGRAMS

#### **DHHL General Plan (2002)**

The recommended disposition is consistent with the following General Plan goals and objectives:

#### **Land Use Planning**

##### Goals:

- Utilize Hawaiian Home Lands for uses most appropriate to meet the needs and desires of the beneficiary population.

##### Objectives:

- Provide space for and designate a mixture of appropriate land uses, economic opportunities, and community services in a native Hawaiian-friendly environment.
- Direct urban growth to priority development areas based on infrastructure availability, feasible site conditions, beneficiary preferences and job opportunities.

##### Goals:

- Be responsible, long-term stewards of the Trust's lands and the natural, historic and community resources located on these lands.

##### Objectives:

- Manage land dispositions in a manner that is environmentally sound and does not jeopardize their future uses.
- Enforce governmental health and safety standards and protect life and property from the effects of natural hazards and disaster on Hawaiian home lands.

### **Economic Development**

Goals:

- Generate significant revenue to provide greater financial support towards fulfilling the Trust's mission.

Objectives:

- Create a professionally managed investment portfolio with a well-balanced mix of assets.

### **Kawaihae Regional Plan, (September, 2010)**

The recommended disposition is consistent with the following elements of the September 2010, Kawaihae Regional Plan as identified in Potential Kawaihae Projects – Economic Development 3. Renewable Energy and Technology (pg. 26)

### **Program Plans**

Ho'omaluku Energy Policy (2009) - Objectives

- ✓ Ko'o: Facilitate the use of diverse renewable energy resources – Pursue the leasing of those lands that are identified as suitable for renewable energy projects. (First priority should be given to entities that would provide “firm” renewable energy power such as garbage-to-energy (mass-burn), geothermal, pump storage hydropower, solar-thermal and second priority to “as-available” renewable energy power such as wind, solar-photovoltaic, and wave.)

### **AUTHORIZATION:**

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended,

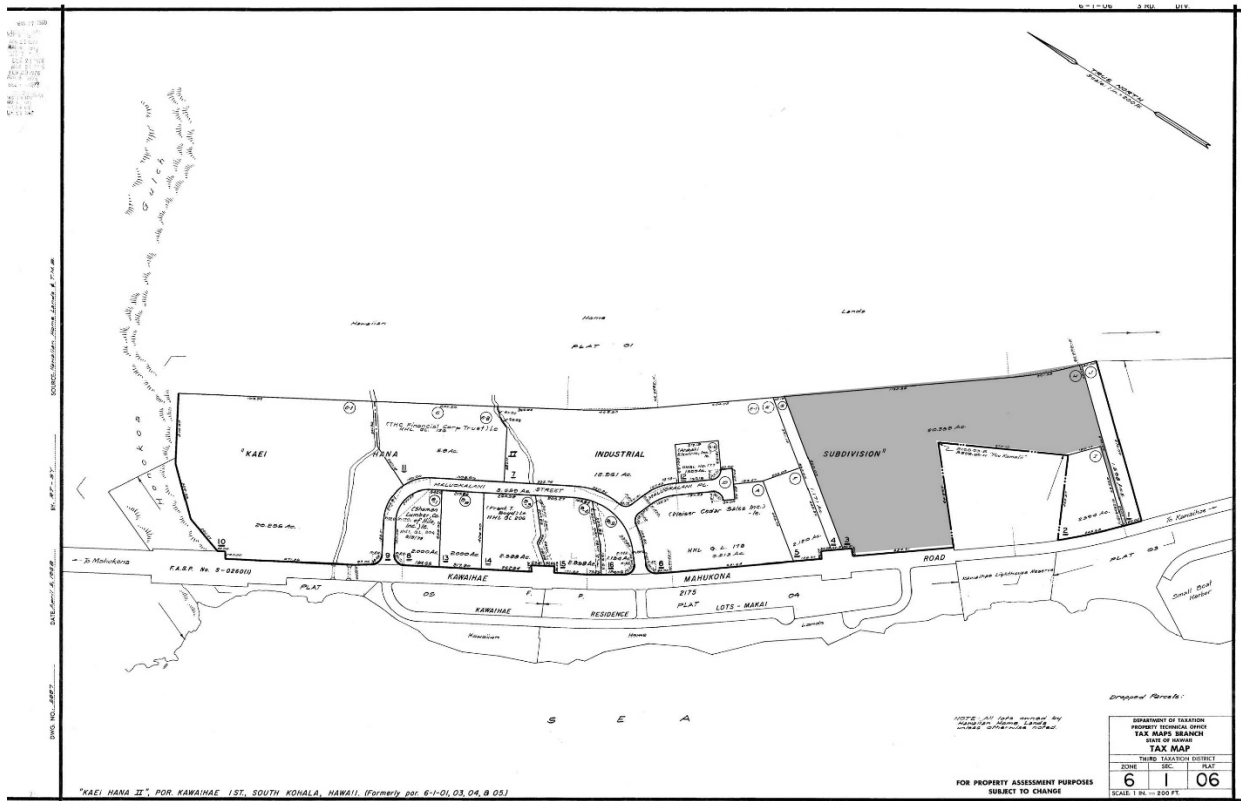
Sections 10-4-21 and 10-4-22, Hawaii Administrative Rules, as amended

§171-55, §171-95, and §171-95.3, Hawaii Revised Statutes, as amended

### **RECOMMENDATION:**

Land Management Division respectfully requests approval of the motion as stated.





**Exhibit "A"**  
**Item No. F-2**

# Kawaihae Project: Terms of Agreement For Right-of-Entry and General Lease

TERMS OF AGREEMENT	DATE	PAYMENT AMOUNT
1. Right-of-Entry Fee for 2-year term	Upon Issuance Oct 2021	\$20,000
2. Right-of-Entry Extension Fee for 1-year	If needed –Oct 2023	\$10,000
3. Fee to Exercise General Lease	Upon completion of EA and PPA with HECO	\$30,000
4. Construction Term: 2 years, option to extend 1 year		0
5. Operational Term: 25 years For 21 acres, Annual lease rent increases to be discussed	Jan 24, 2023	\$2,500/acre/year= \$52,500/year
6. Commencement of Commercial Operations Fee	Jan. 24, 2023	\$30,000
7. Community Donation	Jan. 24, 2023	\$20,000

## Other Terms:

- No subscription fees will be charged to DHHL beneficiaries.
- Off-street parking for surrounding community in project area.
- Upon termination of lease, DHHL may require Nexamp to remove improvements.

**APPENDIX C**  
**SAMPLE RIGHT-OF-ENTRY FORM**

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY NO. \_\_\_\_\_

This RIGHT-OF-ENTRY NO. \_\_\_\_\_ ("ROE") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707, ("PERMITTOR" or "DHHL"), and \_\_\_\_\_, a [jurisdiction] [entity], whose place of business is \_\_\_\_\_ ("PERMITTEE").

1. **RIGHT OF ENTRY.** PERMITTOR hereby grants to PERMITTEE and its employees, agents, representatives, contractors, and subcontractors (collectively, "Permittee Representatives"), a revocable, non-exclusive right to enter upon the portion of that certain parcel of Hawaiian home lands, located at \_\_\_\_\_, Island of \_\_\_\_\_, identified by Tax Map Key No(s). (\_\_\_\_)\_\_\_\_\_, delineated by the area outlined on the map attached hereto as Exhibit "A", and incorporated herein by reference, comprising approximately \_\_\_\_\_ acres, and all improvements or fixtures permitted thereon (the "Premises"), only for the Permitted Uses (defined below) and in connection with assessing the feasibility for PERMITTEE to develop a renewable energy project ("Project").
2. **TERM.** The initial term of this ROE shall be for two (2) years, commencing on the Effective Date and expiring on \_\_\_\_\_. PERMITTEE may negotiate an extension of the term of this ROE by providing PERMITTOR with prior written notice at least 180 days prior to the expiration of the initial term. Notwithstanding the foregoing, this ROE shall automatically terminate upon the effective date of a general lease PERMITTOR may enter into with PERMITTEE (*see* Paragraph 14 below).  
  
Notwithstanding the foregoing, PERMITTEE in its sole and absolute discretion, may immediately terminate this ROE upon at least 30 days' prior written notice thereof to PERMITTOR and this ROE shall immediately terminate upon PERMITTOR's receipt of such notice.
3. **PERMITTED USE.** The Premises (further defined below) shall be used only for due diligence activities and investigation related to the development of the Project and for no other purpose(s), which due diligence activities shall include only those exempt classes of action under Hawai'i Revised Statutes Chapter 343.
4. **FEE.** Within thirty (30) days after the Effective Date of this ROE, PERMITTEE shall pay PERMITTOR a non-refundable fee, for the first two years, in the amount of \_\_\_\_\_.

\_\_\_\_\_ DOLLARS and XX/100  
(\$\_\_\_\_\_). This fee shall be inclusive of PERMITTEE's initial deposit of TEN  
THOUSAND DOLLARS (\$10,000.00). For any extension, PERMITTEE shall pay  
PERMITTOR a non-refundable fee in the amount of  
\_\_\_\_\_ and XX/100 DOLLARS  
(\$\_\_\_\_\_), to be paid in advance on or prior to the start of any such extension.

5. CONSTRUCTION AND MAINTENANCE. During the term of this ROE, PERMITTEE shall keep the Premises in good and orderly condition consistent with good industry practice but in no case less than reasonable practice. PERMITTEE shall not make or allow any waste, spoil, nuisance, or unlawful, improper, or offensive use of the Premises. PERMITTEE and Permittee Representatives shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or federal rule, regulation, or authority applicable to the Premises.
6. RIGHT TO ENTER. PERMITTOR, the State of Hawaii, and the employees, agents, and representatives thereof (collectively, "Permittor's Representatives") may access and inspect the Premises at all reasonable times to determine whether the covenants herein are being fully observed and performed and for the performance of any public or official duties; provided, however, that in the exercise of such rights, PERMITTOR and Permittor Representatives shall not unreasonably interfere with PERMITTEE's use of the Premises.
7. BREACH. It is expressly agreed that the PERMITTOR may terminate this ROE following written notice to the PERMITTEE of its failure to comply with the specified term(s) of the ROE and the failure of the PERMITTEE to cure its breach within thirty (30) days of receipt of the notice of breach. If PERMITTOR, in its discretion, determines that PERMITTEE has abandoned the Premises, PERMITTOR shall immediately terminate this ROE and thereupon take immediate possession of the Premises without prejudice to any additional remedy or right of action PERMITTOR may have under the law.
8. NO TRANSFER, MORTGAGE, OR SUBLEASE. This ROE is non-transferrable. PERMITTEE may not assign, sublease, sublicense, transfer, mortgage, pledge, or devise any of its rights or interests under this ROE, except to another wholly-owned subsidiary of PERMITTEE with PERMITTOR's prior written consent.
9. EXPIRATION. Upon the expiration of this ROE, or its sooner termination, PERMITTEE shall peaceably and quietly surrender and deliver up to PERMITTOR possession of the Premises as provided in and subject to Paragraph 15D (below).
10. TERMINATION/ABANDONMENT. Upon cancellation, termination, or expiration of this ROE, all interests granted by this ROE and any permitted improvement constructed by PERMITTEE on the Premises, and which PERMITTOR expressly accepts, shall revert to, and become the property of PERMITTOR. In the event operations cease for reasons beyond PERMITTEE's control, such as fire or other casualty that renders the facilities unusable, PERMITTEE shall have a reasonable period of time in which to resume operations.



11. INSURANCE. PERMITTEE shall, at its own expense, effect, maintain and keep in force throughout the term of this ROE, the following minimum insurance coverages:

- A. Comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, including property damage, personal injury and advertising injury; (b) \$100,000.00 for fire damages to the Premises for any one fire; \$10,000.00 in medical expenses for any one person, and an aggregate limit of \$2,000,000.00 per policy year.
- B. Workers Compensation Insurance to include Employer's Liability. Such coverage shall apply to all of its employees.
- C. Automobile Insurance, covering all owned, non-owned and hired automobiles in the following amounts: Bodily Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence; Property Damage: \$1,000,000.00 per accident; or a combined single limit of \$1,000,000.00

Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the Chairman, Hawaiian Homes Commission; (b) name the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, as an additional insured; (c) provide that the DEPARTMENT OF HAWAIIAN HOME LANDS shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PERMITTEE or Permittee Representatives in connection with PERMITTEE'S use or occupancy of the Premises.

PERMITTEE shall insure during the term of this ROE the entire Premises, including all buildings now existing and hereafter built or located on the Premises, improvements and grounds, and all roadways and sidewalks on or adjacent to the Premises in the control or use of the PERMITTEE. The insurance shall cover loss or damage by fire and other hazards, casualties, and contingencies, including vandalism and malicious mischief. The insurance shall be for the full insurable value of such improvements.

PERMITTEE shall furnish to PERMITTOR upon the execution of this Permit, certificates showing such insurance policy or policies to be in favor of PERMITTOR and to be in force and shall furnish like certificates upon each renewal thereof. In the event of loss, damage or destruction, PERMITTOR shall retain from the proceeds of the policies such amounts deemed by it to be necessary to cover the loss, damage or destruction of or to the improvements and the balance of such proceeds, if any, shall be delivered to PERMITTEE. Failure of PERMITTEE to provide and keep in force such insurance shall be regarded as material default under this ROE. PERMITTOR shall be entitled to exercise any or all of the remedies provided in this ROE for default of PERMITTEE.

The procuring of such required insurance coverages shall not be construed to limit PERMITTEE'S obligation to indemnify PERMITTOR under this ROE, nor limit, restrict, release, or relieve PERMITTEE of any liability arising under this ROE.

PERMITTEE'S insurance shall be primary. Any insurance maintained by PERMITTOR and/or the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by PERMITTEE.

12. HAZARDOUS MATERIAL. PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials used by PERMITTEE on the Premises. PERMITTEE shall not store or use such materials on the Premises 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 PERMITTEE's employees or agents to do so, or to bring or allow PERMITTEE's employees or agents to bring onto the Premises any such materials except to use in the ordinary course of PERMITTEE'S business, and then only after written notice is given to the PERMITTOR of the identity of such materials and upon PERMITTOR'S written consent, which consent may be withheld at the PERMITTOR'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 PERMITTEE, then PERMITTEE shall be responsible for the costs thereof. In addition, PERMITTEE shall execute affidavits, representations, and the like from time to time at PERMITTOR's request concerning PERMITTEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PERMITTEE.

PERMITTEE agrees to indemnify, defend, and hold harmless PERMITTOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands therefore, directly arising out of, or resulting from, any use or release of hazardous materials on the Premises or adjacent property by PERMITTEE or PERMITTEE's agents, and occurring while PERMITTEE is in possession of the Premises. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive, or consequential damages in contract, tort, warranty, strict liability or otherwise. These covenants shall survive the expiration or earlier termination of this ROE.

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment. Prior to the termination of this ROE (except where termination is due to the issuance and execution of the General Lease), PERMITTEE may be required to 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, the Department of Health and PERMITTOR; provided however, that this provision shall not be applicable if the ROE is terminated pursuant to Paragraph 14, below.

13. DEFENSE AND INDEMNITY. PERMITTEE shall, defend, indemnify and hold harmless PERMITTOR, its officers, and employees, from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, directly arising out of or resulting from personal injury or death of persons and property damage to the extent arising from the acts or omissions of PERMITTEE and/or PERMITTEE'S officers, employees, agents, or contractors and occurring during or in connection with the exercise of this ROE. PERMITTEE's liability to PERMITTOR shall be limited to direct damages and shall exclude any other liability, including, without limitation, liability for special, indirect, punitive, or consequential damages in contract, tort, warranty, strict liability or otherwise. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.
14. GENERAL LEASE. PERMITTOR may lease to PERMITTEE the Premises or a portion of the Premises upon such terms and conditions of a general lease, based on the term sheet attached in Exhibit "B" (the "General Lease"), and provided that PERMITTOR determines, in its sole discretion, that: (a) PERMITTEE is not in default under this ROE; and (b) PERMITTEE has satisfied (or PERMITTOR has expressly waived in writing) all of the conditions below or which PERMITTOR may require. Upon the effective date of any such General Lease, this ROE shall automatically terminate.
  - A. PERMITTEE shall submit a written request to PERMITTOR for the issuance of a general lease ("Request for General Lease") no less than ninety (90) days prior to the expiration of this ROE, with a non-refundable payment of \_\_\_\_\_ DOLLARS and XX/100 (\$\_\_\_\_\_) (the "Option Fee").
  - B. All applicable requirements of Hawaii Revised Statutes Chapter 171 have been met, and specifically pursuant to Hawaii Revised Statutes Section 171-95.3 for renewable energy producers.
  - C. PERMITTOR's beneficiary consultation process for PERMITTEE has been completed.
  - D. PERMITTEE provides PERMITTOR written assurance from a utility company to purchase the energy that will be generated from the Project.
  - E. All requirements of Hawaii Revised Statutes Chapter 343 have been met, including but not limited to, the preparation, at PERMITTEE's sole expense, of an environmental assessment and/or environmental impact statement, and the issuance of a Finding of No Significant Impact or an acceptance of final environmental

impact statement, as the case may be. All mitigation measures prescribed pursuant to Chapter 343, if any, shall be included as material terms of the General Lease.

- F. PERMITTOR shall have approved a site plan depicting the locations within the Premises of any facilities, roads, and other infrastructure and improvements required for the Project.
- G. PERMITTEE shall prepare a metes and bounds survey of the portions of the Premises to be demised under the General Lease
- H. PERMITTEE shall submit the following documents to PERMITTOR:
  - i. A copy of PERMITTEE's Articles of Incorporation.
  - ii. Evidence reasonably acceptable to PERMITTOR of PERMITTEE's financial ability to develop, operate, and maintain the Project, and to make rent payments as required under the General Lease.

15. SPECIAL CONDITIONS.

- A. PERMITTEE shall keep and maintain the Premises and any and all equipment and personal property of PERMITTEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris, and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the Premises.
- B. PERMITTEE accepts the Premises as-is, where-is, with all faults. PERMITTEE understands and acknowledges that there are no existing utility services to the Premises. PERMITTEE is solely responsible for obtaining and paying for any and all utility services required by PERMITTEE to use or make use of the Premises as contemplated under this ROE.
- C. PERMITTEE may grub and clear the existing vegetation on the Premises only to the extent needed for the Permitted Uses, provided further that Permittee has obtained all necessary permits or approvals to conduct such activities.
- D. RESTORATION OF PREMISES. Upon surrender or abandonment of the Premises, Permittee shall restore, at its own cost and risk, the Premises to a condition as good as or better than that which existed before the Effective Date, reasonable and ordinary wear and tear and damage by acts of God excepted, and peacefully surrender possession thereof to PERMITTOR. This includes the removal of any Improvements that PERMITTOR elects to not accept. If PERMITTEE fails to restore the Premises, PERMITTOR may undertake all work it deems necessary or appropriate to restore the Premises on Permittee's behalf and expense, whether by its own employee or contractor(s), and may charge all such costs and expenses to PERMITTEE. PERMITTEE shall remit payment for all such



costs and expenses to PERMITTOR within thirty (30) days. This provision shall not be applicable if the ROE is terminated pursuant to Paragraph 14, above.

- E. All associated construction costs under this ROE shall be borne solely by the PERMITTEE and shall not, in any case, be reimbursable by PERMITTOR.
- F. PERMITTEE shall take all precautions to minimize disturbance to the areas surrounding the site of an activity being undertaken for study or exploration and to avoid spreading the seeds of invasive species when entering areas of native vegetation.
- G. Should any activity involve substantial construction, or extensive excavation or drilling during the term of this ROE, PERMITTEE will contact PERMITTOR in advance for written approval to proceed.
- H. PERMITTEE shall provide copies of all reports or studies performed to evaluate the Project to PERMITTOR, including data collected, archaeological and environmental surveys, and biological studies.
- I. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to PERMITTEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to PERMITTOR:

Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, HI 96707  
Attention: Land Management Division

And a copy to:

Department of the Attorney General

425 Queen Street  
Honolulu, HI 96813  
Attention: AG PSHH

- J. This ROE may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses and in the manner set forth herein, whether in hardcopy or electronic format, by PDF, email, or facsimile.
- K. This ROE shall be construed in accordance with the laws of the State of Hawaii, without regard or application to its principles of conflicts of laws. PERMITTEE submits to the jurisdiction of the State of Hawaii. Any dispute arising under or in connection with this ROE shall be filed and adjudicated in the Circuit Court of the First Circuit of the State of Hawaii, and PERMITTEE irrevocably waives any objection now or hereafter respecting choice of law, jurisdiction, or venue and consents to the service of process by means of registered or certified mail, return receipt requested, to the address(es) set forth above or as PERMITTEE shall furnish to PERMITTOR in writing.

IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first written above.

APPROVED BY THE HHC  
AT ITS MEETING HELD ON

State of Hawaii  
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

By \_\_\_\_\_,  
\_\_\_\_\_, Chairman  
Hawaiian Homes Commission

PERMITTOR

\_\_\_\_\_  
Deputy Attorney General  
State of Hawai'i

COMPANY NAME

By \_\_\_\_\_  
Printed Name and Title

PERMITTEE

STATE OF HAWAII )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF HAWAII )

CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that \_\_\_\_\_ is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same freely and voluntarily for the use and purposes therein set forth.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
Printed Name of Notary Public

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ or ✕ Undated at time of notarization.

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

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary

**EXHIBIT A**

[MAP OUTLINING THE PARCEL OR A PORTION  
OF THE PARCEL AS THE PREMISES]

**EXHIBIT B**

[TERM SHEET FOR GENERAL LEASE TO BE ATTACHED]