

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 11, 2012

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 12OD-031

Oahu

Consent to Stock Purchase Agreement and Assignment and Assumption Agreement Regarding General Lease No. S- 4095 between Olomana Golf Links, Inc. and Hawaii OGL LLC; Revise the Monthly Rent for Revocable Permit No. 7517 for Golf Course Nursery Operations, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-013:010 & 012

APPLICANT:

Olomana Golf Links, Inc., a domestic profit corporation

Hawaii OGL LLC, a domestic limited liability company.

LEGAL REFERENCE:

Section 171-36(a)(5) and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-013:010 and 012, as shown on the attached maps labeled **Exhibit A**.

AREA:

Parcel 10 - 129.859 acres

Parcel 12 - 4.774 acres

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: Open space

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

- Parcel 10 - Encumbered by General Lease No. 4095, Olomana Golf Links, Inc.; Lessee, for construction and operation of a golf course and allied facilities. The allied facilities may include but are not limited to a clubhouse.
- Parcel 12 - Encumbered by Revocable Permit No. 7517, Olomana Golf Links, Inc.; Permittee, for general agriculture purposes (Golf course nursery operations).

TERM OF LEASE:

Originally 40 years, commencing on May 4, 1967 and expiring on May 3, 2007. Term was extended for an additional 25 years from May 4, 2007 to May 3, 2032. Last rental reopening occurred on October 28, 2004; next rental reopening is scheduled for October 28, 2014.

CURRENT RENTAL:

GL 4095 – Parcel 10

\$144,500 payable in quarterly payments, or a percentage of the gross receipts, whichever is greater. Percent rent sources: 9% from green fees, 5% from food, 7% from liquor, 6% from pro shop.

RP 7517 – Parcel 12

\$497 per month

STOCK PURCHASE AGREEMENT:

CONSIDERATION:

\$4,500,000.00

RECOMMENDED PREMIUM:

Pursuant to Condition 13, "Assignment", "... the sale or transfer of 20% or more or ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium." In addition, the subject stock purchase agreement is subject to the assignment premium policy attached as **Exhibit B**.

**Exhibit C** is the letter from a CPA firm enclosing the schedule of the assignment premium, which is assessed at \$138,880. Staff notes the supporting material<sup>1</sup> and the calculation itself are generally in line with the assignment premium policy. Therefore, staff recommends the Board approve \$138,880 as the assignment premium for the above-referenced request.

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<sup>1</sup> Spreadsheets showing the supporting material are not enclosed in the submittal, but kept in files.

DCCA VERIFICATION:

Olomana Golf Links, Inc.:

Place of business registration confirmed:	YES	<u>  x  </u>	NO	<u>  __  </u>
Registered business name confirmed:	YES	<u>  x  </u>	NO	<u>  __  </u>
Good standing confirmed:	YES	<u>  x  </u>	NO	<u>  __  </u>

Hawaii OGL LLC:

Place of business registration confirmed:	YES	<u>  x  </u>	NO	<u>  __  </u>
Registered business name confirmed:	YES	<u>  x  </u>	NO	<u>  __  </u>
Good standing confirmed:	YES	<u>  x  </u>	NO	<u>  __  </u>

REVOCABLE PERMIT:

Character of Use

Golf course nursery operations

Monthly Rent

The monthly rent under RP 7517 has been staying at \$497 since 1999<sup>2</sup>. Due to the lack of staff appraiser, the Division is unable to perform an appraisal to update the current fair market rent for the revocable permit.

Staff recommends an 8% annual return on the current assessed land value<sup>3</sup>, with 25% discount for being a revocable permit.

Assessed Land Value	\$	150,400
8% return per annum	\$	12,032
25% discount for RP	\$	<u>(3,008)</u>
Annual RP rent	\$	9,024
Monthly RP rent	\$	<u>752</u>
	Say,	750

Collateral Security Deposit:

Twice the monthly rental.

APPLICANT REQUIREMENT:

Applicant shall pay for the appraisal to determine the assignment premium mentioned Recommended Premium section.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

<sup>2</sup> RP 7517 was issued in 2010 to replace RP 6822 due to the changes in insurance provisions. Both RPs were issued to Olomana Golf Links.

<sup>3</sup> Value obtained from City and County of Honolulu Real Property Tax Office website.

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exemption Notification attached as **Exhibit D**.

REMARKS:

The subject property was leased to Olomana Golf Links, Inc. ("OGL") by way of a public auction for a term of 40 years commencing on May 4, 1967 and expiring on May 3, 2007. The Board at its meeting of October 28, 1994, under agenda item F-6, approved the extension of the lease term for an additional 25 years expiring on May 3, 2032.

OGL has entered in to a Stock Purchase Agreement ("Agreement") with Hawaiian Golf Properties LLC. ("HGP") regarding a 100% stock acquisition of OGL. Under the Agreement, GL 4095 and RP 7517 are included as assets of OGL. By the Assignment and Assumption Agreement between HGP and Hawaii OGL LLC (a company formed by HGP), the latter accept all of HGP's right, title and interest under the Agreement.

Pursuant to Condition 13, "Assignment" of GL 4095, "... the sale or transfer of 20% or more or ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium."

As mentioned above, rent for RP 7517 has not been adjusted since 1999. Staff recommends the Board authorize the increase of the monthly rent to \$750 as described above effective from July 1, 2012.

OGL is in compliance with the terms and conditions of the lease in regards to the rent, liability insurance and performance bond. Site inspection shows that the subject area has been maintained in a satisfactory manner.

Hawaii OGL LLC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

No agency or interest groups were solicited for comments, as there will be no changes in the existing use of the property. There are no other pertinent issues or concerns. Staff does not have any objection to the request for consent to assign.

RECOMMENDATION: That the Board

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably

have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Consent to the Stock Purchase Agreement and the Assignment and Assumption Agreement regarding General Lease No. S-4095 between Olomana Golf Links, Inc. and Hawaii OGL LLC, subject to the following:
  - a. Payment of \$138,880 as assignment premium;
  - b. The standard terms and conditions of the most current consent form, as may be amended from time to time;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Increase the monthly rent for Revocable Permit No. 7517 to \$750 effective from July 1, 2012.

Respectfully Submitted,



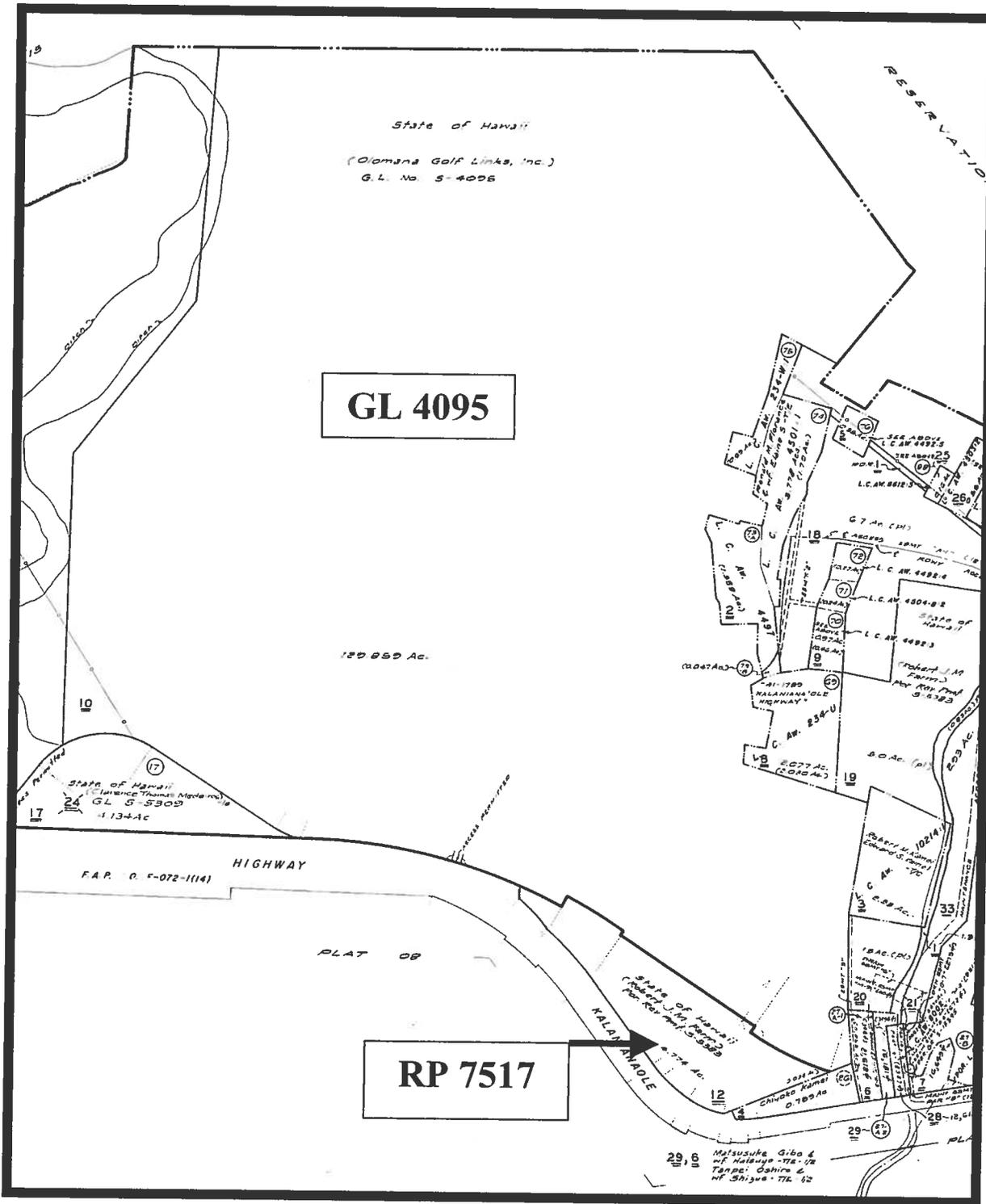
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





TMK (1) 4-1-013:010 and 012

EXHIBIT A

JOHN WAHNEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT  
P. O. BOX 621  
HONOLULU, HAWAII 96806

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

September 14, 1990

Board of Land and  
Natural Resources  
Honolulu, Hawaii

Subject: Staff Recommendation to Amend the Assignment of  
Lease Evaluation Policy

At its meeting of December 15, 1989 under agenda Item F-10, attached hereto and incorporated herein by reference, the Board adopted an Assignment of Lease Evaluation Policy to conform with Act 104, Session Laws of Hawaii 1989.

However, the staff realized that for subsequent assignments of leases, the evaluation procedure was not explicit. The policy mirrored the statute and only mentioned improvements as the sole investment of the lessee. Inequities may therefore result when existing tenant-owned improvements are transferred as part of the consideration for the assignment.

As a solution, an additional section would be included in the policy for those assignments that do include the purchase of existing tenant-owned improvements.

Briefly, it requires redefining the expired term to be the holding period and the consideration paid to be the value of improvements and trade fixtures, all other items and procedures remaining the same, to insure that the second, third, or any subsequent assignment will be treated in the same manner as the first. A typical example would be included as shown by Schedule E.

Secondly, financial institutions have expressed concerns that in the event of foreclosure or sale, the premium, if any, may prevent them from recovering their advances. The legislature did consider measures to provide relief and during the last session, passed Act 242, Session Laws of Hawaii 1990 (approved June 25, 1990) which reads in part:

"provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;"

APPROVED BY THE CHAIRPERSON  
OF THE BOARD OF LAND AND  
NATURAL RESOURCES ON  
SEPT 14, 1990

ITEM F-21

EXHIBIT "B"

September 14, 1990

Although we are of the opinion that all leases should be treated equally, the Act only addresses agricultural leases. At this time, the staff proposes to adopt the language of the Act to allow financial institutions to recover their advances first before any premiums are paid to the state but for agricultural leases only.

Whether to extend the right to all lessees will be discussed further with the Office of the Attorney General and, if a favorable decision is reached, will be brought before the Board at a later date.

Thirdly, when state-owned improvements are leased, neither the statute nor the policy recognizes the usual improvement renovation requirement in state leases. It is proposed that the actual expenditures of the lessee to renovate state-owned improvements be recognized as being tenant-owned improvements for consideration in the policy.

If the Board concurs with the previous recommendations, for clarification purposes, it is further proposed that the language in Schedule D be revised to conform to the language used in the narrative on Schedule E.

**RECOMMENDATION:**

That the Board:

- A. Approve to include a section and schedule, attached hereto and incorporated herein by reference, to address subsequent assignments of leases.
- B. Approve to include a section providing that, for agricultural leases only, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.
- C. Approve to include a section recognizing the required expenditures to renovate state-owned improvements as being tenant-owned improvements.
- D. Approve to amend the language of Schedule D to conform to the language of Schedule E.

Respectfully submitted,



W. MASON YOUNG

Land Management Administrator

APPROVED FOR SUBMITTAL:



WILLIAM W. PATY, Chairperson

8. Subsequent Assignments

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

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

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

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

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

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

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

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

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

Schedule E. Subsequent Assignment of Lease Calculations

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

Example

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

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

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

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

Schedule D. Assignment of Lease Calculations

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

Example

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

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

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

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

JOHN WAINHEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT  
P. O. BOX 681  
HONOLULU, HAWAII 96808

AQUACULTURE DEVELOPMENT  
PROGRAM  
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CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

December 15, 1989

Board of Land and  
Natural Resources  
Honolulu, Hawaii

Gentlemen:

Subject: Resubmittal - Staff Recommendation to Adopt an  
Assignment of Lease Evaluation Policy to Conform  
with Act 104, Session Laws of Hawaii 1989

During the 1989 legislative session, Chapter 171-36(a)(5)  
was amended, effective May 24, 1989, to read in part:

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

Because the Department of Transportation also administers  
leases using the same statutes, they have developed a procedure  
to evaluate lease assignments with input from DLNR staff. The  
policy being proposed is an adaptation from the DOT procedure but  
will only be applicable to leases from which the state can  
receive premiums as determined by the Attorney General. It  
should also be noted that preparation and passage of the  
legislative act was largely the result of DOT's efforts.

To implement the statute, the proposed policy would use  
indices obtained from the U.S. Department of Labor, Bureau of  
Labor Statistics, to derive the depreciated cost of improvements  
and trade fixtures being transferred to the assignee. Using an  
index is recommended since it is a faster, simpler method and  
will eliminate the added expense of hiring an independent  
appraiser or cost estimator. However, for lessees that construct  
their own building, they alone will be given the option of asking  
for an appraisal (at their expense) to determine the value of the  
improvements to obtain due credit for their efforts.

All lessees will be required to provide information and/or  
evidence on actual costs of construction of all improvements or  
renovations (already a condition in leases with improvement  
requirements) and the purchase price of trade fixtures which will  
be maintained in the lease file along with the necessary indices.  
Lessees will also be required to provide an inventory of all  
personal property placed on the premises.

AS AMENDED  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

DECEMBER 15, 1989

ITEM F-10

December 15, 1989

As shown on Schedule D, the evaluation typically begins by analyzing the consideration for the assignment to eliminate that portion attributable to inventory.

The adjusted depreciated cost for improvements or renovations is calculated by using the Construction Cost Index (CCI) for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year) multiplied by the original cost of the improvements or renovations. Depreciation, calculated by dividing the expired term of improvements or renovations by the whole term (completion date to lease expiration date) and multiplied by the adjusted cost, is subtracted from the adjusted cost. An example is shown on Schedule A.

For trade fixtures, the adjusted depreciated cost is similarly calculated by using instead the Consumer Price Index (CPI) for the evaluation year divided by the CPI for the purchase year (base year) against the original cost. The depreciation is calculated by dividing the expired life by the estimated life of a particular item and multiplied by the adjusted cost as indicated on Schedule B.

The excess is the amount, if any, derived by subtracting the depreciated value of the improvements or renovations and trade fixtures from the consideration for the assignment.

No other deduction is allowed as the statute only recognizes tangible items (intangibles such as "goodwill", business name recognition, etc., are not deductible).

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

This item was deferred at the Board's November 17, 1989 meeting.

**RECOMMENDATION:**

That the Board approve to adopt the Assignment of Lease Evaluation Policy, attached hereto as Exhibit A, to conform with Act 104, Session Laws of Hawaii 1989.

Respectfully submitted,

*W. Mason Young*

W. MASON YOUNG

Acting Land Management Administrator

APPROVED FOR SUBMITTAL:

*[Signature]*  
WILLIAM W. PATY, Chairperson

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute

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

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

2. Qualifying Leases

The evaluation for premium determination will only be applicable to leases from which the state can receive premiums as determined by the Attorney General.

3. Prior Approval

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

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

4. Qualifications of Assignee

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

5. Consideration to be Paid

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

6. Payment of Premium

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

consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

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

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

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

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

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

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

#### 7. Non-qualifying Deductions

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

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations

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

2. Depreciation

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

3. Depreciated Cost of Improvements or Renovations

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

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

Example

Actual cost:	\$500,000
CCI (most recent):	121.1
CCI (base year):	102.3
Expired term:	57 mos.
Whole term:	408 mos.

1. Adjusted Cost of Improvements or Renovations

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

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

2. Depreciation

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

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\underline{\$509,197}}$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture

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

2. Depreciation

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

3. Depreciated Cost of Trade Fixtures

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

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

Example

1. Adjusted Cost of Trade Fixture

Refrigerator  
 Actual cost: \$1,510  
 CPI (most recent): 118.1  
 CPI (base year): 104.6  
 Expired term: 57 mos.  
 Whole term: 96 mos.  
 (Anticipated life)

Actual Cost x  $\frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$

$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

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

3. Adjusted Depreciated Cost of Trade Fixture

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

Schedule C. Premium Percentages

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

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

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

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

Schedule D. Assignment of Lease Calculations

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

Example

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

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

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

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



AMERICAN SAVINGS BANK TOWER  
1001 BISHOP STREET, SUITE 1700  
HONOLULU, HAWAII 96813-3696  
T (808) 524-2255 F (808) 523-2090

April 11, 2012

Mr. Barry Cheung  
State of Hawaii  
Department of Land and Natural Resources  
Land Division  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813

RECEIVED  
LAND DIVISION  
2012 APR 11 P 2:53  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Re: Olomana Golf Links, Inc., Waimanalo, Oahu  
Lease Transfer Calculations

Dear Mr. Cheung:

We are transmitting to you the attached Schedule A, Adjusted Depreciated Cost of Improvements or Renovations, Schedule B, Adjusted Depreciated Cost of Trade Fixtures, Schedule C, Premium Percentages and Schedule D, Assignment of Lease Calculations, for your review and approval. Schedule D shows the fee due to the State of Hawaii from Olomana Golf Links, Inc. for the transfer of the lease by Olomana Golf Links, Inc. The calculations were completed based on the State's requirements. Schedule A was calculated using the E.H. Boeckh building cost index (Apartments, hotels and office buildings) for years 1985 through 1998, subsequent year building cost index information was not available. For years 2001 through 2002, the Turner Construction Co. building construction index was used as this appeared to be the most similar index to the E.H. Boeckh building cost index. For years which the index was not available, the next closest year index was used.

I can be reached at 808-566-1313 if you have any questions about the attached schedules. Thank you.

Sincerely,

N&K CPAs, INC.

Kenneth Yamato  
Principal

vs

EXHIBIT "e"

OLOMANA GOLF LINKS, INC.  
**SCHEDULE D - Assignment of Lease Calculations**  
FYE: 12/31/2011

1. Net consideration (Consideration less amount for inventory)

Consideration (Sales Price)	4,500,000	
Inventory (Pro Shop inventory at fmv)	<u>(16,000)</u>	
Net consideration		\$ 4,484,000

2. Adjusted depreciated cost of improvements or renovations from Schedule A (1,400,298)

3. Adjusted depreciated cost of trade fixtures from Schedule B (306,094)

4. EXCESS - Amount of consideration for the assignment that exceeds the depreciated costs in the above amounts in #2 and #3

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2,777,608

---

5. Premium at 5% of line 4

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**\$ 138,880**

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**EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Consent to Stock Purchase Agreement and Assignment and Assumption Agreement

Project / Reference No.: PSF 12OD-031

Project Location: Waimanalo, Koolaupoko, Oahu, TMK:(1) 4-1-013:010 & 012

Project Description: Transfer of Business through Stock Purchase Agreement

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

There will be no changes in the existing use of the subject properties. Staff does not anticipate the request will result in major alterations in the conditions of land, water and vegetation.

Recommendation: That the Board finds this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

4/30/12  
\_\_\_\_\_  
Date

**EXHIBIT D**

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Assignment”)** made and entered into as of the 11 day of April, 2012, between **HAWAIIAN GOLF PROPERTIES LLC**, a Hawaii limited liability company, whose address is 700 Bishop Street, Suite 1701, Honolulu, Hawaii 96813 (“**Assignor**”) and **HAWAII OGL LLC**, a Hawaii limited liability company, whose address is 700 Bishop Street, Suite 1701, Honolulu, Hawaii 96813 (“**Assignee**”).

### **WITNESSETH:**

**WHEREAS**, Assignor, as buyer, and Taeko Mizuno and Jun Mizuno (“**Stockholders**”) entered into that certain Stock Purchase Agreement dated January 3, 2012, as amended by that First Amendment to Stock Purchase Agreement dated March \_\_, 2012 (collectively, the “**Agreement**”), whereby Stockholders agreed to sell and Assignor agreed to purchase 100% of the issued and outstanding shares of common stock of Olomana Golf Links, Inc. (the “**Company**”); and

**WHEREAS**, pursuant to Section I.G of the Agreement, Assignor “may substitute a partnership or other entity (to be formed by or for [Assignor]) as Buyer of the Company Stock upon written notice to the Company and the Stockholders, provided, however, that such substitution shall not operate to release [Assignor] from liability under [the] Agreement”; and

**WHEREAS**, Assignor wishes to assign to Assignee, and Assignee wishes to accept from Assignor, all of Assignor’s right, title and interest under the Agreement and to assume all of Assignor’s obligations thereunder;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

1. Capitalized terms used, and not otherwise defined, in this Assignment shall have the definitions given them in the Agreement.

2. Assignor does hereby assign, transfer, set over and convey to Assignee all of Assignor’s right, title and interest in, to and under the Agreement. In addition, Assignor does hereby assign, transfer, set over and convey to Assignee all of Assignor’s right, title and interest in, to and under any and all reports, insurance certificates, studies, due diligence materials, contracts, documents and personal property, including, without limitation, general intangibles, claims, rights and demands, with respect to, relating to, or arising out of, or in any way in connection with the Agreement, the Company Stock and/or the Property.

3. Assignee hereby accepts such assignment and assumes all obligations of Assignor under the Agreement.

4. Assignor and Assignee hereby represent and warrant, for the benefit of the Stockholders that:

a. Assignee is a Hawaii limited liability company formed by Assignor.

b. Assignor shall remain fully liable under the Agreement and shall not be released from performing any of the terms, provisions, covenants and conditions of the Agreement.

5. All notices and other communications under the Agreement to Assignee shall be addressed to Assignee at the same address as provided under Section I.O.4 of the Agreement for Assignor.

The parties have executed this Assignment and Assumption Agreement as of the day and year first above written.

HAWAIIAN GOLF PROPERTIES LLC, a  
Hawaii limited liability company

By: 

Name: Micah A. Kane

Its: Chief Operating Officer

“Assignor”

HAWAII OGL LLC, a Hawaii limited  
liability company

By: 

Name: Micah A. Kane

Its: Chief Operating Officer

“Assignee”