

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

July 10, 2015

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

Ref: GL 5478

OAHU

Consent to Sublease and Change of Permitted Use; General Lease No. S-5478,  
Office of Hawaiian Affairs, Lessee, to Hi'ipaka LLC, Sublessee, Haleiwa,  
Waialua, Oahu, Tax Map Key: (1) 6-6-009:023.

APPLICANT:

Office of Hawaiian Affairs, as Sublessor, to Hi'ipaka LLC<sup>1</sup>, a domestic limited liability  
company, as Sublessee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Haleiwa, Waialua, Oahu, identified by Tax Map  
Key: (1) 6-6-009:023, as shown on the attached map labeled **Exhibit A**.

AREA:

1.064 acres, more or less.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: R-5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

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<sup>1</sup> According to the website of Waimea Valley, Hi'ipaka LLC acquired the title of the Waimea Valley from the  
Office of Hawaiian Affairs in 2007 as part of an organizational design to facilitate the functionality of the non-profit  
entity. Current CEO of OHA is one of the managers of Hi'ipaka LLC.

LEASE CHARACTER OF USE:

The Lessee shall use or allow the premises to be used for any use as permitted by law including office space for government and private community service organizations. The Lessee can change the use of the premises provided that the change of use receives prior approval from the Board of Land and Natural Resources.

SUBLEASE CHARACTER OF USE:

The Sub-lessee shall use or allow the premises to be used for any use as permitted by law including office space for government and private community service organizations, ancillary retail and other commercial uses subject to the approval of the Sub-lessor, the Board of Land and Natural Resources and others as necessary by law. The Sub-lessee can change the use of the premises provided that the change of use receives prior approval from the Sub-lessor and the Board of Land and Natural Resources.

TERM OF LEASE:

35 years, commencing on March 5, 1998 and expiring on March 4, 2033. The lease is not subject to any rental reopening during its term.

TERM OF SUBLEASE:

Upon consent given, and expiring on March 4, 2033. Copy of sublease inadvertently uses March 31, 2033 as the expiration date. It will be corrected by the parties.

ANNUAL RENTAL:

Gratis.

ANNUAL SUBLEASE RENTAL:

\$7,514.00.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None. Pursuant to Condition 30 of the lease, as amended, the Lessee may charge users, including sublessees of the premises reasonable rental and use fees. The Lessee may also assess reasonable maintenance and utility fees. Staff believes the annual rent for the sublease (\$7,514) falls within the reasonableness as envisioned in the lease document.

DCCA VERIFICATION:

SUBLESSOR:

Not applicable. Government agency.

SUBLESSEE:

Place of business registration confirmed: YES x NO \_\_\_  
Registered business name confirmed: YES x NO \_\_\_  
Good standing confirmed: YES x NO \_\_\_

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(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 **Exhibit B**.

REMARKS:

In December 1993, the Board authorized the issuance of a 35-year lease to the Office of Hawaiian Affairs ("OHA") for the former Waialua Courthouse. At its meeting of May 25, 2012, under agenda item D-19, the Board authorized the amendment of the lease condition pertaining to the character of use and ability to charge sublessee rent and utility fee, as noted above.

OHA plans to increase usage of the premises to include "retail spaces". Therefore, OHA proposes a sublease (copy attached as **Exhibit C**) of the premises to Hi'ipaka LLC. The proposed sublease covers the following arrangements:

- Hi'ipaka will occupy one room in the Courthouse to operate a small gift shop/retail space;
- Hi'ipaka will have better opportunities to advertise the unique and cultural experiences available at Waimea Valley to tourist foot traffic along Haleiwa Highway;
- The retail space will also provide an opportunity for daily, on-site, managerial presence;
- In alignment with the ongoing use of the Courthouse as a meeting space for our beneficiaries on the North Shore, Hi'ipaka will increase outreach to other beneficiary groups and organizations, and manage all scheduling and usage of the courthouse meeting space;
- Additionally, Hi'ipaka will also reach out to and manage potential tenants for the remaining open rooms/offices;
- Annual rent shall begin at \$7,514.00 annually, with incremental increases as defined in the sublease.

Retail use is permissible under the current zoning, provided a Conditional Use Permit Major permit is obtained from the City and County of Honolulu. OHA and the sublessee are planning to pursue such permit upon approval of the subject request.

The character of use condition, as noted above, allows the change of use with the blessing

from the Board. Staff does not have any objection to the proposed sublease arrangement which involves retail use [gift shop], as it will enhance the marketability of the Waimea Valley Fall Park and expose the availability of the subject property to other community users.

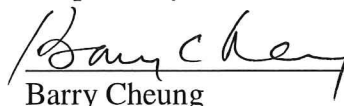
The Lessee is in compliance with the terms and conditions of the lease. Staff did not solicit comments from other agencies as the consents to sublease were previously obtained for other previous cases at the subject property.

There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board

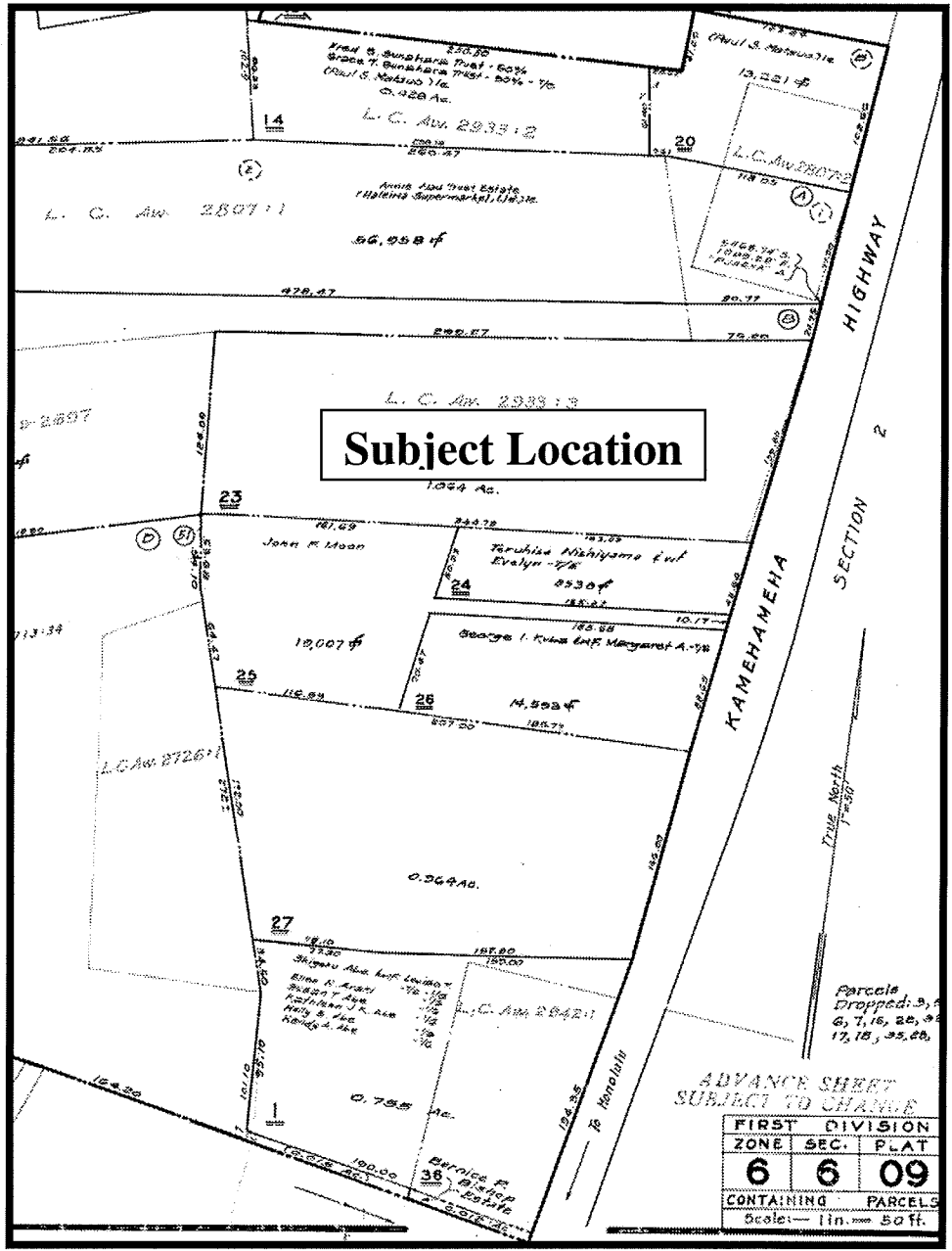
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Allow retail use to be conducted on the subject property, pursuant to condition of the lease.
3. Consent to the sublease under General Lease No. S-5478 between Office of Hawaiian Affairs, as Sublessor, and Hi'ipaka LLC, as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
  - A. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson



TMK (1) 6-6-009:023

EXHIBIT A

**EXEMPTION NOTIFICATION**

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


Project Title: Sublease for former Waiialua Court House  
Project / Reference No.: GL 5478  
Project Location: Waikiki, Honolulu, Oahu, TMK (1) 6-6-009:023.  
Project Description: Consent to sublease and change of permitted use  
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."

The proposed sublease arrangement is to enhance to utilization of the subject premises and marketability of the Waimea Valley, which is owned by the sublessee and affiliated with the sublessor. Staff does not anticipate the change to retail use will result in any known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Not applicable

Recommendation: It is recommended that the Board find that 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.

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson  
Date 6/29/15



**EXHIBIT B**

**OFFICE OF HAWAIIAN AFFAIRS**

**SUBLEASE NO. \_\_\_\_\_**

**BETWEEN**

**OFFICE OF HAWAIIAN AFFAIRS**

**AND**

**HI'IPAKA LLC**

**Dated: \_\_\_\_\_**



**STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
560 NORTH NIMITZ HIGHWAY, SUITE 200  
HONOLULU, HAWAII 96817**

**OFFICE OF HAWAIIAN AFFAIRS  
SUB-LEASE NO. \_\_\_\_\_**

THIS SUB-LEASE, made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the OFFICE OF HAWAIIAN AFFAIRS, a body corporate existing under the Constitution and the laws of the State of Hawai'i, by its Ka Pouhana and Chief Executive Officer, acting on behalf of the Board of Trustees, whose principal place of business and mailing address is 560 North Nimitz Highway, Suite 200, Honolulu Hawai'i 96817, hereinafter referred to as the "Sub-Lessor", and Hi'ipaka LLC, a Hawai'i non-profit corporation, whose business and mailing address is 59-864 Kamehameha Highway, Hale'iwa, Hawai'i 96712, hereinafter referred to as the "Sub-Lessee"

**WITNESSETH:**

Pursuant to General Lease No. S-5478 dated August 20, 1998 (as amended), Sub-Lessor is the Lessee of the land (the "Land") described in Exhibit "A" attached to this Sub-Lease, together with all buildings and improvements now or hereafter constructed on the Land known as the Waialua Courthouse property ("WCH"), located at 66-207 Kamehameha Highway, Haleiwa, Hawai'i 96712, TMK: 6-6-009:023. Sub-Lessor hereby Sub-Leases to Sub-Lessee, and Sub-Lessee hereby rents from Sub-Lessor, upon the terms and conditions set forth in this Sub-Lease, WCH ("the Premises"), which is more specifically described and identified in Exhibit "B" attached to and made a part of this Sub-Lease (the "Sub-Lease").

Term. The Term of this Sub-Lease shall commence on \_\_\_\_\_, 2015 (the "Commencement Date"), and shall expire at 6:00 PM on March 31<sup>st</sup>, 2033 (the "Termination Date"), unless said term shall be sooner terminated as hereinafter provided.

Option to Extend. N/A

Annual Rent. The annual rent shall be \$7,514.00 equivalent to SIX HUNDRED TWENTY-SIX AND 16/100 (\$626.16) per month. The annual rent shall increase by 3% in year 2 and shall increase an additional 3% in year 3. The rent for years 4 through 8 shall be re-negotiated prior to the end of year 3 and shall be determined by written agreement between the



parties, but in no event shall the rent for years 4 through 8 be less than the rent for year 3 increased by 3%. If the parties cannot agree upon a new rent by at least 90 days prior to the first day of year 4 of the Term of this Sub-Lease, either party may terminate this Sub-Lease by providing the other party with at least 30 days advance written notice of the early termination date. The rent for years 9-13 shall be re-negotiated by the parties prior to the end of year 8 and shall be determined by written agreement between the parties. If the parties cannot agree upon a rental amounts for years 9-13 by at least 90 days prior to the first day of year 9 of the Term of this sub-lease, either party may terminate this Sub-Lease by providing the other party with at least 30 days advance written notice of the termination date. The rent for year 14 through the Termination Date shall be re-negotiated prior to the end of year 13 and shall be determined by written agreement between the parties. If the parties cannot agree upon a new rent by at least 90 days prior to the first day of year 14 of the Term of this Sub-Lease, either party may terminate this Sub-Lease by providing the other party with at least 30 days advance written notice of the early termination date.

Security Deposit. One month's rent which is equivalent to SIX HUNDRED TWENTY-SIX AND 16/100 (\$626.16)

Each monthly payment of Rent is payable in advance, without deduction or set-off, in legal tender of the United States of America, on the first day of each and every calendar month of the term, at Sub-Lessor's offices, located at 560 N. Nimitz Hwy Suite 200, Honolulu, HI 96817, or at such other place as Sub-Lessor may from time to time designate in writing. Any rent, adjustments to rent, Additional Rent or other charges which Sub-Lessee is or becomes obligated to pay to Sub-Lessor which is not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the original due date until paid.

#### THE SUB-LESSEE COVENANTS AND AGREES WITH THE SUB-LESSOR AS FOLLOWS:

1. Taxes, assessments, etc. The Sub-Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description which the Sub-Lessor or Sub-Lessee are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Sub-Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this Sub-Lease.

2. Utility services. The Sub-Lessee shall be responsible for obtaining any and all utility services it requires and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges which the Sub-Lessor or Sub-Lessee may become liable for during the term, whether assessed to or payable by the Sub-Lessor or Sub-Lessee.

4. Covenant against discrimination. The use and enjoyment of the Sub-Lessee shall not be in support of any policy which discriminates against anyone based upon race,

creed, sex, color, national origin, sexual orientation, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Sub-Lessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use by Sub-Lessee. The Sub-Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the Premises or any part, without the prior written consent of the Sub-Lessor. Sub-Lessee shall not cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises without the express written consent of Sub-Lessor.

7. Compliance with Laws and Regulations. Sub-Lessee shall, at all times during the term of this Sub-Lease, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Premises.

8. Inspection of the Premises. The Sub-Lessee shall permit the Sub-Lessor and its agents, at all reasonable times during the Sub-Lease Term, to enter the Premises and examine the state of its repair and condition.

9. Improvements. The Sub-Lessee shall not at any time during the term construct, place, maintain or install on WCH or on the Premises any building, structure or improvement of any kind and description without the prior written approval of the Sub-Lessor, and the approval of BLNR when required, and upon those conditions the Sub-Lessor may impose, including any adjustment of rent, unless otherwise provided in this Sub-Lease. The Sub-Lessee shall own these improvements until the expiration or other termination of the Sub-Lease, at which time the ownership shall, at the option of the Sub-Lessor, remain and become the property of the Sub-Lessor or shall be removed by Sub-Lessee at Sub-Lessee's sole cost and expense.

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

11. Liens. The Sub-Lessee shall not commit or suffer any act or neglect which results in the Premises, or any improvement, or the leasehold estate of the Sub-Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Sub-Lease, and shall indemnify, defend, and hold the Sub-Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Sub-lessee shall use or allow the Premises to be used for any use as permitted by law including office space for government and private

community service organization, ancillary retail and other commercial uses subject to the approval of the Sub-lessor, the Board of Land and Natural Resources and others as necessary by law. The Sub-lessee can change the use of the premises provided that the change of use receives prior approval from the Sub-lessor and the Board of Land and Natural Resources. The Premises shall not be used for any other purposes, unless approved in writing in advance by Sub-Lessor. Sub-Lessee will not use or permit the use of the Premises or any part thereof for lodging, sleeping, or for any immoral or illegal purpose; furthermore, Sub-lessee will not permit noisy, boisterous, or objectionable conduct in, upon, or about the said Premises; nor suffer to be done in or upon the Premises any act or thing which shall or may be a nuisance, annoyance, inconvenience, or damage to the Premises, or Sub-Lessor or other tenants. Nothing shall be done nor any act or acts suffered or permitted to be done on the Premises that in any manner conflicts with or is contrary to any federal or state laws, rules and regulations, or any ordinance of the City and County of Honolulu.

13. Assignments, etc. The Sub-Lessee shall not transfer, assign, sub-rent or permit any other person to occupy or use the Premises, or any portion, or transfer or assign this Sub-Lease or any interest, either voluntarily or by operation of law, without the prior written approval of the Sub-Lessor.

14. Indemnity. The Sub-Lessee shall indemnify, defend, and hold the Sub-Lessor, its Trustees and employees and the State of Hawai'i harmless 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 Sub-Lessee relating to Sub-Lessee's use, occupancy, maintenance, or enjoyment of the Premises; 2) any failure on the part of the Sub-Lessee to maintain the Premises including sidewalks, stairs, ramps, drive ways, roadways and parking areas adjacent to the Premises in Sub-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 Sub-Lessee to maintain 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 Sub-Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this Sub-Lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

15. Costs of litigation. In case the Sub-Lessor or the State of Hawai'i shall, without any fault on Sub-Lessor's part, be made a party to any litigation commenced by or against the Sub-Lessee (other than condemnation proceedings), the Sub-Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Sub-Lessor and the State of Hawai'i; furthermore, the Sub-Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Sub-Lessor in enforcing the covenants and agreements of this Sub-Lease, in recovering possession of Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

16. Insurance. The Sub-Lessee shall procure and maintain, at its cost and expense and acceptable to the Sub-Lessor, in full force and effect throughout the term of this Sub-Lease, commercial general liability insurance, naming Sub-Lessor, the State of Hawaii and

such other parties as Sub-Lessor may specify as additional insureds, insuring against any liability arising out of the use, occupancy or maintenance of the Premises by Sub-Lessee. Such insurance shall be written by a company authorized to do business in the State of Hawai'i and have reasonable minimum limits set by Sub-Lessor from time to time, based on acceptable minimum limits used for similar properties at the time of such setting. The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all driveways/roadways or sidewalks on or adjacent to the Premises in the use or control of the Sub-Lessee. Initially, such limits shall not be less than the following amounts, unless approved in writing by Sub-Lessor:

Bodily Injury and Property Damage Combined Single Limit --  
\$1,000,000 per occurrence  
\$2,000,000 general aggregate per policy year  
\$2,000,000 Products and Completed Operations aggregate per policy year

Personal and Advertising Injury  
\$1,000,000 each offense

Fire Legal Liability  
\$100,000 per fire;

Sub-Lessee shall also carry employer's liability insurance and worker's compensation insurance (as required by applicable law). All insurance shall provide for a deductible of not more than \$5000 per occurrence.

The Sub-Lessee, prior to entry and use of the Premises, or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Sub-Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or non-renewed until after thirty (30) days written notice has been given to the Sub-Lessor. The Sub-Lessor may at any time require the Sub-Lessee to provide Sub-Lessor with copies of the insurance policy(s) that are or were in effect during the Sub-Lease period.

The Sub-Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Sub-Lessor, the insurance provisions in this Sub-Lease do not provide adequate protection for the Sub-Lessor, the Sub-Lessor may require Sub-Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Sub-Lessor's requirements shall be reasonable but shall 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. The Sub-Lessor shall notify Sub-Lessee in writing of changes in the insurance requirements and Sub-Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Sub-Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit

Sub-Lessee's liability under this Sub-Lease nor to release or relieve the Sub-Lessee of the indemnification provisions and requirements of this Sub-Lease. Notwithstanding the policy(s) of insurance, Sub-Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Sub-Lessee's negligence or neglect connected with this Sub-Lease.

All rights or claims of subrogation against the Office of Hawaiian Affairs, the State of Hawai'i, its Trustees, officers, employees, and agents are waived.

It is agreed Sub-Lessee's insurance will be primary and that any insurance maintained by the Sub-Lessor will apply in excess of, and not contribute with, insurance provided by Sub-Lessee's policy.

17. Lessor's lien. The Sub-Lessor shall have a lien on all the buildings and improvements placed on the Premises by the Sub-Lessee, on all property kept or used on the Premises by Sub-Lessee, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the Premises for all Sub-Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Sub-Lessor on behalf of the Sub-Lessee, and for the payment of all money provided in this Sub-Lease to be paid by the Sub-Lessee, and this lien shall continue until the amounts due are paid.

18. Mortgage. The Sub-Lessee shall not mortgage, hypothecate, or pledge the Premises, or any portion, or any interest in this Sub-Lease.

19. Breach. Time is of the essence in this agreement. If the Sub-Lessee shall fail to pay the rent or additional amounts due, or any part thereof, at the times and in the manner provided in this Sub-Lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Sub-Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Sub-Lessee, or if the Sub-Lessee shall become bankrupt, or shall abandon the Premises, or if this Sub-Lease shall be attached or taken by operation of law, or if any assignment is made of the Sub-Lessee's property for the benefit of creditors, or if Sub-Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Sub-Lease and on its part to be observed and performed, and this failure shall continue for a period of more than thirty (30) days after delivery by the Sub-Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Sub-Lessee at its last known address, the Sub-Lessor may at once re-enter the Premises, or any part, and upon or without the entry, at its option, terminate this Sub-Lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Sub-Lessor, all buildings and improvements shall remain and become the property of the Sub-Lessor or shall be removed by Sub-Lessee; furthermore, Sub-Lessor shall retain all rent paid in advance to be applied to any damages.

20. Condemnation. If at any time, during the term of this Sub-Lease, any portion of the Premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the Sub-

Lessee condemned. The Sub-Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Sub-Lessee is not permitted to harvest and (b) the proportionate value of the Sub-Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the Sub-Lease; provided, that the Sub-Lessee may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by the Sub-Lessee. The Sub-Lessee shall not by reason of the condemnation be entitled to any claim against the Sub-Lessor for condemnation or indemnity for sub-leasehold interest and all compensation payable or to be paid for or on account of the sub-leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Sub-Lessor. The foregoing rights of the Sub-Lessee shall not be exclusive of any other to which Sub-Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the Premises were sub-leased, the Sub-Lessee shall have the option to surrender this Sub-Lease and be discharged and relieved from any further liability; provided, that Sub-Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Sub-Lessor.

21. Right to enter. The Sub-Lessor, the State of Hawaii or the County and their agents or representatives shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Sub-Lessor, the State of Hawaii or the County shall not interfere unreasonably with the Sub-Lessee or Sub-Lessee's use and enjoyment of the Premises.

22. Acceptance of rent not a waiver. The acceptance of rent or other amounts owed from Sub-Lessee by the Sub-Lessor shall not be deemed a waiver of any breach by the Sub-Lessee of any term, covenant, or condition of this Sub-Lease, nor of the Sub-Lessor's right of re-entry for breach of covenant, nor of the Sub-Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Sub-Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

23. Extension of time. Notwithstanding any provision contained in this Sub-Lease, when applicable, the Sub-Lessor may for good cause shown, allow additional time beyond the time or times specified in this Sub-Lease for the Sub-Lessee to comply, observe, and perform any of the Sub-Lease terms, conditions, and covenants.

24. Quiet enjoyment. Sub-Lessor agrees that so long as Sub-Lessee timely pays the rent and other amounts due under this Sub-Lease and performs all of the covenants and conditions of this Sub-Lease, Sub-Lessee shall have, hold and enjoy the Premises during the Sub-Lease Term, without hindrance or interruption by Sub-Lessor or any other person lawfully claiming by, through or under Sub-Lessor.

25. Surrender. The Sub-Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Sub-Lessor possession of the Premises in a clean and orderly condition, together with all improvements existing or constructed thereon or

Sub-Lessee shall remove such improvements, at the option of the Sub-Lessor. Furthermore, upon the expiration, termination, or revocation of this sub-lease, should the Sub-Lessee fail to remove any and all of Sub-Lessee's personal property from the Sub-Lessee, after notice thereof, the Lessor may remove any and all personal property from the Sub-Lessee and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Sub-Lessee, and the Sub-Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the Sub-Lease.

26. Non-warranty. The Sub-Lessor does not warrant the conditions of the Premises, as the same are being sub-leased as is.

27. Hazardous materials. Sub-Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Sub-Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Sub-Lessee any such materials except to use in the ordinary course of Sub-Lessee's business, and then only after written notice is given to Sub-Lessor of the identity of such materials and upon Sub-Lessor's consent which consent may be withheld at Sub-Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Sub-Lessee, then the Sub-Lessee shall be responsible for the reasonable costs thereof. In addition, Sub-Lessee shall execute affidavits, representations and the like from time to time at Sub-Lessor's request concerning Sub-Lessee's best knowledge and belief regarding the presence of hazardous materials on the Sub-Lessee placed or released by Sub-Lessee.

Sub-Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the Sub-Lessee occurring while Sub-Lessee is in possession of the Premises, or elsewhere if caused by Sub-Lessee or persons acting under Sub-Lessee. These covenants shall survive the expiration or earlier termination of the Sub-Lease.

For the purpose of this Sub-Lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

28. Hawai'i law. This Sub-Lease shall be construed, interpreted, and governed by the laws of the State of Hawai'i.

29. Exhibits - Incorporation in Sub-Lease. All exhibits referred to are attached to this Sub-Lease and hereby are deemed incorporated by reference.

30. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

31. Partial invalidity. If any term, provision, covenant or condition of this Sub-Lease should be held to be invalid, void or unenforceable, the remainder of this Sub-Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

32. Time is of the essence. Time is of the essence in all provisions of this sub-lease.

33. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawai'i Revised Statutes, are found on the Premises, the Sub-Lessee and the Sub-Lessee's agents, employees and representatives shall immediately notify Sub-Lessor and stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawai'i Revised Statutes.

34. Condition of Premises/Assumption of Risk. Sub-Lessee hereby agrees and acknowledges that Sub-Lessor has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous, hazardous or defective conditions existing in or on the Premises, whether or not such conditions are known to Sub-Lessor or reasonably discoverable by Sub-Lessee. Sub-Lessee agrees that by taking possession of the Premises that Sub-Lessee is accepting the Premises AS IS, in its present condition and that Sub-Lessee shall maintain the Premises in good repair for the term of this Agreement.

Sub-Lessor and Sub-Lessor's Affiliates shall not be liable to Sub-Lessee for any damage occasioned by fire, water, gas, explosion, electricity, steam, sewerage, wiring, deluge, rain, wind, storm, overflow of ocean waters, earthquakes, bursting, leaking or overflow of water, gas, sprinkler or any pipes, plumbing or apparatus, or running of any tank, washstand, closet or waste or other pipes in or about the Premises, nor by reason of any leak, nor for any damage occasioned by water coming into the Premises from any source whatsoever, nor any existing or future condition, defect, matter or thing in the Premises, nor from any damage arising from any acts or neglect of other tenants or occupants of adjacent property, or the public. All property of Sub-Lessee stored on the Premises shall be so stored at the risk of Sub-Lessee only, and Sub-Lessee shall hold Sub-Lessor harmless from any claims arising out of damage to the same, including subordination claims by Sub-Lessee's insurance carriers. Sub-Lessee agrees that Sub-Lessor shall not be held responsible for any injury or damage to Sub-Lessee or its affiliates due to the presence of hazardous materials on or in the Premises.

## **SPECIAL CONDITIONS**

35. Withdrawal. The Sub-Lessor shall have the right to withdraw the Premises or any portion, at any time during the term of this Sub-Lease upon giving reasonable



notice and without compensation, except as otherwise provided in the Sub-Lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Sub-Lessor to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the Sub-Lessee; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally sub-leased to become unusable for the specific use or uses for which it was sub-leased, the rent (if any) shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Sub-Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the Sub-Lease.

36. Restriction on residential use. The Premises, or any portion, shall not be utilized for residential purposes. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited.

37. Audit and examination of books, etc. The Sub-Lessee shall, at all reasonable times, permit the Lessor or its authorized agents and employees, upon reasonable notice given by the Sub-Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Sub-Lessee concerning its operations under this Sub-Lease.

38. Commercial operations. To the extent permitted by law, the Sub-Lessee, its employees, customers, guests, agents or invitees shall be permitted to use the Premises for commercial purposes which are related to its Waimea Valley operations. Sub-Lessee shall be solely responsible for determining whether commercial activity is presently allowed on the Premises and shall be responsible for securing any and all required governmental permits and approvals required to conduct commercial activity on the Premises. No other commercial activity shall be allowed on the Premises without the prior written approval of the Sub-Lessor and upon such terms and conditions established by the Sub-Lessor and BLNR if required.

39. Environmental regulations. Sub-Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawai'i Revised Statutes, as amended, and regulations governing historic preservation.

40. Removal of trash. The Sub-Lessee shall be responsible for the removal of all trash upon the Premises, whether or not placed on the Premises by Sub-Lessee or with or without Sub-Lessee's consent.

41. General Lease No. S-5478 and Amended General Lease No. S-5478: Sublease shall be subject to all the terms and conditions of General Lease No. S-5478 and Amended General Lease No. S-5478 referenced as aforesaid and attached as Exhibit "C" and "D".

42. Termination. This Sub-Lease may be terminated by Sub-Lessor without cause following at least NINETY (90) days' prior written notice.

## Definitions

1. The use of any gender shall include all genders, and if there is more than one Sub-Lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this Sub-Lease, unless clearly repugnant to the context:

(a) “Sub-Lessor” means and includes the Sub-Lessor, its officers, employees, invitees, successors or permitted assigns.

(b) “Sub-Lessee” means and includes the Sub-Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) “Waste” includes, but is not limited to, (1) permitting the Sub-Lessee, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the Sub-Lessee; and (3) failure to employ all of the usable portions of the Sub-Lessee.

(d) “Days” shall mean calendar days, unless otherwise specified.

*(The rest of this page intentionally left blank. Signatures follow on next page.)*

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

OFFICE OF HAWAIIAN AFFAIRS  
"SUB-LESSOR"

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Kamana'opono M. Crabbe, Ph.D.  
Ka Pouhana  
Chief Executive Officer

Date: \_\_\_\_\_

Approved as to Form:

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Ernest M. Kimoto  
Ka Paepae Puka  
OHA Corporate Counsel

Approved as to Content:

---

Miles Nishijima  
Pou Kihl Kanaloa- 'Āina  
Land and Property Director

"SUB-LESSEE"

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Date: \_\_\_\_\_