

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

July 10, 2015

PSF No: 06HD-061
Ref. No.: GLS-5997

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

HAWAII

Amend Prior Board Action of June 13, 2014, Item D-6, Direct Lease to the University of Hawaii for Education, Housing, and Related Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001:024 and (3) 2-4-056:014.

Purpose of the amendment is to: 1) include in the direct lease to the University of Hawaii, the former U.S. Army Reserve Site, identified as TMK: (3) 2-4-056:016, and 2) approve lease form for issuance of direct lease to the University of Hawaii.

BACKGROUND:

The subject State property is currently vacant and unencumbered. The parcel borders the Wailoa Flood Control drainage way and is heavily covered with what appears to be non-native trees and vegetation. The remaining bordering properties are primarily residential in nature except for General Lease No. S-4004 to the Christ Lutheran Church and a parcel under the United States of America. Although, the parcel itself is zoned residential, it should be noted that many of the fee residential parcels along Mohouli Street have been rezoned to commercial due to the County's General Plan.

Authorization to proceed with a request to acquire use of State lands for the University of Hawaii at Hilo was approved by the University of Hawaii's Board of Regents at its meeting held in February 2006.

At its meeting of June 13, 2014, Item D-6, the Board of Land and Natural Resources (Land Board) approved the issuance of a direct lease to the University of Hawaii at Hilo, for Education, Housing and Related Purposes, Waiakea, South Hilo, Hawaii, identified as Tax Map Key: (3) 2-4-001:024 ("Parcel 24") and (3) 2-4-056:014 ("Parcel 14"), subject however to the "standard terms and conditions of the most current direct lease document form for government agencies, as may be amended from time to time and as may be amended to address this specific property, use and the University of Hawaii, as an autonomous government agency." (Exhibit A)

Pursuant to the Land Board's approval, a lease document was forwarded to the University of Hawaii for execution. The Office of University General Counsel reviewed and objected to the lease form, requesting that the language be revised to be consistent with the language previously adopted/used for its Kalakaua Marine Education Center lease in Puako, under General Lease No. S-5993.

The lease form for General Lease No. S-5993 was revised from our standard lease language, to address the University's many concerns relating to indemnification.

Moreover, at its meeting of January 23, 2015, under agenda D-2, the Land Board approved in principle a proposed acquisition of government (crown) lands at Waiakea, South Hilo, Island of Hawaii, Tax Map Key: (3) 2-4-056:016 ("Parcel 16"). As discussed, therein, Parcel 16 is currently owned by the United States of America. Pursuant to the conditions of the Land Board's approval in principle, final documentation of the proposed acquisition remains subject to a presentation to the Land Board of the required due diligence results and details of the proposed acquisition for the Land Board's consideration of a final approval. (Exhibit B)

REMARKS:

Parcel 16 is currently owned by the United States of America. However under a separate agenda item, today the Land Board is being asked to approve the acquisition of Parcel 16. As shown on the location map attached as Exhibit A. Parcel 16 abuts Parcel 14. Accordingly, subject to the Land Board's final approval to acquire Parcel 16, adding Parcel 16 to this request for a direct lease would consolidate UH's interest of adjoining lands into a single lease document.

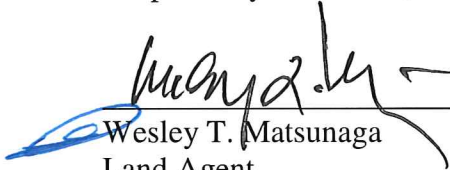
Previously noted at its meeting of June 13, 2014 and January 23, 2015, under agenda items D-5 and D-2, respectively, the Final Environmental Assessment for the Disposition of State Land for Expansion of UH-Hilo, TMK: (3) 2-4-001:024, 2-4-056:014 and 2-4-056:016 was prepared for the University of Hawaii and was published in the OEQC's Environmental Notice on January 8, 2014 with a finding of no significant impact.

The University of Hawaii is further requesting a compromise in the lease language for this lease to be similar to its UH-Kalakaua Marine Education Center lease in Puako. Many of UH's requested changes are technical but others are substantive. The substantive changes are summarized in the attached sampling of the redlined version of the draft lease document for the UH-Kalakaua Marine Education Center lease, showing additions proposed to the standard lease form in double-underscored green font, and deletions by strikethrough. (Exhibit C) Staff is recommending that the requested changes for the UH-Kalakaua Marine Education lease form be accepted and adopted into the UH-Lanikaula Direct Lease.

RECOMMENDATION: That the Board:

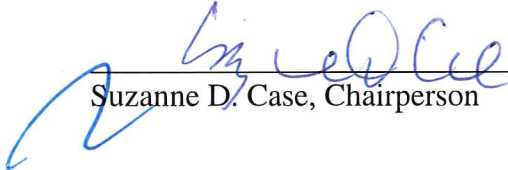
1. Amend its prior Board action of June 13, 2014, under agenda item D-6 by:
 - A. Inserting Tax Map Key: (3) 2-4-056:016, the former U.S. Army Reserve Administration Building Site to the subject lease.
 - B. Approve the form of lease, which is similar/consistent with the terms and conditions contained in General Lease No. S-5993 to the University of Hawaii for its UH-Hilo Kalakaua Marine Education Center in Puako, Lalamilo, South Kohala.
2. All terms and conditions listed in its June 13, 2014 (D-6) approval to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

June 13, 2014

PSF No: 06HD-061
Ref. No.: GLS-5997

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

HAWAII

Rescind Prior Board Action of May 12, 2006, Item D-4, Direct Lease to the University of Hawaii for Education, Housing, and Related Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001: portion of 024 and (3) 2-4-056: 017 and portion of 014.

RESUBMITTAL - Direct Lease to the University of Hawaii for Education, Housing and Related Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001: 024 and (3) 2-4-056:014.

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

June 13, 2014

BACKGROUND:

At its meeting of May 12, 2006, Item D-4, the Board of Land and Natural Resources approved the issuance of a direct lease to the University of Hawaii at Hilo, for Education, Housing and Related Purposes, Waiakea, South Hilo, Hawaii, identified as Tax Map Key: (3) 2-4-001:portion of 024 and (3) 2-4-056:017 & portion of 014.

In the processing of the above request, the Deputy Attorney General preparing the lease document noted that the prior Board action was not in noncompliance with the current requirements under Hawaii Revised Statutes (HRS), Chapter 343 on Environmental Assessments. To proceed with processing, a number of corrections are required:

- 1) The Board action of May 12, 2006 approving the lease preceded the completion of the environmental assessment dated January 8, 2014. As a result, the Board action should be rescinded and reapproved, noting the compliance with HRS Chapter 343.
- 2) TMK: (3) 2-4-056:017 was referenced in the Board action but was not included in the environmental assessment of January 8, 2014. That parcel should therefore be deleted from the request, or a supplemental EA should be done to include that parcel.
- 3) The Board action of May 12, 2006 referenced the affected lands as TMK: (3) 2-4-001: portion of 024 and TMK: (3) 2-4-056: portion of 014. Since 2006, portions

EXHIBIT A

of the respective parcels not intended to be included in the UH lease have been subdivided out. Accordingly, the references to the lands being "a portion of" are no longer reflective of the area required by the UH. As a result, the TMKs referenced on the request should be revised to reflect TMK: (3) 2-4-001:024 and (3) 2-4-056:014.

- 4) References to Exhibit C and Exhibit I in the prior Board action were incorrect and should have been to Exhibit D and Exhibit J, respectively.
 - A. On page 1 of the Board submittal, dated May 12, 2006, Applicant Requirements, No. 1, referred to Exhibit I, but should be to Exhibit J.
 - B. On page 6 of the Board submittal, dated May 12, 2006, Recommendation Section, Condition B, referred to Exhibit C, but should be to Exhibit D.

To resolve Item 1 above, the prior board action of May 12, 2006 must be rescinded, and then resubmitted with a new recommendation for the direct lease to the University.

APPLICANT:

University of Hawaii, whose business address and mailing address is 2444 Dole Street, Honolulu, Hawaii 96822, Attn.: Procurement & Property Management.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-001:024 and 2-4-056:014, as shown on the attached map labeled Exhibit A.

TMK/ DISTRICT/ ZONING/ ENCUMBRANCE/ AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	AREA
		LUC	CZO		(Acres)
(3) 2-4-001:024	Waiakea, South Hilo	Urban	RS-10	Vacant	35.110
				Land Office Deed No. S-28,325; Fernando Afable	(0.060)
(3) 2-4-056:014	Waiakea, South Hilo	Urban	RS-10	Vacant	7.521
				Grant of Easement No. S-4952; John & Ginger Hamilton	(0.099)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES _____ NO x

CURRENT USE STATUS:

TMK: (3) 2-4-001:024:

Encumbered by Land Office Deed No. S-28,325 to Fernando Afable for access and utility purposes, commencing on 1/19/1999.

TMK: (3) 2-4-056:014

Encumbered by Grant of Easement No. S-4952 to John & Ginger Hamilton, for access purposes, 1/1/1085 to 12/31/2049.

CHARACTER OF USE:

Education, Housing and Related University Purposes.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Gratis

RENTAL REOPENINGS:

Not applicable.

PERFORMANCE BOND:

Not applicable.

PROPERTY CHARACTERISTICS:

Utilities - All utilities are available.
Slope - Gentle (0 to 20%)
Elevation - 100 feet, more or less.
Rainfall - 120 to 200 inches, annually.
SCS Soil Series - Pahoehoe with Olaa, stony.
Land Study Bureau - University of Hawaii, L.S. Bulletin No. 6, November 1965.
Legal access to property - Legal accesses to the property is off Lanikaula Street (south entrance) and Mohouli Street (north entrance).
Subdivision - Staff has verified that subject property is a legally subdivided lot.
Encumbrances - Staff has verified that currently there are no encumbrances on the subject property.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on January 8, 2014 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Not applicable,

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Process and obtain subdivision of proposed leased area, the proposed Kapiolani Street Extension in accordance with the County of Hawaii, Department of Public Works' comments set forth in attached Exhibit F, and remainder parcel makai of the proposed Kapiolani Street Extension, at Applicant's own cost. Preliminary subdivision maps shall be subject to approval by the Chairperson, prior to submission of subdivision application;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. As noted above, Applicant has obtained a FONSI for its requested lease.

REMARKS:

The subject property is currently vacant and unencumbered. The parcel borders the Wailoa River and Tributary Flood Control Channel and is heavily covered with mostly non-native trees and vegetation. The remaining bordering properties are primarily residential in nature except for General Lease No. S-4004 to the Christ Lutheran Church. Although, the parcel itself is zoned residential, it should be noted that many of the fee residential parcels along Mohouli Street have been rezoned to commercial due to the County's General Plan.

Authorization to proceed with a request for this area by the University of Hawaii at Hilo, was approved by the University of Hawaii's Board of Regents at its meeting held in February 2006. (Exhibit B)

At its meeting of April 25, 2014, Item D-5, the Board of Land and Natural Resources approved:

1. Set Aside to the County of Hawaii for Kapiolani Street Extension Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001: 181 & 182 and (3) 2-4-056:029;
2. Grant of Perpetual Easements to the County of Hawaii, for Kapiolani Street Extension, Affecting Tax Map Keys: (3) 2-4-001: portion of 019, 024, 167 & 183; (3) 2-4-056:014, 022 & 028; and
3. Construction Rights-of-Entry to County of Hawaii for Kapiolani Street Extension, onto State Parcels, Waiakea, South Hilo, Hawaii, identified as Tax Map Keys: (3) 2-4-001:019, 024, 167, 181, 182 & 183; (3) 2-4-056:014, 022, 028 & 029.

Staff has attached an aerial photo as Exhibit C for the Board's reference.

The US Army Reserve currently holds title to TMK: (3) 2-4-056:016, consisting of 3.70 acres and intends to decommission the facility within the next couple years as part of an overall restructuring. Upon decommissioning, the property will revert back to the State of Hawaii and the University of Hawaii has already had discussions with the US Army Reserve on UH's interest in requesting use of the facility for their College of Pharmacy. The parcel identified as TMK: (3) 2-4-056:014 abuts the Army Reserve property and UH would like to use this parcel to supplement the Army Reserve property for the purpose of the College of Pharmacy.

The University of Hawaii has also approached the County of Hawaii regarding the extension of Kapiolani Street, including the bridge of the Wailoa River Flood Control and connection with Mohouli Street. The County has agreed to pursue funding of the extension of Kapiolani Street, including the bridge across the flood control channel.

Such a bridge will connect the Army Reserve area with the parcel identified as TMK: (3) 2-4-001:024, which the University of Hawaii intends to look at for student housing.

PBR Hawaii & Associates, on behalf of the University of Hawaii, conducted the Final Environmental Assessment (FEA), and received a Finding of No Significant Impact (FONSI) determination from the Office of Environmental Quality Control on January 8, 2014. During the environmental assessment process, various governmental agencies and interest groups were solicited for comments. All respondents had no objections to the request. The County Planning Department, County Public Works and Christ Lutheran Church provided comments to express their concerns.

The County of Hawaii, Planning Department requested that conditions be included for the University to subdivide the proposed parcel and to comply with the Planning Department conditions subject to all easements. (Exhibit D)

The Christ Lutheran Church expressed concern over the remainder parcel created by the subdivision and creation of the Kapiolani Street Extension. The Kapiolani Street Extension would provide a very distinct separation from the balance of the area leased to the University of Hawaii and may provide for other prospective uses in the future. As a result, staff is recommending that the remaining parcel makai of the proposed Kapiolani Street Extension, adjacent to the Christ Lutheran Church parcel, be excluded from the lease to the University of Hawaii. (Exhibit E)

The County of Hawaii, Department of Public Works requested that the University of Hawaii be required to subdivide the proposed Kapiolani Street Extension parcel in accordance with the recommendation in their letter. (Exhibit F)

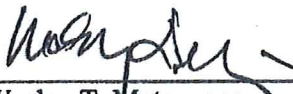
RECOMMENDATION: That the Board:

1. Rescind its prior actions of May 12, 2006, under agenda item D-4.
2. Find that the public interest demands the issuance of this direct lease to the University of Hawaii for Educational, Housing and Related University purposes;
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the University of Hawaii, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current direct lease

document form for government agencies, as may be amended from time to time and as may be amended to address this specific property, use and the University of Hawaii, as an autonomous government agency;

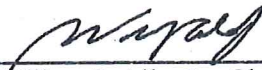
- B. The University of Hawaii shall be required to comply with the conditions of the County of Hawaii, Planning Department as detailed in attached Exhibit D;
- C. The lease shall exclude the area of the Kapiolani Street Extension and the Makai remainder parcel;
- D. The lease shall be subject to all existing and any previously approved undocumented easements;
- E. Review and approval by the Department of the Attorney General; and
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



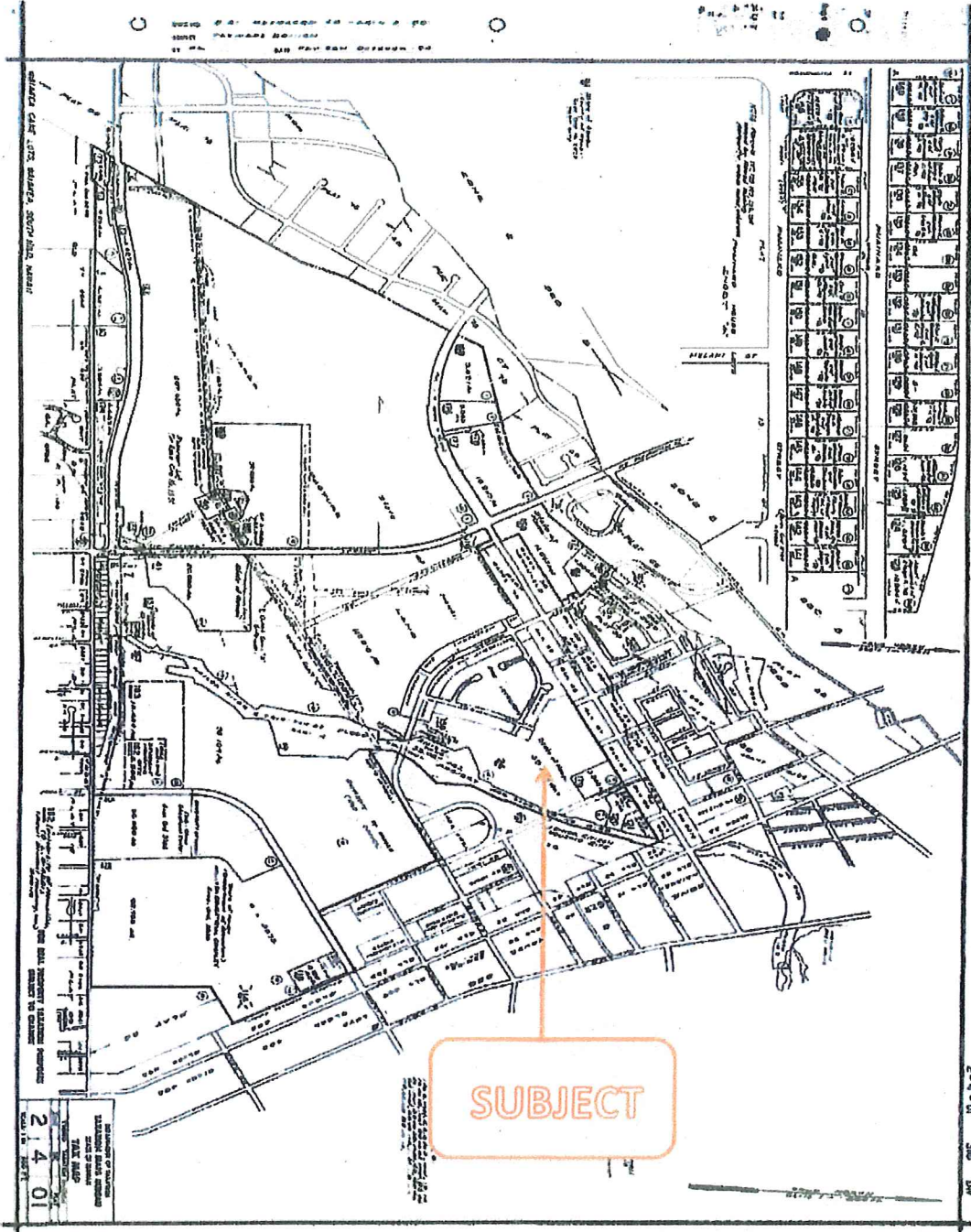
Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





SUBJECT

EXHIBIT A

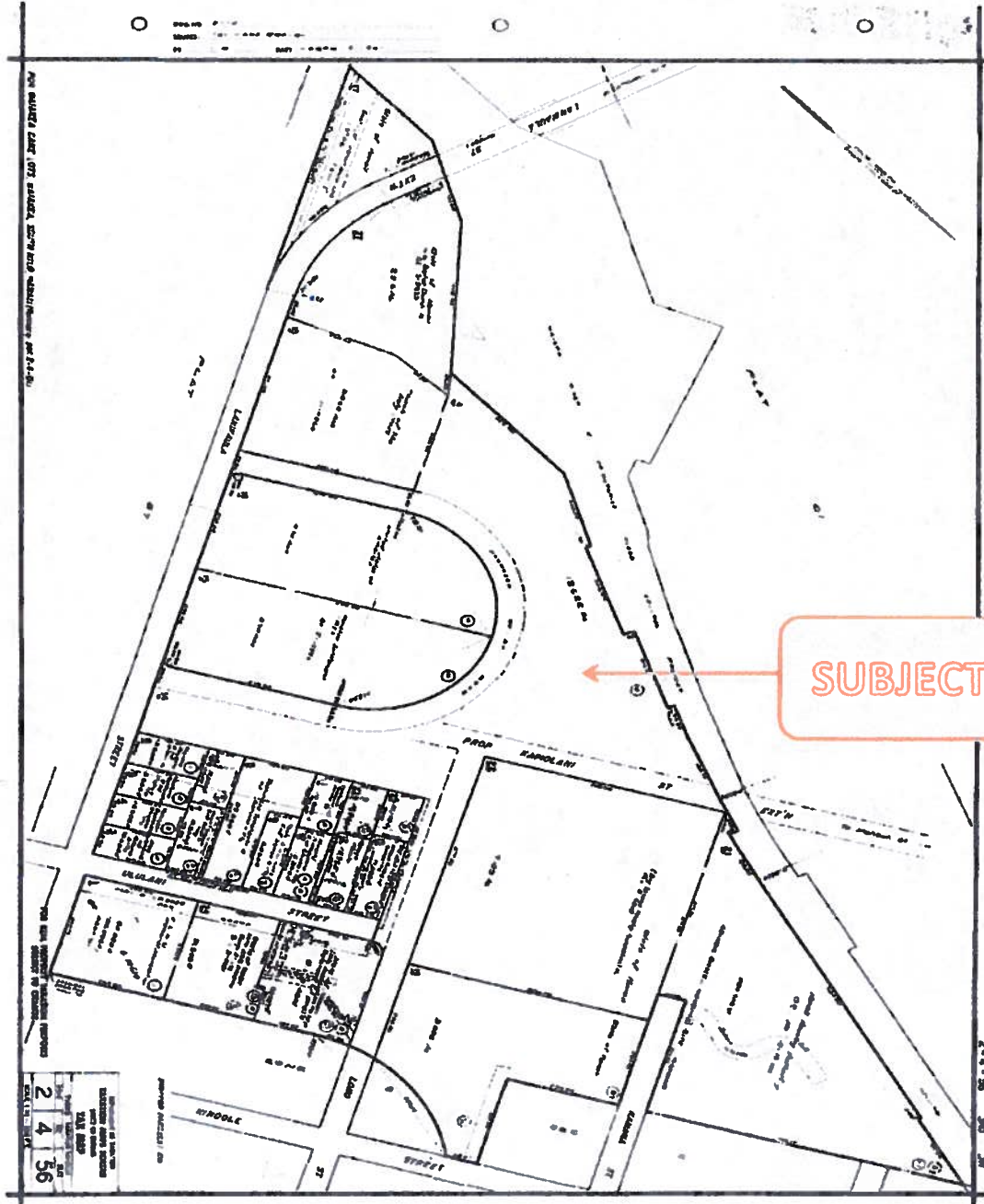


EXHIBIT A

2/16/06
17

Harry Yoda (3)
4936

974-6222

UNIVERSITY OF HAWAII AT HILO

UH Hilo Administration
Office of the Chancellor

January 23, 2006

2006 FEB 23 A 9 26

UNIVERSITY OF HAWAII
BOARD OF REGENTS

RECEIVED
LAND DIVISION
HILO, HAWAII

06 FEB -3 P1:27

MEMORANDUM

TO: Kitty Lagareta
Chairperson, Board of Regents

VIA: David McClain
Interim President *D. McClain*

FROM: Rose Tseng
Chancellor, University of Hawai'i at Hilo *Rose Tseng*

SUBJECT: Acquisition of Real Property, Waialae, South Hilo, Hawaii
Tax Map Keys: 3/2-4-01-:24 and 3/2-4-56:14, 54.99 Acres.

UNIVERSITY OF HAWAII
PRESIDENT

06 JAN 25 P3:45

RECEIVED

SPECIFIC ACTION REQUESTED:

It is requested that the Board of Regents authorize the Administration to enter into negotiation for a long-term, nominal rent lease with the Department of Land and Natural Resources (DLNR) for 54.99 acres, more or less of Government land, as shown on the attached map.

RECOMMENDED EFFECTIVE DATE

Upon Board approval.

PURPOSE

The proposed lease with DLNR to acquire 54.99 acres of State land in close proximity to the University of Hawai'i at Hilo (UH Hilo) campus is desired to further UH Hilo's academic and program expansion, to include the College of Pharmacy, additional facilities, classrooms and labs, a recreational field, and bikeways that traverse the acreage that connect and access Mohouli Street.

BACKGROUND INFORMATION

This request is submitted in accordance with Section 10-1 of the Board of Regents' Bylaws and Policies.

In October of 2005, UH Hilo entered into discussions with DLNR to lease approximately 54.99 acres of State land for a term of sixty-five years. The subject property is situated in close proximity to the UH Hilo campus (off Lanikaula Street, behind the U.S. Army Reserve

Kitty Lagareta, Chairperson
January 23, 2006
Page 2

Center), an ideal location for the operation and expansion of UH Hilo. In addition to this property, UH Hilo is also pursuing acquisition of the soon to be decommissioned U.S. Army Reserve Center (approximately 3.75 acres), which will revert back to the State of Hawai'i in accordance with the terms of the deed.

Currently, County of Hawaii is pursuing funds to extend Kapiolani Street between Mohouli and Lanikaula Street with basic infrastructure installed. This will open up the said property for development without funding from the University.

UH Hilo has requested CIP funds to update its Long Range Development Plan (LRDP). The said property will be included in the LRDP update.

ACTION RECOMMENDED

It is recommended that the authority be granted to the Administration to enter into a negotiation for a lease with DLNR for the 54.99 acre parcel to be used for future University of Hawai'i at Hilo expansion. The lease will be brought forth for BOR approval after the Office of the University General Counsel's review and approval as to form.

Attachments

- c: Executive Administrator and Secretary of the Board Iha
Sam Callejo, Vice President for Administration

- 1 TMK 3rd/ 2-4-56, 14
- 2 TMK 3rd/ 2-4-01 24
- 3 TMK 3rd/ 2-4-56 17
- 4 Main Existing UH Hilo Campus
- 5 US Army Reserve Facility
- 6 YMCA Facility
- 7 Church of the Holy Cross
- 8 Hilo Baptist Church
- 9 USDA Pacific Basin Agricultural Research Center
- 10 UH's US China Center Project
- 11 Waialea High School Campus

Remainder Parcel

Proposed Kapiolani Street Extension

Komohana St

EXHIBIT C



Harry Kim
Mayor



County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

March 29, 2006

Mr. Harry Yada
District Land Agent
Department of Land and Natural Resources
Land Division
75 Aupuni St., Rm. 204
Hilo, HI 96720

Dear Mr. Yada:

Subject: Issuance of Lease for Education, Housing, and Related Purposes
Applicant: University of Hawai'i, Ref. No. 06HD-061
Location: Waiakea, South Hilo, Hawai'i
TMKs: (3)2-4-01: Por. 24 and 2-4-56: 17 & Por. 14

This is in response to your memorandum dated March 7, 2006 requesting our review and comments on the subject application. We understand that the University of Hawai'i has applied to lease the above-referenced, state-owned properties for education, housing, and related purposes. Land Division is proposing to ask the Board of Land & Natural Resources to approve the transfer of management jurisdiction to the University of Hawai'i of the three above-referenced properties. The University would be held responsible for any required consolidation and/or subdivision of the properties as well as any Chapter 343, HRS compliance requirements.

We have the following comments to offer:

1. Consolidation and/or subdivision is required prior to issuance of a lease, per Hawaii County Subdivision Code Section 23-76 which states: "Land shall not be offered for sale lease or rent in any subdivision, nor shall options or agreements for the purchase, sale, leasing or rental of the land be made until approval for recordation of the final plat is granted by the director."
2. Chapter 343, HRS compliance requirements will be triggered prior to the submittal of the consolidation and/or subdivision applications.

EXHIBIT D

Mr. Harry Yada
Page 2
March 29, 2006

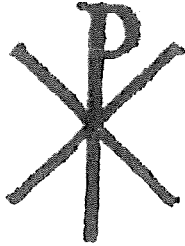
3. Our records show that subdivision of TMK (3) 2-4-56:14 was approved on September 4, 1985 (Subdivision No. 5301), dividing the parcel into two lots: a 2.916 acre lot for use by the Hilo Baptist Chapel and a 13.622 acre remaining lot. We will amend the TMK to reflect the approved boundaries of Subdivision No. 5301.
4. TMK (3) 2-4-1:24 will also need to be subdivided prior to lease of the parcel to the University and Hospice of Hilo.
5. Our records also show that an access easement was created on TMK (3) 2-4-1:24 per Subdivision No. 2197-A which was approved on January 25, 1966, but the right-of-way was never built nor was it dedicated to the county. The purpose of the road was to provide access to the University Heights Residential Subdivision- Second Increment.
6. All three properties are in the State Land Use Urban District.
7. County zoning for all three properties is Single-Family Residential District (RS-10). University uses and structures can be permitted in the residential district, provided they meet the definition of "public use" or "public structure or building." Per the Hawaii County Zoning Code, Section 25-4-11(c), "*Public uses, structures, and buildings and community buildings are permitted uses in any district, provided that the Director has issued plan approval for such use.*" The County Zoning Code Section 25-4-5(b), defines "public use" or "public structure" as "*.... a use conducted by or a structure or building owned or managed by the federal Government, the State of Hawai'i or the County to fulfill a governmental function, activity or service for public benefit and in accordance with public policy.*"
8. According to the General Plan Land Use Pattern Allocation Guide Map, TMK: 2-4-56:17 is designated for University Use. TMKs 2-4-56: 14 and 2-4-01: 24 are designated for Low Density Urban and High Density Urban.
9. None of the subject properties are in the Special Management Area.

Thank you for the opportunity to comment on the University's application. Should you have questions, please contact Deborah Chang of my staff at 961-8288, Ext. 254.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director



CHRIST LUTHERAN CHURCH

595 Kapiolani Street, Hilo, HI 96720-3936

Telephone: (808) 935-8612
Facsimile: (808) 933-9236
Electronic mail: christhilo@hawaii.rr.com

*"Listen! You nations of the world: listen to the Word of the Lord.
Announce it from coast to coast; declare it to distant islands."*

April 10, 2006

Mr. Harry Yada, District Land Agent
Department of Land and Natural Resources
State of Hawaii
75 Aupuni Street, Room 204
Hilo, HI 96720

Ref. No.: 06HD-061 (University of Hawaii)

Dear Mr. Yada:

We have reviewed the information that you sent with your March 7, 2006 memorandum with the above reference number. We have no major objections to the proposed use of this site that borders the property that we are currently leasing. Depending on the specific uses of the various portions of the site, we do have some concerns about the potential increase in noise and traffic that will be generated in our area.

After the Kapiolani Street extension is completed, there will be a triangular piece of property that will be bordered by the new Kapiolani Street extension, the drainage canal and our property. We are more concerned about the impact that this parcel could have on our use of our property. Should this piece ever become available as a separate parcel of land, we would appreciate being given some consideration to propose an alternative use for this land, such as leasing additional space for our congregational needs.

If you have any questions please feel free to contact me at 961-8425 (daytime phone) or call the church at 935-8612. Thank you for giving us the opportunity to submit our comments.

Sincerely,

Deanna S. Sako
President

cc: Pastor
Church Council

EXHIBIT E

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO HAWAII

Memorandum

Date : March 9, 2006

To : HARRY YADA, District Land Agent

From : *Bruce C. McClure*
BRUCE C. McCLURE, Director DPW

SUBJECT: ISSUANCE OF LEASE - UNIVERSITY OF HAWAII
Waiakea, South Hilo, Hawai'i
Tmk 3rd Div.: 2-4-001: Por 024 & 2-4-056: 017 & Por 014

We have reviewed the proposed lease and have the following comments:

1. A 60-foot wide right-of-way with 20-foot corner radii at Lanikaula Street should be subdivided and set aside (from the lease) for the Extension of Kapiolani Street. The right of way should be aligned to match the existing Kapiolani Street centerline at Mohouli and Lanikaula Streets. This would facilitate the improvement and transfer of the extension to the County should it ever be constructed.
2. The County has agreed to pursue State funding for this project.

Should you have any questions please contact Galen Kuba at x8422.

c: Eng

EXHIBIT F

Lessee, excepted.

9. Repairs to improvements. The Lessee shall, at its- own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the ~~premises~~Premises in good order, condition, and repair, reasonable wear and tear excepted.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the ~~premises~~Premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease. The Lessee will, subject to and limited by the Lessee Limitations (as defined in Section 13 herein) and as may be authorized by the Lessee's Board of Regents, initiate proceedings or take action to discharge or have released or removed any liens that may be filed against the Property, including the Lessee's interest therein, resulting from any act or neglect by the Lessee, all within a reasonable time of the Lessee learning or becoming aware of the existence of such liens. ~~this lease, and shall indemnify, defend, and hold the Lesser harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.~~

11. Character of use. The Lessee shall use or allow the ~~premises leased~~Premises to be used solely for marine education and research purposes.

12. Assignments, etc. and transfers. The Lessee shall not sublease, ~~subrent,~~ transfer, assign, or permit any other person to occupy or use the ~~premises~~Premises or any portion or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the Land Board.

13. Indemnity. Lessee Limitations.

a. Lessee's Responsibility. The Lessee shall ~~indemnify, defend,~~ be responsible for damage or injury caused by the Lessee's officers and ~~and~~ employees in the course of their employment to the extent that the Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by the Lessee. The Lessee shall pay for such damage or injury to the extent permitted by law and provided that funds

are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this lease (including, without limitation, any applicable rules and regulations adopted or implemented by the Lessor-) where the Lessee is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 13a (Lessee's Responsibility). The Lessor acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the Lessee. The Lessee's obligations under this Subsection 13a shall survive the expiration or earlier termination of this lease.

b. Lessee not authorized to indemnify. The Lessor and the Lessee acknowledge and agree that the Lessee, as an agency of the State of Hawaii, is not authorized to indemnify the Lessor in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons. Notwithstanding anything to the contrary contained in this lease, the Lessee shall have no contractual duty to indemnify, defend, or hold harmless the Lessor or any other persons under any circumstances arising out of or related to this lease and the Lessee's occupancy of the Premises under the terms of this lease. In each instance in this lease (including, without limitation, any applicable rules and regulations adopted or implemented by the Lessor) where the Lessee is or may be obligated to indemnify, defend, or hold harmless the Lessor or any other persons, such obligations shall be deemed null and void and such contrary indemnity or defense obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to funding. To the extent that the Lessee is or may be: (1) obligated to perform under this lease, (2) obligated to make any payments under this lease, or (3) deemed liable under this lease, the Lessee's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made

properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. The Lessee shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Lessee's obligations. Notwithstanding anything to the contrary contained in this lease, this provision shall apply to and qualify each and every Lessee's obligation to perform under this lease, including, without limitation, any obligation of the Lessee to pay or reimburse the Lessor for any work performed by the Lessor due to the Lessee's failure or refusal to perform under this lease and any obligation of the Lessee to perform under the rules and regulations adopted or implemented by the Lessor.

(2) Lessor's right to notice. As an inducement to the Lessor to agree to the Lessee Limitations (as defined herein), the Lessee hereby agrees that for any obligations or liabilities of the Lessee which are subject to the Lessee obtaining funding or satisfying other conditions prior to the Lessee being able to fulfill such obligations or liabilities, as specified in the Lessee Limitations (as defined herein), if the Lessee knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the Lessee shall provide the Lessor with written notice thereof within thirty (30) days of the Lessee obtaining such knowledge, and the Lessor may immediately issue to the Lessee a notice of breach or default pursuant to Section 15 of this lease.

d. Subject to Lessee Limitations. The Lessor and the Lessee acknowledge and agree that Subsections 13a (Lessee's Responsibility), 13b (Lessee not authorized to indemnify), and 13c (Subject to funding) are hereafter collectively the "Lessee Limitations." Notwithstanding and superseding anything to the contrary contained in this lease (and any exhibits attached to this lease), any and all obligations, duties, responsibilities, and liabilities of the Lessee under this lease (including, without limitation, the

Lessee's obligations to comply with any provisions of any of the Lessor's rules and regulations) are expressly subject to and limited by the Lessee Limitations set forth and defined in Section 13 of this lease.

14. Lessor Limitations.

a. Lessor's Responsibility. The Lessor shall be responsible for damage or injury caused by the Lessor's officers and employees in the course of their employment to the extent that the Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by the Lessor. The Lessor shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this lease where the Lessor is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 14a (Lessor's Responsibility). The Lessee acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the Lessor. The Lessor's obligations under this Subsection 14a shall survive the expiration or earlier termination of this lease.

b. Lessor not authorized to indemnify. The Lessor and the Lessee acknowledge and agree that the Lessor, as an agency of the State of Hawaii, is not authorized to indemnify the Lessee in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons. Notwithstanding anything to the contrary contained in this lease, the Lessor shall have no contractual duty to indemnify, defend, or hold harmless the Lessee or any other persons under any circumstances arising out of or related to this lease or the Lessor's leasing of the Premises to the Lessee under the terms of this lease. In each instance in this lease where the Lessor is or may be obligated to indemnify, defend, or hold harmless the Lessee or any other persons, such obligations shall be deemed null and void and such contrary indemnity or defense obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to funding. To the extent that the Lessor is or may be: (1) obligated to perform under this lease, (2) obligated to make any payments under this lease, or (3) deemed liable under this lease, the Lessor's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. The Lessor shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Lessor's obligations. Notwithstanding anything to the contrary contained in this lease (except for the Lessor's obligation to pay just compensation in the event the Lessor exercises its reserved rights under Subsection 1b (Water rights reserved) and/or its withdrawal and taking rights under Section 28 (Withdrawal), this provision shall apply to and qualify each and every Lessor's obligation to perform under this lease, including, without limitation, any obligation of the Lessor to pay or reimburse the Lessee for any work performed by the Lessee due to the Lessor's failure or refusal to perform under this lease.

(2) Lessee's right to notice. As an inducement to the Lessee to agree to the Lessor Limitations (as defined herein), the Lessor hereby agrees that for any obligations or liabilities of the Lessor which are subject to the Lessor obtaining funding or satisfying other conditions prior to the Lessor being able to fulfill such obligations or liabilities, as specified in the Lessor Limitations (as defined herein), if the Lessor knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the Lessor shall provide the Lessee with written notice thereof within thirty (30) days of the Lessor

obtaining such knowledge.

d. Subject to Lessor Limitations. The Lessor and the Lessee acknowledge and agree that Subsections 14a (Lessor's Responsibility), 14b (Lessor not authorized to indemnify), and 14c (Subject to funding) are hereafter collectively the "Lessor Limitations." Notwithstanding and superseding anything to the contrary contained in this lease (and any exhibits attached to this lease), except for the Lessor's obligation to pay just compensation in the event the Lessor exercises its reserved rights under Subsection 1b (Water rights reserved) and/or its withdrawal and taking rights under Section 28 (Withdrawal), any and all obligations, duties, responsibilities, and liabilities of the Lessor under this lease are expressly subject to and limited by the Lessor Limitations set forth and defined in Section 14 of this lease.

15. Lessee to require contractors to comply with obligations to Lessor. The Lessee shall require the Lessee's contractors and consultants (hereafter collectively the "Lessee's Contractors") to comply with the following obligations to the Lessor:

a. Indemnify Lessor and Lessee. The Lessee shall require the Lessee's Contractors to indemnify, defend, and hold harmless the Lessor and the Lessee from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non observance or non performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

14. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs,

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~~including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.~~

15(1) Lessee's Contractors' acts or omissions. Any act or omission on the part of the Lessee's Contractors relating to the use, occupancy, maintenance, or enjoyment of the Premises.

(2) Failure to maintain. Any failure on the part of the Lessee's Contractors to maintain or keep in a safe condition the Premises or any portions thereof that are involved with or affected by the work being performed or the services provided by the Lessee's Contractors (hereafter the "Work Areas"), including any death, accident, fire, or nuisance growing out of or caused by any such failure to maintain.

(3) Non-performance of terms or conditions. All actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's Contractors' non-observance or non-performance of any of the obligations being required of the Lessee's Contractors under this lease, including failure to comply with applicable rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments.

b. Obtain insurance. The Lessee shall require that the Lessee's Contractors procure, at their own cost and expense, and maintain during the entire period during which the Lessee's Contractors are performing work or providing services in relation to the Premises (hereafter the "Work Period"), from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Land Board.

(1) State as additional insured. The policy or policies of insurance shall name the State of Hawaii and the University of Hawaii as additional insureds and a copy shall be filed with the Lessor.

(2) Insurance to cover entire Premises. The insurance shall cover the entire Premises, including all Work Areas and any buildings, improvements, grounds, roadways, and/or sidewalks located therein.

(3) Lessee's Contractors to furnish insurance certificates. The Lessee's Contractors shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the Work Period and furnish a like certificate(s) upon each renewal of the policy(s).

(4) No cancellation without notice. This insurance shall not be cancelled, limited in scope of coverage, or not renewed unless and until written notice has been given to the Lessor and the Lessee.

(5) Lessor right to review coverage. The Lessor may at any time review the coverage, form, and amount of the insurance required hereunder, by requiring the Lessee to produce from Lessee's Contractors, copies of the insurance policy(s) that are or were in effect during the Work Period. If, in the opinion of the Lessor, the insurance provided hereunder does not provide adequate protection for the Lessor or the Lessee, the Lessor may require the Lessee to require the Lessee's Contractors to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required.

(6) Lessor to notify Lessee of insurance changes. The Lessor shall notify the Lessee in writing of changes in the insurance requirements and the Lessee shall require the Lessee's Contractors to deposit with the Lessor copies of acceptable insurance policy(s) or certificate(s) thereof incorporating the written changes reasonably requested by the Lessor.

(7) No limit on Lessee's Contractors' liability. The procuring of the required policy(s) of insurance shall not be construed to limit the liability of the Lessee's Contractors under this lease nor to release or relieve the Lessee's Contractors of the indemnification obligations being required of the Lessee's Contractors under this lease.

Notwithstanding the policy(s) of insurance, the Lessee shall require that the Lessee's Contractors shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of the Lessee's Contractors in connection with the Premises.

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

c. Maintain the Premises. The Lessee shall require the Lessee's Contractors to keep the Work Areas in a strictly clean, sanitary, and orderly condition.

d. Restoration after work completed. The Lessee shall require that the Lessee's Contractors be responsible for cleaning and restoring the Work Areas to its original condition or a condition satisfactory to the Lessor and the Lessee upon completion of the work performed or services provided in connection with the Premises. The Lessee shall require the Lessee's Contractors to remove and properly dispose off-site all trash generated or brought onto the Premises and/or Work Areas by the Lessee's Contractors.

e. Compliance with Applicable Laws. The Lessee shall require that the Lessee's Contractors comply with all Applicable Laws in relation to the Premises and the Work Areas.

16. Breach. Time is of the essence in this agreement lease and if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if Lessee shall or fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default (hereafter the "Lessor's Default Notice") and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises Premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises Premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action