

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

January 22, 2016

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

GL No: S-6074

Kauai

Approve Form of Lease for General Lease No. S-6074, Office of Hawaiian Affairs, Lessee; Consent to Sublease under General Lease No. S-6074, Office of Hawaiian Affairs, as Sublessor, to Ho'omana also known as Ho'omana Inc., as Sublessee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021. General Lease No. S-6074 contains non-standard provisions relating to sanitation, compliance with laws, repairs to improvements, indemnity, hazardous materials, building construction, and removal of trash.

APPLICANT:

Office of Hawaiian Affairs ("OHA"), as Lessee and as Sublessor, to Ho'omana also known as Ho'omana Inc., a Hawaii nonprofit corporation ("Ho'omana"), Sublessee

LEGAL REFERENCE:

Section 171-95 and 36(a)(6), Hawaiian Revised Statutes ("HRS"), as amended

LOCATION:

Portion of Government lands of Wailua, Kawaihau (Puna), Kauai, identified by Tax Map Key: (4) 4-1-004:021, as shown as on the attached map labeled **Exhibit I**

AREA:

0.813 acre, more or less

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaiian Admission Act

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

LEASE CHARACTER OF USE :

For uses consistent with zoning and applicable law.

SUBLEASE CHACTER OF USE:

For the operation and implementation of work training program for children with special needs, on the island of Kauai through the operation of thrift store on the Premises. The Premises must be used at all times in the manner that is consistent with zoning and applicable law.

TERM OF LEASE:

Sixty-five (65) years, commencing on a date to be determined by the Chairperson.

TERM OF SUBLEASE:

Ten (10) years, commencing on the date the lease commences and continuing for ten years, unless sooner terminated as hereinafter provided the Sublessee.

ANNUAL RENTAL:

Gratis.

ANNUAL SUBLEASE RENTAL:

Gratis.

DCCA VERIFICATION:LESSEE:

Applicant, as a government agency, is not required to register with DCCA.

SUBLESSEE:

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



REMARKS:

On October 24, 2014, under agenda item D-3, the Land Board approved the issuance of a new direct lease to OHA and consented in concept to a sublease between OHA, as Sublessor, and Ho'omana, as Sublessee. On May 22, 2015, under agenda item D-1, the Land Board authorized an extension of time of six (6) months for OHA to submit a proposed sublease, and added a reservation for an electrical easement in the subject property which was inadvertently omitted in the original board submittal. (**Exhibit II**).

General Lease No. S-6074

The Department of the Attorney General (AG) prepared General Lease No. S-6074, which was then forwarded to OHA for signature. OHA requested a number of edits to the lease form. Counsel for OHA and the Board negotiated as to the requested edits and produced the revised lease form that is attached hereto as **Exhibit III**.<sup>1</sup> The following provisions of the lease are non-standard for the reasons indicated:

Sections 4. Sanitation, includes the following non-standard language in addition to the standard lease provision:

Lessor recognizes the premises are in a state of disrepair and require a significant amount of cleanup and repair, and as such, Lessor acknowledges and agrees that the existence of or the need for cleanup of the premises and repairs to the improvements or buildings on the premises shall not constitute a default or breach of section 4 so long as Lessee or its sub-lessee submits a plan to Lessor to clean up the premises and repair the buildings and improvements on the premises, which plan is accepted by the Chairperson of the Board (the "Plan"), and Lessee or its sub-lessee is working towards repairing and or improving the conditions of the premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements.

Similarly, Sections 6. Compliance with laws, 9. Repairs to improvements, and 31. Building construction contain the following provision:

Lessor recognizes the premises are in a state of disrepair and require a significant amount of cleanup and repair, and as such, Lessor acknowledges and agrees that the existence of or the need for cleanup of the premises and repairs to the improvements or buildings on the premises shall not constitute a default or breach of section [6, 9, 31] so long as Lessee or its sub-lessee is working towards repairing and or improving the

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<sup>1</sup> Exhibit III is a redlined version of the lease showing changes between the version initially prepared by the AG and the revised version negotiated between the AG and OHA's counsel.

conditions of the premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements.

OHA requested the revisions to these sections of the lease due to the existing poor condition of the premises. OHA did not want to enter into the lease and immediately find itself in a default situation with respect to the standard requirements. Staff and AG agree that the revisions are appropriate. Attached as **Exhibit IV** is a draft of OHA's "Ho'omana Thrift Store and Training Center Due Diligence PLAN for Future Development." Once OHA has settled on the remedial options in the plan, especially with respect to the septic system on the property, staff will submit the plan to the Chairperson for approval.

In addition, sections 14. Indemnity and 23. Hazardous materials have been revised to change the standard obligation of lessee to indemnify the Board. State agencies are generally not required to indemnify other State agencies in State leases. Accordingly, this provision has been revised to require OHA's sublessees to indemnify the Board as lessor. Again, staff and AG agree that the revisions are appropriate under the circumstances of this lease.

Section 35. Removal of trash has been revised to extend the time for OHA to remove trash from 90 days to 180 days. Again, given the condition of this property, staff and AG have no objection to the revision.

#### Sublease

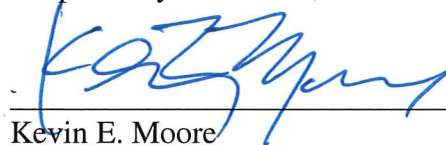
OHA submitted the form of sublease to Land Division staff on October 20, 2015. As noted in the October 24, 2014 board submittal, staff is presenting the proposed sublease (**Exhibit V**) between OHA and Ho'omana for approval by the Land Board today. Staff has reviewed the sublease and determined that the terms and conditions are consistent with the Board's prior actions on OHA's request. Pursuant to the sublease, Ho'omana will use the premises for the operation and implementation of work training program for children with special needs on the island of Kauai through the operation of thrift store on the premises. The premises must be used at all times in the manner that is consistent with zoning and applicable law.

#### RECOMMENDATION: That the Board:

1. Approve the form of lease for General Lease No. S-6074, Office of Hawaiian Affairs, Lessee, substantially in the form of Exhibit III attached hereto, subject to the conditions set forth above and further subject to:
  - A. Final review and approval by the Department of the Attorney General; and

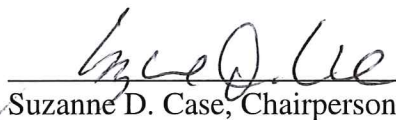
- B. Such other conditions as may be prescribed by the Chairperson which are in the best interest of the State.
2. Consent to the sublease under General Lease No. S-6074 between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana also known as Ho'omana Inc., as Sublessee, subject to any applicable 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 service the interest of the State.

Respectfully Submitted,



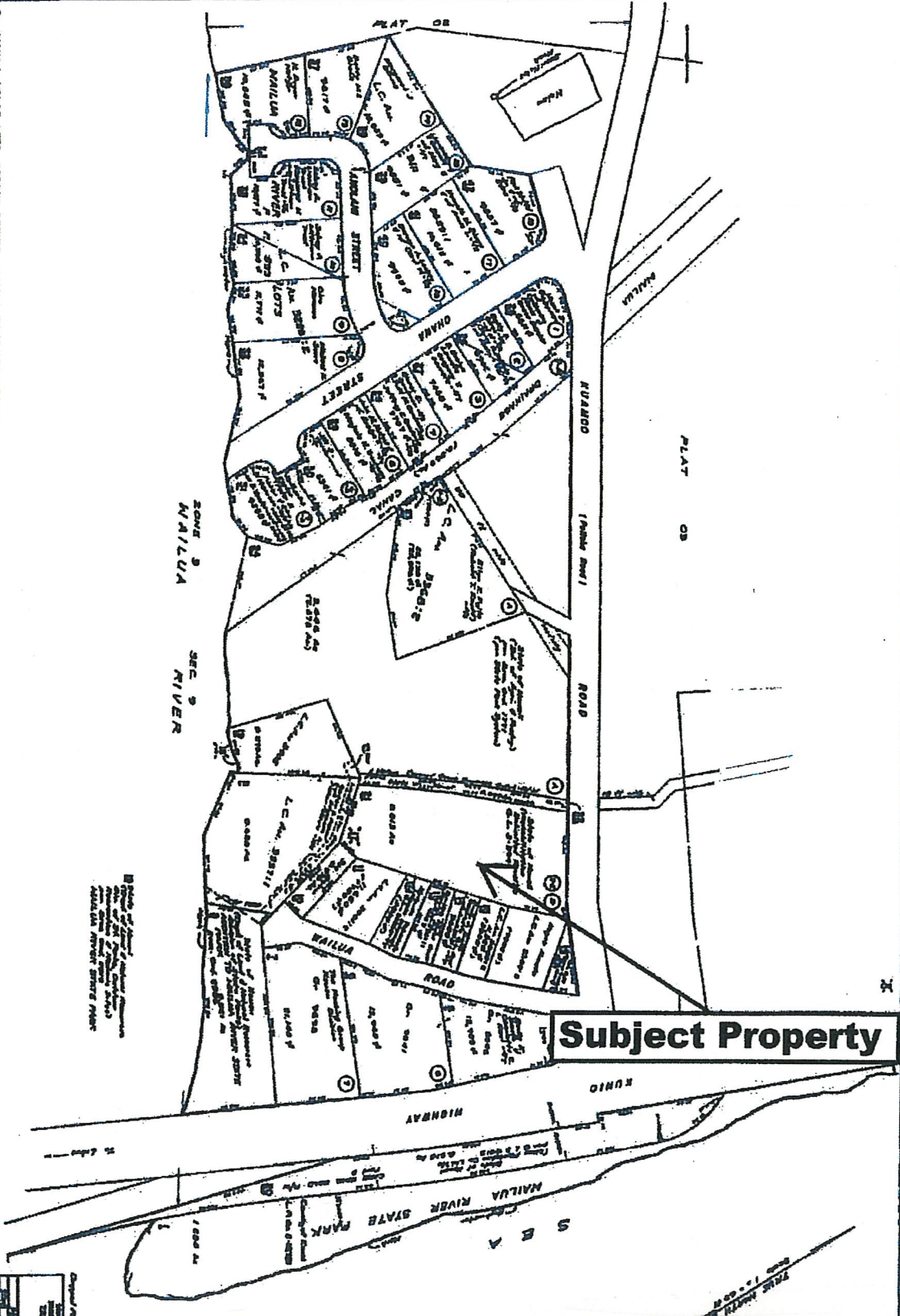
Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

BY WILLIAM HOUSE LOTS, SECOND SERIES, MAIWA RIVER LOTS, CH 800  
 KAWAIAWA, KAUAI, HAWAII (Plat No. 4-1-04)



**Subject Property**

**EXHIBIT I**

4	1	04
4	1	04
4	1	04



D-1

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

May 22, 2015

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

GL No: S-3941

Kauai

Amend Prior Board Action of October 24, 2014, Item D-3, Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021.

The Purpose of the Amendment is to Extend the Deadline for the Office of Hawaiian Affairs ("OHA") to Submit the Sublease between OHA and Ho'omana to Land Division, and to Expand an Easement reserved to the Division of State Parks over the Lease Premises to Include an Electrical Transmission Line.

BACKGROUND:

On October 24, 2014, under agenda item D-3, the Land Board approved the issuance of a new direct lease to OHA and consented in concept to a sublease between OHA, as sublessor, and Ho'omana, as sublessee. The Board approval required OHA to submit the proposed form of sublease between OHA and Ho'omana for Land Division's review within six months of the Board approval date. The Board submittal also reserved a sewer easement across a portion of the property in favor of the Division of State Parks. A copy of the approved submittal is attached as **Exhibit 1**.

REMARKS:

On April 15, 2015, OHA requested a six (6) month extension of time to submit the sublease between OHA and Ho'omana to Land Division. See **Exhibit 2**. There have been delays in the negotiations between the Land Division and OHA on the terms and conditions of the new direct lease. The terms of that lease must be agreed upon before OHA can negotiate the sublease with Ho'omana. Staff has no objection to the time extension request and is proposing an amendment of the prior Board action to give OHA one year from the October 24, 2014 Board approval date to submit the proposed form of sublease to Land Division.

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

May 22, 2015 Go.

D-1

**EXHIBIT II**



With respect to the sewer easement, the prior Board action should also have reserved an electrical transmission line easement in favor of the Division of State Parks over the same alignment as the sewer easement as shown in **Exhibit 3**. The underground electrical line powers the pumps used to move waste from the comfort stations to an aerobic tank and leach field. Accordingly, staff is seeking an amendment of the prior Board action to expand the reserved easement to cover both the sewer line and electrical line.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 24, 2014, under agenda item D-3, by:

- A. Replacing recommendation C.4 with the following

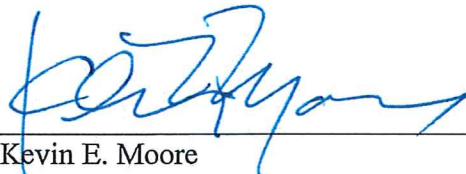
The reservation of a sewer line and electrical transmission line easement across the property at a location to be determined by survey at State Parks' expense;

- B. Replacing recommendation D.1 with the following:

OHA shall submit the proposed form of sublease to Land Division staff within one year of today's approval, and staff will present the terms and conditions of the sublease to the Board for review and approval.

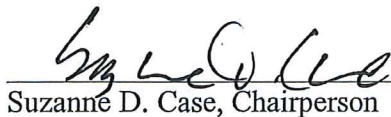
2. Except as amended hereby, all terms and conditions listed in its October 24, 2014 approval are to remain the same.

Respectfully Submitted,



Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

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

October 24, 2014

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

GLNo. S-3941

Kauai

Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021

APPLICANT:

Office of Hawaiian Affairs (OHA)

LEGAL REFERENCE:

Section 171-95 and 36(a)(6), Hawaiian Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua, Kawaihau (Puna), Kauai, identified by Tax Map Key: (4) 4-1-004:021, as shown on the attached map labeled **Exhibit A** (exhibit includes photos of improvements).

AREA:

0.813 acre, more or less

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Open

TRUST LAND STATUS:

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

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

October 24, 2014

D-3

**Exhibit "1"**

CURRENT USE STATUS:

Encumbered by General Lease No. S-3941 (GL No. S-3941), scheduled to expire on November 15, 2020. The lease character of use is the rehabilitation of the disabled and handicapped and related activities. Additionally, the Division of State Parks has a sewer line and pedestrian walkway across the southern end of the parcel.

NEW DIRECT LEASE TERMS AND CONDITIONS:

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

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

ANNUAL RENT:

Gratis.

CHARACTER OF USE:

Uses consistent with zoning and applicable law.

SUBLEASE TERMS AND CONDITIONS:

The proposed sublease between OHA and Ho'omana has not yet been prepared, so the specific terms and conditions of the sublease are not yet known. However, staff understands that OHA intends to allow Ho'omana to continue its current operations on the premises. Upon receipt of the proposed sublease, staff will return to the Board of Land and Natural Resources to report on the specific terms and conditions and seek the Board's final consent to the sublease.

PROPERTY CHARACTERISTICS:

Staff has verified that legal access to the subject property is off Kuamoo Road, and that it is a legally subdivided lot. Based on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, the entire property is located within Flood Zone AEF, the 100-year floodway with a base flood level between 14 and 15 feet above mean sea level.

APPLICANT REQUIREMENTS:

Applicant shall be required to:



1. Submit the proposed sublease between OHA and Ho'omana for Land Division's review within six months of this approval.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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." (Exhibit B).

DCCA VERIFICATION:

LESSEE:

Applicant, as a government agency, is not required to register with DCCA.

SUBLESSEE:

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

BACKGROUND:

At its meeting of August 14, 1964, Item F-17, the Board of Land and Natural Resources (Board), approved the sale of a 55-year lease to Rehabilitation Unlimited, Kauai (RUK) for the rehabilitation of the disabled and handicapped and related activities. The Kauai District Land Office conducted a public auction on November 16, 1965 at the State Office Building, Lihue, Kauai. The upset rent was \$220.00. GL No. S-3941 was issued to RUK for the specific use of rehabilitation of the disabled and handicapped and related activities, commencing on November 16, 1965 and ending on and including November 15, 2020.

On May 25, 1989, RUK wrote to the Department of Land and Natural Resources (Department) of its decision to cease operation by July 28, 1989. At its meeting of June 23, 1989, Item F-17, the Board approved the termination of GL No. S-3941 to RUK, and set aside to the Division of State Parks (State Parks), as an addition to the Wailua River State Park.

On August 1, 1989, Mr. Walter J. Smith, Jr., President of Smith's Motor Boat Service, Inc., wrote to the Department, expressing his interest to assume the lease to continue RUK's mission of providing jobs and job training for disabled and handicapped persons in an effort to give back to the community.

Upon receipt of Mr. Smith's letter expressing his interest in reviving work and training opportunities for Kauai's handicapped, staff was prompted to discuss the idea with State

Parks and the State Historic Preservation Division (SHPD), and in greater detail with Mr. Smith. Both State Parks and SHPD had no objection to relinquishing the use of the land, provided the property was used to benefit the mentally and physically handicapped.

On December 1, 1989, the Board, under agenda Item F-8, approved to reinstate GL No. S-3941 to RUK, and subsequently consent to an assignment of the lease, to Smith's Motor Boat Service, Inc. (Smith's), as assignee.

On February 13, 2014, OHA Chief Executive Officer, Kamana'opono M. Crabbe, Ph.D., wrote to the Board expressing OHA's interest in parcel TMK No. (4) 4-1-004:021, currently leased to Smith's. OHA expressed its desire to acquire the lease and sublease the premises to Ho'omana, a Kauai-based 501(c) 3 non-profit organization founded by Native Hawaiian parents of special needs children. A new lease and new sublease would allow Ho'omana to obtain grant monies and other funding to make much needed repairs and improvements to the premises. On March 24, 2014, Smith's wrote to the Department requesting a mutual cancellation of GL No. S-3941 to allow Ho'omana to utilize the property through an agreement with OHA.

On April 21, 2014, various government agencies and interest groups were solicited for comments. The Department's Division of Boating and Ocean Recreation and the County of Kauai's Department of Public Works responded with no objections or comments. State Parks supports this request and their comments are attached as **Exhibit C**. State Parks is concerned about preserving pedestrian access over portions of the lease premises, and consummating a disposition for an existing sewer line across the lease premises that services park facilities. Based on State Parks' comments, staff is recommending that pedestrian easements be reserved in favor of the public over portions of the lease premises to allow access to the Old Smith's Landing area, the boat ramp and park areas. Staff is further recommending that an easement for the sewer line be reserved in favor of State Parks. The easements will be located on the southern end of the parcel, generally in the area indicated in yellow on **Exhibit D** attached hereto. The exact location of the easements will need to be determined by survey at State Parks' expense.

OHA commissioned a Structural Due Diligence Report and a Civil Infrastructure Assessment as part of its due diligence in determining to acquire the lease. These reports showed that property has one or more cesspools on it that are not currently in use, likely due to their failure. The only restroom facility at the premises is a portable toilet, which is a violation of applicable Department of Health rules. The structural report found the building on the premises to be in "poor/extremely poor physical condition" with extensive termite damage and spalling of the perimeter CMU stem wall. The structural report concluded that the building has surpassed its useful life.

Despite the poor condition of the improvements, OHA wrote to the Department on September 30, 2014, reporting that the Board of Trustees approved securing a new lease as well as a sublease to Ho'omana. See **Exhibit E**. OHA requested that the allowed character of use under the lease be expanded to any use consistent with zoning and applicable law. OHA further requested that a ditch adjacent to the property not be made



a part of the leased premises. Staff reviewed the State Survey map and confirms that the ditch on the northwest boundary of the parcel is not a part of the lease premises.

Staff has no objection to the issuance of a new lease to OHA. Staff recommends, however, that the new lease contain a provision on subleasing to read substantially as follows:

Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

In the future, if OHA seeks the Board's consent to sublease the premises to a different sublessee or for a different use, staff will evaluate the request under this provision and the Board's sublease rent participation policy to determine whether the rent to OHA under the lease should be adjusted.<sup>1</sup>

Due to the poor condition of the improvements on the property, staff is additionally including a recommendation below that the lease require OHA to accept the land and improvements in "as is, where is" condition with all defects, whether latent or patent.

The proposed use has continued since 1965 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural environmental and/or cultural resources in the areas. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

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

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<sup>1</sup> Staff notes that the submittal to the OHA Board of Trustees, which recommended the acquisition of the lease, states that OHA is interested in supporting Ho'omana's program, as well as its possible relocation, and the potential commercial redevelopment of the property. A copy of the Action Item of the Land and Property Committee submitted to the OHA Board of Trustees for its September 11, 2014 meeting (less exhibits thereto) is attached as **Exhibit F**.

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

- B. Authorize the mutual cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current mutual cancellation lease document form, as may be amended from time to time;
  2. Review and approval by the Department of the Attorney General; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the issuance of a new direct lease to the Office of Hawaiian Affairs, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current lease to government agency form, as may be amended from time to time, but including a consent to sublease provision substantially in the form of that stated above;
  2. The lease shall include a provision requiring OHA to accept the land and improvements in "as is, where is" condition with all defects, whether latent or patent;
  3. The reservation of public access easements over portions of the property necessary to provide pedestrian access to the Old Smith's Landing area, boat ramp and park areas, to be determined by survey at State Parks' expense;
  4. The reservation of a sewer line easement across the property at a location to be determined by survey at State Parks' expense;
  5. Review and approval by the Department of the Attorney General; and
  6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- D. Consent in concept to a sublease between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, 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:

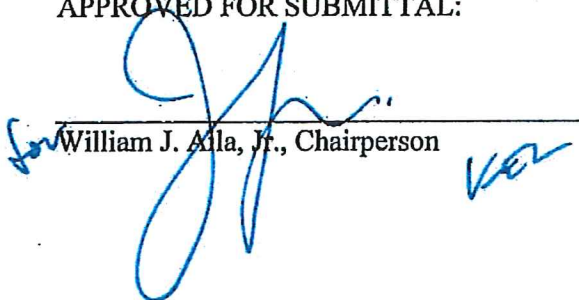
1. OHA shall submit the proposed form of sublease to Land Division staff within six months of today's approval, and staff will present the terms and conditions of the sublease to the Board for review and approval.

Respectfully Submitted,



Kevin E. Moore  
Acting Administrator

APPROVED FOR SUBMITTAL:



William J. Alla, Jr., Chairperson

VER





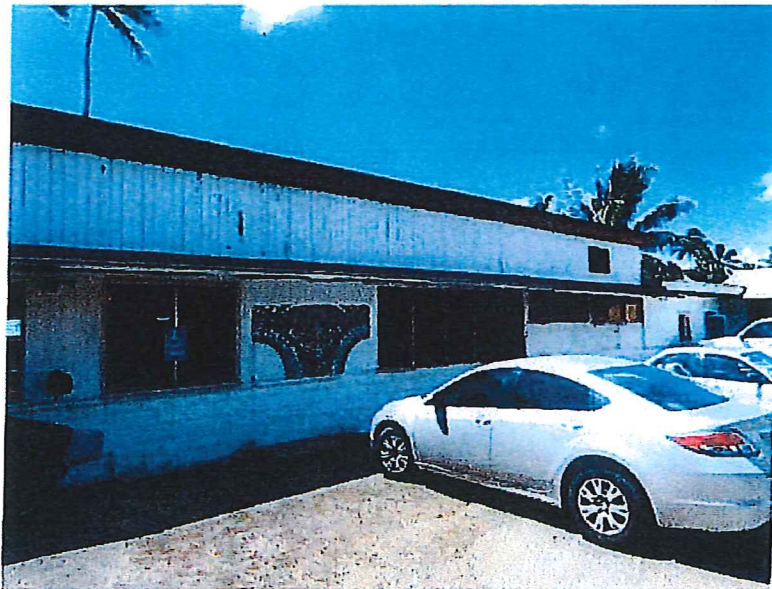




**Elevations / Plans**



**Entrance elevation**



**Elevation facing south**

**4531 Kuamoo Road Due Diligence**



Elevation facing west



Elevation facing northwest

4531 Kuamoo Road Due Diligence





Elevation facing northwest



Elevation facing southeast

4531 Kuamoo Road Due Dilligence



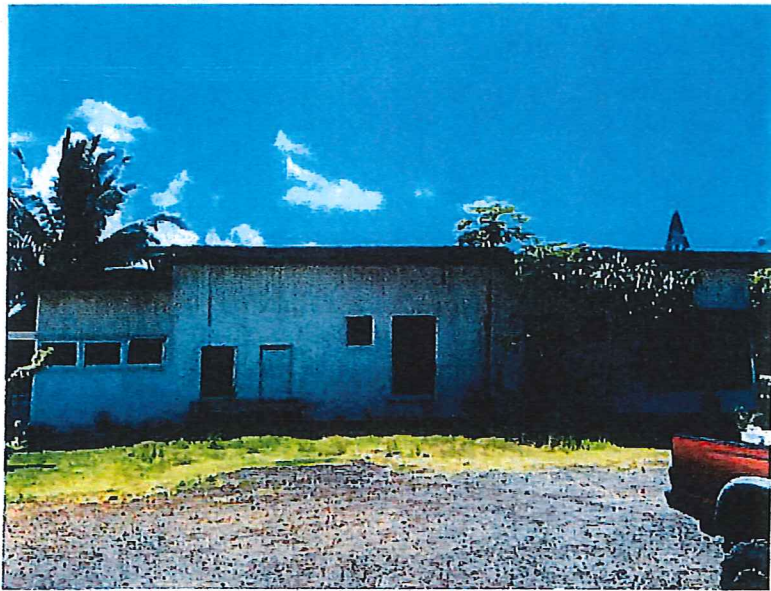
Elevation facing southeast



Elevation facing northeast

4531 Kuamoo Road Due Diligence





Elevation facing southeast



Elevation facing east

**4531 Kuamoo Road Due Dillgence**



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 24, 2014

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
SHORELAND  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**EXEMPTION NOTIFICATION**

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

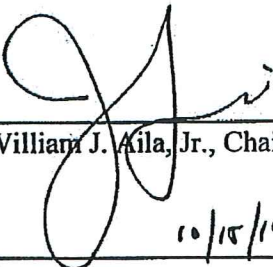
Project Title:	Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee
Project / Reference No.:	GL No. S-3941
Project Location:	Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021
Project Description:	Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee
Chap. 343 Trigger(s)	Use of State Land
Exemption Class No. and Description:	In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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."
Consulted Parties:	None. There will be no change in use from which previously existed.

**Exhibit B**

Exemption Notification  
TMK: (4) 4-1-004:021  
October 24, 2014

**Recommendation:**

It is anticipated this project will probably have minimal or no significant effect on the environmental and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson  
  
10/15/14  
\_\_\_\_\_  
Date

NEIL ADERCRUMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 12, 2014

**MEMORANDUM**

**TO:** Lydia Morikawa, Special Projects and Development Specialist  
DLNR/Land Division

**FROM:** Daniel S. Quinn, Administrator *[Signature]*  
DLNR/Division of State Parks

**RE:** REQUEST FOR COMMENTS REGARDING THE MUTUAL  
CANCELLATION OF GENERAL LEASE NO. S-3941; ISSUANCE OF A  
NEW DIRECT LEASE TO THE OFFICE OF HAWAIIAN AFFAIRS AND  
CONSENT TO SUBLEASE BETWEEN ATHE OFFICE OF HAWAIIAN  
AFFAIRS, LESSEE, TO HO'OMANA, SUBLESSEE, TMK: (4) 4-1-004:021  
(the "Subject Property")

The Division of State Parks is supportive of the cited request and notes the following:

1. Tax map key parcel (4) 4-1-004:010 is adjacent to the Subject Property and is under the jurisdiction of the Division of State Parks. There is a restroom facility on that parcel which is connected by an underground sewer line which cuts through the Subject Property to parcel number (4) 4-1-004:024, also under the jurisdiction of the Division of State Parks. That parcel also contains a bathroom facility as well as a septic system and leach field. The Division of State Parks requests this be taken into consideration with respect to the lease and sublease and if that if an easement or other instrument is warranted for this sewer line, that it be perfected. State Parks also notes that funds from the Land and Water Conservation Fund were used for these improvements and that any disposition related to the improvements be coordinated with the National Park Service to comply with LWCF requirements. State Parks will assist as necessary.
2. River recreation users including kayak and canoe paddlers use pedestrian access through the Southern end of the Subject Property to access the Old Smith's Landing area (TMK: (4) 4-1-004:008) and the boat ramp and park areas (TMK: (4) 4-1-004:-24). The Division of State Parks requests that this use of the Southern portion of the Subject Property continue to allow park users to continue to enjoy these facilities and that use be properly considered with respect to a lease/sublease.

If you have any questions, please contact Stephen Soares, Property Manager at the Division of State Parks at 808 587-0505.

WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN LAND AND NATURAL RESOURCES  
COMMISSIONER FOR WATER RESOURCES MANAGEMENT

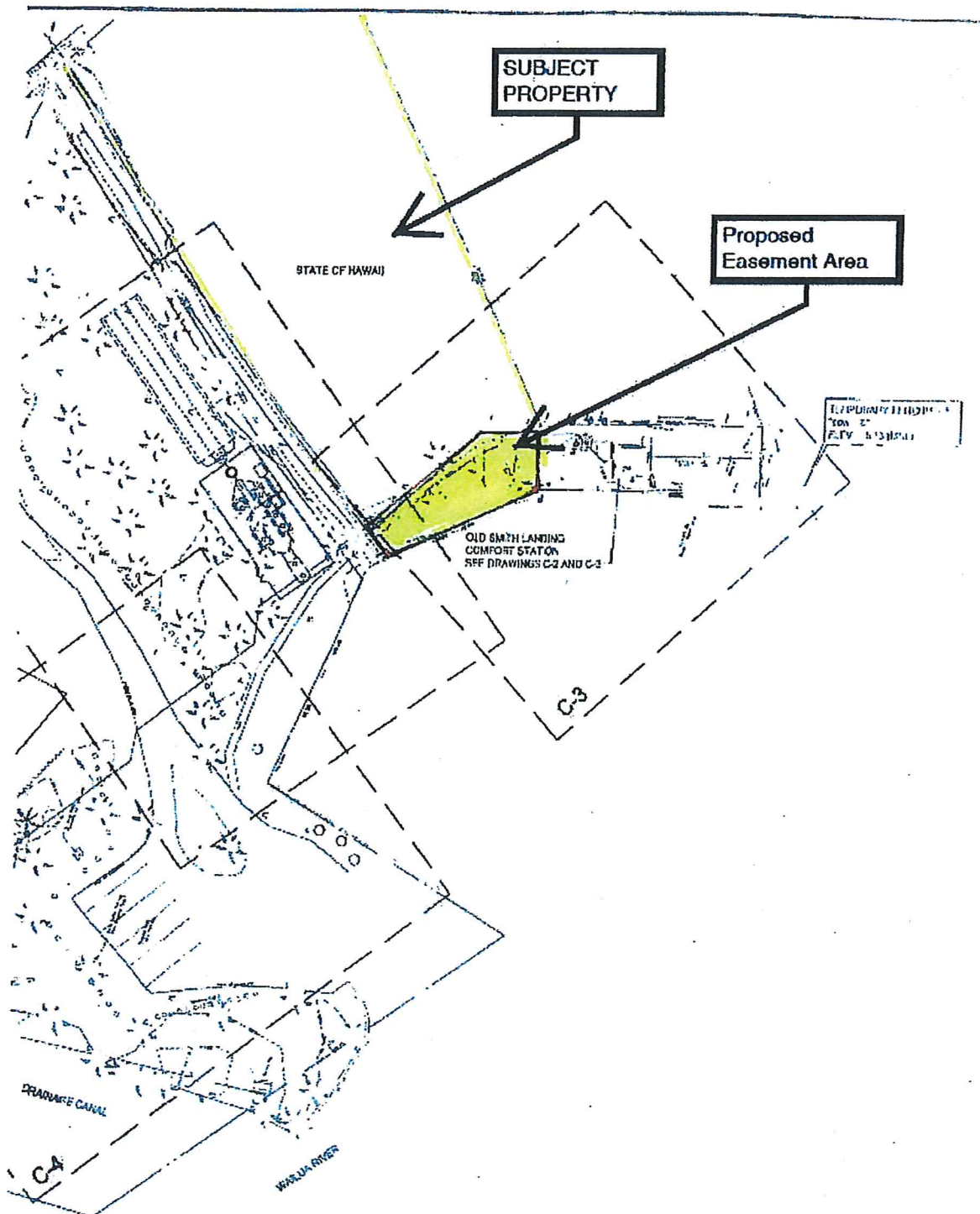
JESSE K. SOUAI  
DEPUTY

WILLIAM M. TAM  
DEPUTY FOR WATER

AQUATIC RESOURCES  
WATER AND LAND RELATION  
HAWAIIAN CONSERVATION  
COMMISSIONER FOR WATER RESOURCES MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND SUBSISTENCE  
THREATS  
CONSERVATION AND WILDLIFE  
HAWAIIAN ISLAND RESERVE COMMISSIONER  
LAND  
STATE PARKS

**Exhibit C**





**Exhibit D**





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**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
737 IWILEI ROAD, SUITE 200  
HONOLULU, HAWAII 96817

September 30, 2014

William Aila, Jr.,  
Chairperson, Board of Land and Natural Resources  
Department of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawaii 96809

Aloha Chairperson Aila,

Re: "Mutual Cancellation of General Lease No. S-3941; Issuance of a New Direct Lease to the Office of Hawaiian Affairs and Consent to Sublease Between the Office of Hawaiian Affairs, Lessee, to Ho'omana, Sublessee" Wailua Ahupua'a, Puna, Kaua'i (TMK: (4) 4-1-004:021)

I am pleased to report that at the September 11, 2014 OHA Board of Trustees' meeting, the Trustees approved 1) the execution of the sixty-five (65) year lease with the Department of Land and Natural Resources (DLNR) for land located at Wailua, Kawaihau (Puna) Kaua'i Tax Map Key (TMK): (4)4-1-004:021 and 2) the subletting of the subject parcel to Ho'omana Inc.

I would like to move forward with obtaining DLNR's approval to 1) authorize the mutual cancellation of General Lease S-3941 with Smith's Motor Boat Service, Inc.; 2) authorize the issuance of a new direct lease to OHA; and 3) consent to the sublease between OHA and Ho'omana Inc., subject to any applicable conditions cited in the April 21, 2014 Memorandum for this project.

I am requesting the following provisions be incorporated into the new direct lease:

1. Revise "Character of Use" - Change to - Uses consistent with zoning and applicable law;
2. Revise "Sublease Character of Use" - Change to - Uses consistent with zoning and applicable law;
3. Revise 3.D to remove - "but only to non-profit organizations"; and
4. That the ditch adjacent to the subject property is not made a part of the leased premises.

**Exhibit E**

William Aila, Jr.,  
September 30, 2014  
Page 2

Further, notwithstanding the foregoing modifications, upon review of the new proposed direct lease from DLNR, OHA may request additional changes as it deems appropriate.

With regard to the sublease to Ho'omana, the terms and conditions of the new executed lease will, to an extent, determine what terms and conditions will be included in the sublease. Suffice it to say at this point that the sublease will clearly state the condition of the property and will clearly delineate the responsibilities of Ho'omana to include but not necessarily limited to, the maintenance, repairs and upkeep of the property, the cost of utility services, and insurance.

Our intention is to include a provision in the cover letter accompanying the sublease to be executed by Ho'omana, a request that Ho'omana submit a plan within 60-days for renovations and repairs to bring the building up to code. Should any construction or work to be done to the structure require permitting or BLNR approval, I am requesting your assistance in obtaining or securing the required permits and approvals.

Please contact me at (808) 594-1890 if you have any questions.

'O wau iho nō,



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

KMC:emk



**Action Item**  
**Land and Property Committee**  
September 11, 2014

LAP #14-05

**Action Item Issue:** Due Diligence for the new 65 year lease from the Department of Land and Natural Resources to OHA for land located at Wailua, Kawaihau (Puna), Kaua'i identified by Tax Map Key (TMK): (4)4-1-004:021 and Sublease to Ho'omana

**Prepared by:**

KK Burgess  
Kāwika K. Burgess  
Ka Pou Nui, Chief Operating Officer

9/04/14  
Date

**Reviewed by:**

Ernest M. Kimoto  
Ernest M. Kimoto  
Ka Paepae, Corporate Counsel

9-4-14  
Date

**Reviewed by:**

Kamano M. Crabbe  
Kamano M. Crabbe, Ph.D.  
Ka Pouhana, Chief Executive Officer

9/4/14  
Date

**Approved by:**

Hulu Lindsey  
Hulu Lindsey  
Chairperson, Committee on Land and Property

9/5/14  
Date

**I. ACTION ITEM**

Whether the Land and Property Committee should authorize Ka Pouhana, OHA's CEO to:

- A. Work with Ho'omana to identify a more suitable location for the program; and
- B. Work with Ho'omana and the Asset and Resource Management Committee to identify potential funding for the relocation and support of the program.

Alternatively, whether the Land and Property Committee should authorize Ka Pouhana, OHA's CEO, to proceed with Alternative A. or Alternative B. as set forth under item V.  
**ALTERNATIVES.**



## **II. ISSUE.**

The Land and Property Committee is considering entering into a new 65 year lease for property located at Wailua, Kawaihau (Puna) Kaua'i at TMK: (4)4-1-004:021 and subleasing the property to Ho'omana Inc.

## **III. DISCUSSION**

**A. Initial Action Taken by Land and Property Committee.** On June 12, 2014 the Land and Property Committee voted to "Enter into 65-year lease from the Department of Land and Natural Resources to OHA for land located at Wailua, Kawaihau (Puna), Kaua'i identified as Tax Map Key (TMK): (4)4-1-004:021 and Sublease to Ho'omana, Inc.

**B. Board of Trustees Directive to OHA CEO.** On June 19, 2014, the Board of Trustees instructed OHA's CEO:

1. To enter into a 65-year lease from the Department of Land and Natural Resources to OHA for land located at Wailua, Kawaihau (Puna), Kaua'i identified by Tax Map Key (TMK): 4-1-004:021 and sublease to Ho'omana subject to stipulations in item #2 of a memo from Administration dated May 30<sup>th</sup>, outlining a detailed due diligence process; and

2. Provided that final approval of the lease by OHA by subject to completion of additional due diligence on the property. OHA should request a minimum of 90 – 120 days to complete the additional due diligence. Administration estimates additional due diligence would cost up to \$20,000 to address each of the issues identified in the initial due diligence.

**C. Intent of Acquisition.** Discussions of the Land and Property Committee and BOT indicated that the intent of OHA in acquiring the 65-year lease to the property included:

1. Support of the Ho'omana program, and
2. Potential commercial redevelopment of the property

**D. Due Diligence.** Administration conducted the following due diligence to better understand the Ho'omana program and determine the condition of the building and structures and determine costs, risks, and liabilities associated with accepting a 65-year lease for the property.

1. Site Visit and Staff Inspection of the Property
2. Structural Assessment of the building, and (Exhibit A")
3. Civil infrastructure assessment of the property (Exhibit "B")

## **E. Summary of Findings**

### **1. Ho'omana Program**

- a. Mission: Ho'omana assists the emotionally, mentally, physically challenged and those with disabilities with every opportunity to reach their maximum potential.
- b. Ho'omana operates a thrift shop at the property and provides a training site for individuals with special needs to learn basic life and job skills. The program serves approximately 30 youth a year from 9<sup>th</sup> – 12<sup>th</sup> grade from Kapa'a High School and Kaua'i High Schools. The program also provides volunteer opportunities and job skills training for participants in programs such as the State Department of Human Services First to Work Program, the State Vocational Rehabilitation Program, and the Workforce Development Program.
- c. Ho'omana is in good standing with the State of Hawai'i Department of Commerce and Consumer Affairs.

### **2. Building and Property**

- a. Condition of the Building: Poor/Extremely poor physical condition
- b. Risks and Liabilities:
  - (1) Lack of adequate restroom facility
  - (2) Use of portable restroom is not legal
  - (3) Danger to customers, volunteers, and staff associated with the poor to extremely poor condition of the building
  - (4) Building does not meet current building code
  - (5) Building does not meet current fire code
  - (6) Property is located in the 100 year flood plain of the Wailua River and is subject to occasional flooding
  - (7) Site and building is in need of substantial repairs and renovations
  - (8) Permits and approvals for renovations may be difficult to obtain or may be denied
  - (9) Open space zoning limits future use and will trigger additional

permitting and approval

c. Potential Costs for Rebuild or Renovation: (See Exhibit "C")

Based on the findings of the due diligence, Administration recommends that the lease should not be pursued by OHA, but that alternative ways to support the Ho'omana program be explored.

**IV. RECOMMENDATION**

The Land and Property Committee authorize Ka Pouhana, OHA's CEO to:

- A. Work with Ho'omana to identify a more suitable location for the program
- B. Work with Ho'omana and the Asset and Resource Management Committee to identify potential funding for the relocation and support of the program

**V. ALTERNATIVES**

A. The Land and Property Committee can authorize Ka Pouhana, OHA's CEO to:

- 1. Pursue negotiations for the acquisition of a new 65 year lease for the property located at Wailua, Kawaihau (Puna), Kaua'i; TMK: (4) 4-1-004:021 from the DLNR; and
- 2. Accept the property understanding the current condition of the property and potential costs and liabilities associated with the property; and
- 3. Proceed with the design, planning, and permitting, to demolish and rebuild an adequate structure to sublease to Ho'omana to operate the existing thrift store and program assisting emotionally, mentally, physically challenged and those with disabilities.
- 4. Reallocate \$1,500,000 for the design, planning, permitting, and rebuilding
- 5. Acknowledge that because of the location in the flood plain and complications affecting the site, OHA may not be able to obtain all of the necessary permits and approvals to rebuild at the site.

B. The Land and Property Committee can authorize Ka Pouhana, OHA's CEO to:

- 1. Pursue negotiations for the acquisition of a new 65 year lease for the property located at Wailua, Kawaihau (Puna), Kaua'i; TMK: (4) 4-1-004:021 from the DLNR; and
- 2. Accept the property understanding the current condition of the property and potential costs and liabilities associated with the property; and



3. Proceed with planning, permitting, and necessary repairs and renovations to bring the property into an acceptable condition to operate the existing thrift store and Ho'omana program assisting emotionally, mentally, physically challenged and those with disabilities.

4. Reallocate \$750,000 for the planning, permitting and renovations

5. Acknowledge that because of the location in the flood plain and complications affecting the site, OHA may not be able to obtain all of the necessary permits and approvals to renovate the site.

**VI. FUNDING.** Recommendation: Subject to further approval from the Land and Property Committee.

Alternative A: Estimated minimum of \$1,500,000

Alternative B: Estimated minimum of \$750,000

**VII. TIMEFRAME.** Effective upon successful passage on second reading by the OHA Board of Trustees.

**VIII. ATTACHMENTS:**

EXHIBIT "A" - Structural Assessment of the Building

EXHIBIT "B" - Civil Infrastructure Assessment of the Property

EXHIBIT "C" - Potential Costs for Rebuild or Renovation

PHONE (808) 594-1888



STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. NIMITZ HWY., SUITE 200  
HONOLULU, HAWAII 96817

April 15, 2015

Carty S. Chang  
Interim Chairperson  
Department of Land and Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

Re: General Lease No. S-6074

Aloha e Interim Chairperson Chang,

In a letter dated October 29, 2014, from the Department of Land and Natural Resources (DLNR) to the Office of Hawaiian Affairs (OHA), the Board of Land and Natural Resources granted approval of an OHA request for the mutual cancellation of General Lease No. S-3941 for the land located at Wailua, Kawaihau (Puna) Kaua'i Tax Map Key (TMK): (4) 4-1-004: 021; and an issuance of a new direct lease with OHA and a Sub-Lease to Ho'omana. A requirement of the approval stipulated that OHA submit the Sub-Lease between OHA and Ho'omana within six (6) months of the Board approval. As the deadline approaches, we request a six (6) month extension of time to submit the Sub-Lease between OHA and Ho'omana for review and approval by the DLNR.

The Sub-Lease between OHA and Ho'omana is dependent upon the terms and conditions of the General Lease (No. S-6074) between DLNR and OHA. However, the lease is still being finalized between DLNR and OHA legal counsel. As such, OHA hereby requests an extension of time to submit the Ho'omana Sub-Lease for DLNR review and approval.

If you should have further questions regarding this matter, please contact OHA's Land Management Specialist, Brutus La Benz, at (808) 594-1944 or [brutusl@oha.org](mailto:brutusl@oha.org).

Mahalo,

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

KMC:blb

4-23-15 by: KDLO

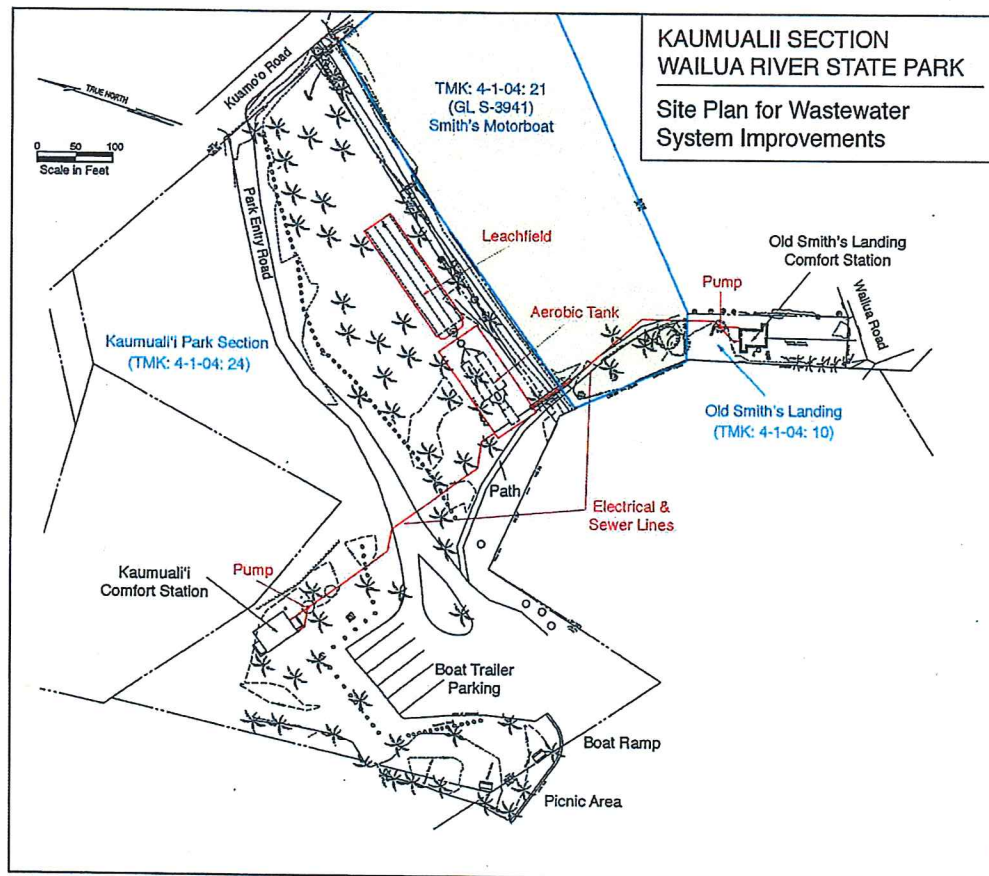
- c. Kevin E. Moore, State Lands Assistant Administrator  
Department of Land and Natural Resources, Land Division

**Exhibit "2"**

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FAX (808) 594-1938

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DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII



MAP 2

Kaumuali'i wastewater system and detail of electrical and sewer lines through parcels 21 and 22.





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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-6074

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and the OFFICE OF HAWAIIAN AFFAIRS, a body corporate of the State of Hawaii, whose address is 737 Iwilei Road, Suite 200, Honolulu, Hawaii 96817, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-95(a)(2), Hawaii Revised Statutes, and for and in consideration of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises identified as "Wailua Coconut Grove, Parcel B," more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65) years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, up to and including the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, unless sooner terminated as hereinafter provided.

The annual rent shall be gratis.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon,

all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

3. Public access easements. Public access easements over portions of the premises necessary to provide pedestrian access to the Old Smith's Landing area, boat ramp and park areas, to be determined by survey at the State of Hawaii, Department of Land and Natural Resources, State Park Division's expense.

4. Sewer line easement and electrical transmission line easement. A sewer line easement and electrical transmission line easement across the premises at a location to be determined by survey at the State of Hawaii, Department of Land and Natural Resources, State Park Division's expense.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land. \_\_\_\_\_



THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or 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, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

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

3. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

4. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition. Lessor recognizes the premises are in a state of disrepair and require a significant amount of cleanup and repair, and as such, Lessor acknowledges and agrees that the existence of or the need for cleanup of the premises and repairs to the improvements or buildings on the premises shall not constitute a default or breach of section 4 so long as Lessee or its sub-lessee submits a plan to Lessor to clean up the premises and repair the buildings and improvements on the premises, which plan is accepted by Lessor (the "Plan"), and Lessee or its sub-lessee is working towards repairing and or improving the conditions of the premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements.

5. Waste and unlawful, improper or offensive use of premises. The 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, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

6. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force. Lessor recognizes the premises are in a state of disrepair and require a significant amount of cleanup and repair, and as such, Lessor acknowledges and agrees that the existence of or the need for cleanup of the premises and repairs to the improvements or buildings on the premises shall not constitute a default or breach of section 6 so long as Lessee or its sub-lessee is working towards repairing and or improving the conditions of the premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements.

7. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

8. Improvements. The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.

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 in good order, condition and repair, reasonable wear and tear excepted. Lessor recognizes the premises are in a

state of disrepair and require a significant amount of cleanup and repair, and as such, Lessor acknowledges and agrees that the existence of or the need for cleanup of the premises and repairs to the improvements or buildings on the premises shall not constitute a default or breach of section 9 so long as Lessee or its sub-lessee is working towards repairing and or improving the conditions of the premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the 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, and shall indemnify, defend, and hold the Lessor 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 to be used solely for uses consistent with zoning and applicable law.

12. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

13. Assignments, etc. Except as provided in paragraph 12, the Lessee shall not transfer, assign, or permit any other person to occupy or use the 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 Board.

14. Indemnity. The Lessee shall require all sub-lessees to indemnify, defend, and hold the Lessor 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 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.

15. 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, 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.

16. Breach. Time is of the essence in this agreement 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 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 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, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the 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 for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be



applied to any damages.

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

18. Right to enter. The Lessor 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 Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

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

20. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease,

without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

21. Surrender or termination. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the 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 lease.

22. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

23. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. 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 premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at 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 Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

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



For the purpose of this 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.

24. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

25. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

26. 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.

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

28. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the 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 Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent 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 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 lease.



29. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

30. Non-use and abandonment. If the Lessee shall, at any time for a continuous period of one (1) year, fail or cease to use, or abandon all or any portion of said premises, this lease shall cease and terminate.

31. Building construction. All building construction shall be in full compliance with all laws, rules and regulations of the federal, state, and county governments and in accordance with plans and specifications submitted to and approved by the Chairperson prior to commencement of construction. Lessor recognizes the premises are in a state of disrepair and require a significant amount of cleanup and repair, and as such, Lessor acknowledges and agrees that the existence of or the need for cleanup of the premises and repairs to the improvements or buildings on the premises shall not constitute a default or breach of section 31 so long as Lessee or its sub-lessee is working towards repairing and or improving the conditions of the premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements.

32. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

33. Time of essence Time is of the essence in all provisions of this lease.

34. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

35. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ~~ninety (90)~~ one hundred eighty (180) days from the date of execution of the lease and shall so notify the Lessor in writing

| at the end of ~~ninety (90)~~ one hundred eighty (180) days.

36. Phase I environmental site assessment. Prior to termination or revocation of the subject lease, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination or revocation, unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

37. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

38. Lessee's acceptance of premises and improvements. The Lessee accepts the premises and improvements in "as is, where is" condition with all defects, whether latent or patent.

Definitions.

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

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, 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 premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days unless otherwise specified. \_\_\_\_\_



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on October 24, 2014.

By \_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and  
Natural Resources

LESSOR

APPROVED AS TO FORM:

\_\_\_\_\_  
LINDA L.W. CHOW  
Deputy Attorney General

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

OFFICE OF HAWAIIAN AFFAIRS,  
a body corporate of the State of  
Hawaii.

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

LESSEE

APPROVED AS TO LEGALITY,  
FORM, EXCEPTIONS, AND  
RESERVATIONS:

\_\_\_\_\_  
Deputy Attorney General

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did say that he/she is the Administrator for the Office of Hawaiian Affairs (OHA), a body corporate of the State of Hawaii, and that in the absence of a seal that said instrument was signed in behalf of OHA by authority of its Board of Trustees, and the said Administrator acknowledged said instrument to be the free act and deed of said OHA.

Notary Public, State of Hawaii

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

**Ho'omana Thrift Store and Training Center**  
**Due Diligence PLAN for Future Development**

***DEVELOPMENT OF PERMANENT SEWAGE SYSTEM:***

Several options are currently being discussed with knowledgeable contractors to determine a solution that would address the closing of the existing cesspool and the installation of a permanent and approved alternate to the sewage issue.

- Aqua Engineers-Consultant-Jerry Nakasone and Hawaii Utility Locators have pledged their support in the upgrading and/or abandonment and are currently reviewing the existing conditions and are making final determinations to include: (See attachments)
  - Cesspool
    - Aqua Engineers have filled numerous cesspools in the past and have pledges to fill/close the existing cesspools. (See attachment)
    - This alternative is the most cost efficient as it includes considerable donation of labor. (See attachment)
  - Individual Waste System (IWS) Tie-In
    - Locating IWS plans and permits for the Mauka and Makai restrooms from the State Parks Department.
    - Determination of the capacity and usage of the IWS.
    - Determination of the volume of flow from one Ho'omana restroom and their current kitchenette.
    - Obtaining permission to tie into IWS from State Parks.
    - Tying into the existing State IWS located at the back of the Ho'omana property at the Wailua River Park Parcel B.
  - Alternative Solution
    - Installation of a Bio Treatment System or an Aerobic System either of which are extremely costly. (See attachments)

***STANDARD OPERATING PROCEDURE (SOP) for FLOOD RISKS:***

- Weather predictors from various media sources keeps Ho'omana well informed when approaching storms or other events related to possible water incursions might occur.
- Historically flooding has primarily occurred when the Wailua River becomes blocked at the mouth and bridge from debris that collect at the river mouth.
- Monitoring the river mouth, bridge and surrounding property and notifying the County of Kauai/DLNR and police department of the blockage prompts the removal of debris with construction equipment to permit continuous river flow into the ocean.
- Design/install a pressure plate and sand bags at the lowest point of the building to help prevent/alleviate flooding. Mr. Jerry Nakasone has pledge to design/install the pressure plate system. (See attachment)
- Put up/away any valuable merchandise that may be damaged.
- Remove as much merchandise as possible.
- Close Ho'omana, call employees/volunteers not to report to work until the flooding subsides and deemed safe to return.
- Close property gate to reduce entry to property and building.

***ENSURE BUILDING AND PROPERTY CONDITIONS ARE IN COMPLIANCE:***

Ho'omana will comply with all Federal, State and County laws including, but not limited to such rules and regulations that govern repairs, improvements, and construction and ADA standards.



### **REPAIRS AND UPGRADES OF EXISTING BUILDING AND PROPERTY:**

- Repairs to roof and new roofing application
- Necessary repairs to existing framing and structural items
- Repairs to parking lot including parking stall indicators
- Repaint the exterior of the building
- Establish an entry/exit system at the street entrance with neighbors that will reduce off-hour access to the property
- Electrical Upgrades
  - Installation of new fluorescent light fixtures throughout the building
  - Installation of recently purchases security/fire alarm system
  - Installation of security method on all windows
- Fire
  - Annual inspection by Kauai Fire Department for egress and exiting of patrons/staff/volunteers
  - Annual review and upgrading of fire extinguishers throughout the building
  - Maintain current established fire safety requirements including exit postings and fire extinguisher locations.
  - Clear identification of fire hydrant located across the street
  - Provide easy access to water meter located adjacent to driveway/street
- Sanitation Mitigation
  - Accumulated card board boxes, clothing and other donated items deemed not suitable for resale will be disposed of weekly in the contracted disposal bin, removed by volunteers/staff, periodic removal from the site by KCCC trustee volunteers in containers acquired from Kauai Disposal Services, and if necessary the occasional hiring of a local contractor.
  - The drainage ditch is the responsibility of DLNR. Courtesy phone calls will be made to DLNR in the event of potential flooding, over-growth and or debris should gather in the DLNR ditch. On rare occasions tree branches have fallen in the ditch and we have removed the items to maintain clean and presentable grounds. Future events regarding the ditch will be addressed when our neighbors across the street -Coco Palms Resort- complete their building and landscaping; excess drainage for the ditch emanates from the resort.
  - Secure ongoing efforts to keep unnecessary debris from accumulating through volunteers or the hiring of occasional manpower to accommodate the need.
- Demolition, Relocation and Temporary Structures - There has been no real consideration of a complete demolition of the entire building for the following reasons:
  - Cost of demolition is not within our budgetary ability.
  - Construction of a new building is not economically feasible.
  - Relocation to another site would reduce our visibility and access which in effect would greatly reduce our ability to maintain an adequate income from the thrift store; and, it would add unnecessary hardships to our training efforts.
  - Upon consultation with various contractors, our initial concern is about adequate space for training during various construction phases. We have determined that it will not be necessary to acquire any temporary buildings/containers to accommodate our needs during the modification/repair work.
  - We are considering demolition of the rear portion of the building which is currently unused and too costly to make necessary repairs. In the event this option should become a reality we would gain a large concrete slab that would provide a large platform for various activities including a place to anchor another building should growth dictate a need for expansion.

Ho'omana has been awarded (July, 2015) a State GIA grant of \$87,400 which is exclusively designated for the repairs as outlined above. (See attachment) The Board of Directors has reviewed and approved this FUTURE DEVELOPMENT PLAN and acknowledges that this plan will be diligently monitored according to the schedule as attached.

**SCHEDULE:**

[illegible]

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ☐ Pickup ☐

To:

Total Number of Pages \_\_\_\_\_

Tax Map Key No . (4) 4-1-004:021

STATE OF HAWAI'I  
OFFICE OF HAWAIIAN AFFAIRS  
SUB-LEASE NO. \_\_\_\_\_

between

OFFICE OF HAWAIIAN AFFAIRS,  
a body corporate of the State of Hawai'i

and

HO'OMANA INC., A Hawai'i Nonprofit

covering

Wailua Coconut Grove, Parcel B  
Situate at Wailua, Kawaihau (Puna), Kauai, Hawai'i  
Containing an area of 0.813 acre



STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
SUB-LEASE NO. \_\_\_\_\_

THIS SUB-LEASE, made this            (To Coincide with OHA-DLNR Lease) day of            20      , by and between the OFFICE OF HAWAIIAN AFFAIRS, STATE OF HAWAII, hereinafter referred to as the "Sub-Lessor, " by its Chief Executive Officer, and HO'OMANA INC., a non-profit and IRC 501(C)(3), whose address is 4531 Kuamo'o Road, Kapa'a, Hawai'i, , hereinafter referred to as the "Sub-Lessee."

WITNESSETH:

The Sub-Lessor, in consideration of the terms, covenants and conditions herein contained, all on the part of the Sub-Lessee to be kept, observed and performed, does Sub-lease unto the Sub-Lessee, and the Sub-Lessee does Sub-lease from the Sub-Lessor the premises identified as "Wailua Coconut Grove, Parcel B," more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof (the "Premises"). Tax Map Key No . (4) 4-1-004:021

TO HAVE AND TO HOLD the Premises unto the Sub-Lessee for the term of ten (10) years, commencing on the            day of           , 20       (the "Commencement Date"), up to and including the day of           ,            (the "Termination Date") unless sooner terminated as hereinafter provided The Sub-lessee shall be held responsible to implement the attached improvement and management plan hereinafter referred to as the "Plan" which shall be approved in writing by both Sub-Lessor and Lessor (State of Hawaii Department of Land and Natural Resources, "DLNR") via Sub-Lessor/Lessor lease agreement. The annual rent shall be gratis.

RESERVING UNTO THE SUB-LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining . "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other

mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Sub-Lessee's permitted activities on the Premises and not for sale to others. (b) All surface and ground waters appurtenant to the Premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Sub-Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Sub-Lessee for any of Sub-Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stock water system(s) located on the land prior to or on the Commencement Date of this Sub-lease, excluding those improvements constructed during the term of this Sub-lease unless provided otherwise.

3. Public access easements. Public access easements over portions of the Premises necessary to provide pedestrian access to the Old Smith's Landing area, boat ramp and park areas, to be determined by survey at the State of Hawai'i, Department of Land and Natural Resources, State Park Division's expense.

4. Sewer line easement. A sewer line easement across the Premises at a location to be determined by survey at the State of Hawai'i, Department of Land and Natural Resources, State Park Division's expense.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawai'i established pursuant to state law including Chapter 6E, Hawai'i Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

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 including real property taxes, rates, and assessments of every description as to which the Premises or any part, or any improvements, or the Sub-Lessor or Sub-Lessee, are now or may be assessed or become liable by authority of law during the term of this Sub-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, installing, maintaining all utility services including but not limited to gas, electricity, water, sewer, refuse collection and green waste removal, telephone and other communication services; and shall pay when due all charges, duties and rates of every description, as to which the Premises or any part, or any improvements, or 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. Payments shall be made to the entity or company supplying such services unless Sub-Lessor directs otherwise.

3. Covenant against discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

4. Sanitation. The Sub-Lessee shall keep the Premises including all improvements in a strictly clean, sanitary and orderly condition. Sub-Lessor recognizes the Premises are in a state of disrepair and requires a significant amount of cleanup and repair, and as such, Sub-Lessor acknowledges and agrees that the existence of or the need for cleanup of the Premises and repairs to the improvements or buildings on the Premises shall not constitute a default or breach of section 4 so long as the Sub-Lessee is diligently working towards repairing and or improving the conditions of the Premises in accordance with the Plan, provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the Premises or improvements. Any new violation issued in connection by any government agency shall be considered a breach of the Sub-lease.

5. Waste and unlawful, improper or offensive use of Premises. 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, nor, without the prior written consent of the Sub-Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises.

6. Compliance with laws. Throughout the Term and any Renewal Term, Sub-Lessee at Sub-Lessee's sole cost and expense, shall comply with all laws, statutes, ordinances, orders, rules, regulations or requirements of any federal, state or municipal government, department, commission, board or officers having jurisdiction



(collectively, "Governmental Authority") which shall be applicable to Sub-Lessee's occupancy or use of the Premises, including, without limitation, the Americans with Disabilities Act of 1990 (42 USC 12181, et seq.) and all regulations and guidelines promulgated thereunder, and Hawai'i Revised Statutes Ch. 6E and all other laws and regulations regarding the removal of artifacts or human skeletal remains (collectively, "Laws"), and shall take any and all actions necessary to avoid or eliminate any violation of Laws of which Sub-Lessee receives notice after the date hereof and during the remainder of the Term (and any Renewal Term). (All of the foregoing Laws, covenants and restrictions are collectively referred to herein as the "Legal Requirements".) Sub-Lessee shall also, during the Term (and any Renewal Term) of the Sub-Lease, maintain in effect all permits, approvals, licenses, consents or other entitlements required for Sub-Lessee's permitted use of the Premises. Sub-Lessee shall be solely responsible for and shall indemnify, defend, and hold harmless OHA and its Trustees, employees, representatives and agents against all claims, demands, liabilities, actions, costs, expenses, losses, damages, judgments and other liabilities or amounts, including all reasonable attorneys' fees and costs, arising from Sub-Lessee's noncompliance with and/or nonobservance or nonperformance of said Legal Requirements.

Sub-Lessor recognizes the Premises are in a state of disrepair and requires a significant amount of cleanup and repair, and as such, Sub-Lessor acknowledges and agrees that the existence of or the need for cleanup of the Premises and repairs to the improvements or buildings on the Premises shall not constitute a default or breach of section 6 so long as the Sub-Lessee is diligently working towards repairing and or improving the conditions of the Premises in accordance with the Plan, provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the Premises or improvements. Any new violation issued in connection with Sub-Lessee's use of the Premises, by any government agency shall be considered a breach of the Sub-lease.

7. Inspection of 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.

8. Improvements. The Sub-Lessee shall not any time construct, place, or maintain on the Premises any building, structure or improvement of any kind and description except with the prior written approval of the Sub-Lessor and upon those conditions the Sub-Lessor may impose, 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 sole cost expense.

Upon termination and/or expiration of the Sub-lease and if desired by the Sub-Lessor, the Sub-Lessee at its expense, shall remove any and all improvements installed or constructed upon the Premises and restore said Premises to a condition satisfactory to the Sub-Lessor.

9. Maintenance of Premises, Repairs. Sub-Lessee at its sole expense, shall at all times keep, repair, and maintain all portions of the Premises, including without limitation all structural and non-structural portions of the buildings and other improvements now existing or hereafter constructed or installed on the Premises (including without limitation all lighting and plumbing fixtures, pipes and utility lines, roofs, exterior walls, floors, foundations, exterior entrances, signs, any air conditioning system or portions thereof, fixtures, equipment and appurtenances thereof, bridges and other structural stream or river crossings and seating areas) and all roads, sidewalks, sewage disposal systems, drains and parking areas, in good, clean and safe order, condition and repair, ordinary wear and tear from normal usage, damage by casualty excepted.

Sub-Lessor acknowledges the Premises are in a state of disrepair and requires a significant amount of cleanup of the Premises and repairs to the improvements or buildings on the Premises shall not constitute a default or breach of section 9 so long as the Sub-Lessee is diligently working towards repairing and or improving the conditions of the Premises in accordance with the Plan, provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the premises or improvements. Any new violation issued in connection with Sub-Lessee's use of the Premises, by any government agency, shall be considered a breach of this Sub-lease.

Sub-Lessee shall keep the Premises free from rubbish and shall store all trash and garbage within the Premises in suitable receptacles. Sub-Lessee shall not burn any trash or garbage of any kind on the Property without the prior written consent of Sub-Lessor.

10. Alterations. Except for actions pre-approved by Lessor and Sub-Lessor in the Plan, the Sub-Lessee shall not proceed with any improvements, repairs, additions or, alterations ("Work") on the Premises that would exceed \$1,000 without the prior approval and consent of the Sub-Lessor. In performing any such Work, Sub-Lessee shall comply with the following conditions, unless any of such conditions shall be waived in writing by Sub-Lessor in its sole discretion:

(a) Approval of Architect and Contractor. Sub-Lessee shall obtain Sub-Lessor's written approval of Sub-Lessee's construction contractor(s), subcontractors and architect, all of whom shall be licensed in the State of Hawai'i.



(b) Approval of Plans and Specifications. Sub-Lessee shall submit to Sub-Lessor for its approval, at least thirty (30) days prior to the date on which Sub-Lessee expects to commence construction, complete plans and specifications for such work. Sub-Lessor may specify minimum requirements from time to time for any alteration, addition or improvement of the Premises, the satisfaction of which shall be a prerequisite to Sub-Lessor's consent to any such alteration, addition or improvement. Sub-Lessor shall have the right to charge a reasonable fee for such review, which fee shall include any architect's, engineer's or other professional fee incurred by Sub-Lessor in such review.

(c) Governmental Permits: Compliance with Laws. Sub-Lessee shall, prior to any Work in or to the Premises (regardless of cost), furnish Sub-Lessor with a building permit and all other required governmental certificates, licenses, permits or approvals. Sub-Lessor is responsible for obtaining any building permit required for any alterations, repairs, improvements or additions on the Premises.

All such Work shall comply with all statutes, laws, ordinances, codes, rules and regulations, and any such Work not acceptable to any governmental authority or agency having or exercising jurisdiction over such Work shall be promptly replaced, at Sub-Lessee's sole expense, notwithstanding any failure by Sub-Lessor's to object to any such Work, and Sub-Lessor shall have no responsibility therefore.

(d) Financing Commitments; Bonds. Sub-Lessee shall provide Sub-Lessor with evidence satisfactory to Sub-Lessor that funds are available and/or committed by Sub-Lessee sufficient to pay for one hundred percent (100%) of the total direct and indirect costs of the Sub-Lessee's Work. Sub-Lessee shall deposit with Sub-Lessor a certificate or other evidence satisfactory to Sub-Lessor stating that each of Sub-Lessee's contractors or subcontractors for construction in the amount of TEN THOUSAND DOLLARS (\$10,000.00) or more has obtained performance and labor and material payment bonds for not less than one hundred percent (100%) of the total cost of the Sub-Lessee Work, naming Sub-Lessor, Sub-Lessor's lender, if any, any managing agent of Sub-Lessor, and such other persons as Sub-Lessor may direct, as their interests may appear, as obligees. Such bonds shall be in the form and amount and with surety satisfactory to Sub-Lessor.

(e) Completion. All Sub-Lessee's Work shall be diligently and continuously pursued from the date of its commencement through its completion. Upon substantial completion of any construction, Sub-Lessee shall file or cause to be filed a "Notice of Completion" in the Office of the Clerk of the Circuit Court of the Fifth



Circuit, State of Hawai'i. Two (2) certified "filed" stamped copies of the Notice of Completion shall be provided by Sub-Lessee to Sub-Lessor. On substantial completion of construction, Sub-Lessee's architect shall deliver to Sub-Lessor a certificate setting forth the total cost of such construction and certifying that the Sub-Lessee's Work has been completed in compliance with the approved plans and specifications.

(f) Protection Against Liens. Sub-Lessee shall promptly pay all contractors and materialmen, and shall keep the Premises free from any liens or encumbrances arising out of any work performed by or for Sub-Lessee, materials furnished to or for Sub-Lessee or obligations incurred by Sub-Lessee. As a condition precedent to Sub-Lessee's payments of sums owed by Sub-Lessee to its contractors and materialmen, Sub-Lessee shall require such contractors, their subcontractors and materialmen, to submit lien releases and waivers to Sub-Lessee in form and content satisfactory to Sub-Lessor. Sub-Lessee shall indemnify, defend and hold harmless Sub-Lessor from and against any and all claims for mechanic's, materialmen's or other liens in connection with any Sub-Lessee Work. If a mechanic's or materialman's lien shall be filed against the Premises for or purporting to be for labor or materials alleged to have been furnished or to be furnished to or for Sub-Lessee, Sub-Lessee shall bond against or discharge said lien within five (5) days after the filing of same. If Sub-Lessee shall fail to bond against or discharge said lien as aforesaid, Sub-Lessee shall be in default under this Lease and, in addition to other remedies available to the Sub-Lessor, Sub-Lessor may (but shall not be obligated to) pay the amount of such lien or discharge the same by deposit or by bonding against such lien. In the event that Sub-Lessor shall discharge such lien as aforesaid, Sub-Lessor may require the lienor to prosecute an appropriate action to enforce such claim, and if said lienor shall prevail in its claim, Sub-Lessor may pay the judgment recovered thereon. Any amount paid or expense incurred by Sub-Lessor pursuant to this Section shall be paid by Sub-Lessee to Sub-Lessor upon demand, together with interest thereon from the date of payment by Sub-Lessor.

(g) Disclaimer. Neither Sub-Lessor's approval of Sub-Lessee's architect or engineer, nor the approval by Sub-Lessor or by any architect or engineer engaged by Sub-Lessor, of any plans or specifications submitted by Sub-Lessee to Sub-Lessor pursuant to the provisions of this Sub-Lease, shall be deemed a warranty or other representation on Sub-Lessor's part to Sub-Lessee or any person that such plans or specifications or the improvements described in said plans are structurally safe or sound or comply with any applicable laws, nor shall Sub-Lessor's approval be construed as a requirement that any such improvements be constructed in the Premises.

11. Liens. The Sub-Lessee shall not commit or suffer any act or neglect which

results in the Premises, any improvement, or the Sub-leasehold estate of the Sub-Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Sub-lease. Sub-Lessee shall indemnify, defend, and hold the Sub-Lessor harmless from and against all, charges, and encumbrances all resulting expenses.

12. Character of use. The Sub-Lessee shall use or allow the Premises Sub-leased to be used primarily for the operation and implementation of work training program for children with special needs, on the island of Kauai through the operation of thrift store on the Premises. The Premises must be used at all times be in a manner that is consistent with zoning and applicable law. Should the Sub-Lessee desire to change the character of use, the change shall be approved in writing by the Sub-Lessor.

13. Subletting. The Sub-Lessee shall not rent or sublet whole or any portion of the Premises, without the prior written approval of the Sub-Lessor; provided, however, that prior to approval, the Sub-Lessor shall have right to review and approve the amount to be charged the proposed sub Sub-Lessee and that in the case where the Sub-Lessee is required to pay rent based on a percentage of its gross receipts, the receipts the sub Sub-Lessee or any subsequent sub Sub-Lessees shall be included as part of the Sub-Lessee's gross receipts, and the Sub-Lessor shall have the right to revise the rent for the Premises based upon the rental rate charged to the sub Sub-Lessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Sub-Lessor may waive the requirement that the Sub-Lessee obtain prior written approval to rent or sublet all or any portion of the Premises.

14. Assignments, etc. Except as provided in paragraph 12, the Sub-Lessee shall not transfer, assign, or permit any other person to occupy or use the Premises or any portion or transfer or assign this Sub-lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the Sub-Lessor.

15. Indemnity. The Sub-Lessee shall indemnify, defend, and hold the Sub-Lessor, Lessor, the State of Hawai'i, and the employees, officers, Trustees and agents of the Sub-Lessor, Lessor and 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 and sidewalks, roadways and parking areas adjacent thereto 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 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 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.

16. Risk of Loss. Sub-Lessee hereby releases Sub-Lessor and Sub-Lessor shall not be liable for any loss or damage from any cause whatsoever to any property of Sub-Lessee or of any other person located in or about the Premises. Any property of Sub-Lessee or any of its employees, directors, officers, representatives, agents and contractors kept in or about the Premises shall be at Sub-Lessee's sole risk and Sub-Lessee agrees to indemnify Sub-Lessor from and against any and all claims for loss of or damage to such property.

17. Insurance.

Liability Insurance. Sub-Lessee shall procure at Sub-Lessee's expense and keep in force during the entire Term, commercial general liability insurance, naming Sub-Lessor its employees, Trustees, officers and employees, Lessor 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 and Sub-Lessee's Affiliates. 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. 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 --

\$2,000,000 per occurrence

\$4,000,000 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; however, if Sub-Lessee uses the Premises for a restaurant or commercial cooking purposes, Sub-Lessee shall maintain limits of \$300,000 per fire.

Worker's Compensation Insurance. 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, and shall be primary, not contributing with and not in excess of coverage which Sub-Lessor may carry, and shall insure performance by Sub-Lessee of the provisions of Section 15 above; provided, however, that the limits of such insurance shall not limit nor be deemed to limit the liability of Sub-Lessee under said Section 15.

Property Insurance and Other Insurance. Sub-Lessee shall, without cost to Sub-Lessor, keep all improvements, furniture, equipment, fixtures, appurtenances, trade fixtures, goods, wares, merchandise, inventory and all other contents located in the Premises (including any plate glass in the Premises) insured throughout the Term for the full replacement cost (replacement cost endorsements to be a part of each policy), without deduction for depreciation, against loss or damage by fire, flood and wind including demolition and debris removal and all other risks covered by an ISO Commercial Property Policy - "Special Form" Causes of Loss form (or its equivalent). Such policy shall contain an agreed value endorsement and shall name as additional insureds the Sub-Lessor and such other parties as Sub-Lessor may specify, as their interests may appear. All proceeds shall be payable in case of loss to Sub-Lessor, and Sub-Lessee will pay all premiums on such insurance when due. In case of loss or damage to Sub-Lessee's improvements covered by Sub-Lessee's insurance, Sub-Lessor will make the proceeds of such insurance available to Sub-Lessee, and Sub-Lessee will promptly use all proceeds of such insurance for rebuilding, repairing or otherwise reinstating the improvements in a good and substantial manner, in which case Sub-Lessee shall be entitled to payment from such proceeds of an amount equal to the unamortized cost of the leasehold improvements paid for by Sub-Lessee (exclusive of any improvements paid for by Sub-Lessor), and the balance of the proceeds shall be kept by Sub-Lessor. Sub-Lessee will make up from its own funds any deficiency in such insurance proceeds. Proof of Sub-Lessee's cost of leasehold improvements shall be reasonably satisfactory to Sub-Lessor. The cost of Sub-Lessee's leasehold improvements shall be amortized on a straight-line basis for a term from the date of completion thereof to the end of the Term of this Sub-lease (excluding any renewal options that have not been exercised as of the date of the casualty).

Policy Forms. Each insurance policy required to be carried by Sub-Lessee shall be with an insurance company qualified to do business in Hawai'i with a Best's insurance report's rating of A- or better and financial category class of VII or higher. Each such policy will be in form and substance acceptable to Sub-Lessor and shall provide that it cannot be canceled or modified without at least sixty (60) days' prior

written notice to Sub-Lessor and any mortgagee of Sub-Lessor and shall provide for thirty (30) days' prior written notice to Sub-Lessor and any such mortgagee if not renewed at the expiration. A current certificate that each such policy is in effect, together with evidence of payment of the premium thereon, shall be deposited with Sub-Lessor by Sub-Lessee at the commencement of the Term and shall be kept current at all times.

Waiver of Subrogation. Sub-Lessor and Sub-Lessee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Sub-Lessor or Sub-Lessee, as the case may be, or their respective properties, arising from any risk covered by the insurance required under this Lease to be carried by each party (or actually carried, whether or not required hereunder), to the extent of such insurance proceeds received; and each party, on behalf of its respective insurance company providing insurance against any such loss, waives any right of subrogation that it may have against Sub-Lessor or Sub-Lessee, as the case may be. This Section shall only be effective to the extent that it does not invalidate, reduce the coverage under or increase the premiums for any such insurance policies.

Reevaluation of Insurance Requirements. Sub-Lessor shall have the right to reevaluate the insurance requirements imposed on Sub-Lessee under this Sub-lease from time to time, and in the event Sub-Lessor determines, in its reasonable discretion, that the insurance coverage is inadequate based on such factors as Sub-Lessor shall consider appropriate, including without limitation, the insurance requirements of Sub-Lessor's for other similar buildings in the State of Hawai'i, Sub-Lessor shall have the right to require Sub-Lessee to comply with any new insurance requirements that Sub-Lessor may impose. Sub-Lessor shall give Sub-Lessee at least ninety (90) days prior notice of such new insurance requirements and Sub-Lessee shall comply with such new requirements on or before the expiration of said 90 days.

18. Costs of litigation. In case the Sub-Lessor 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; 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 the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

1. Breach. Time is of the essence in this agreement and if the Sub-Lessee shall



become bankrupt, or shall abandon the Premises, or if this Sub-lease and Premises shall be attached or taken by operation of law, 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 by the Sub-Lessor of a written notice of breach demand for cure, by personal registered mail or certified mail to Sub-Lessee at its known address and each holder of record having a security interest in the Premises, the Sub-Lessor may, at once, re-enter the Premises, or any part, and 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 remain and become property of Sub-Lessor or shall be removed by Sub-Lessee; furthermore, shall retain rent paid in advance to be applied to any damages.

19. 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 rental shall be reduced in proportion to the value of the portion of the Premises condemned. The Sub-Lessee shall be entitled to receive from the condemning authority (a) value of growing crops, any, which Sub-Lessee 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 lands 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 Sub-leasehold by reason of condemnation shall payable to and be the 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 was 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 it within any reasonable period allowed by Sub-Lessor.

20. Right to enter. The Sub-Lessor 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 or the County shall not interfere unreasonably with the Sub-Lessee or Sub-Lessee's use and enjoyment of the Premises.



21. Extension of time. Notwithstanding any provision 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.

22. Quiet enjoyment. The Sub-Lessor covenants and agrees with the Sub-Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, conditions on the part of the Sub-Lessee to be observed and performed, Sub-Lessee shall and may have, possess, and enjoy the Premises for the term of Sub-lease, without hindrance or interruption by the Sub-Lessor or any other person or persons lawfully claiming by, through, or under it.

23. Surrender or termination. The Sub-Lessee shall, at the end of the term or other sooner termination of this Sub-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 at option of the Sub-Lessor. Upon expiration, termination, and/or revocation of this Sub-lease, should the Sub-Lessee fail to remove any and all of Sub-Lessee's personal property from the Premises, after notice thereof, the Sub-Lessor may remove any and all personal property from the Premises 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, or of the personal property. This provision shall survive the termination of the Sub-lease.

24. Non-warranty and Sub-Lessee's acceptance of Premises and improvements. **Sub-Lessee hereby accepts the Premises in an "AS IS WHERE IS" condition with all defects, whether latent or patent, and without any guaranties, warranties, or representations of any kind whatsoever, express or implied, by Sub-Lessor as to the condition of the Premises or its present or future viability, feasibility, safety, structural soundness, suitability or profitability for Sub-Lessee's purposes.**

25. 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 highest standards prevailing in the industry for of such materials, nor allow to brought onto the Premises any such materials except to use in 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 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 Premises placed or released by Sub-Lessee.

Sub-Lessee agrees to indemnify, defend, and hold Sub-Lessor and Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the Premises occurring while Sub-Lessee is in possession, 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.

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

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

28. 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 Sub-lease.

29. 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.

30. 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 Premises; 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 shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed 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.

31. Termination by either party. The Sub-Lessor and Sub-Lessee, by mutual agreement, may terminate this Sub-lease at any time without cause, provided that the Sub-Lessor and the Sub-Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

32. Non-use and abandonment. If the Sub-Lessee shall, at any time for a continuous period of Six (6) Months, fail or cease to use, or abandon all or any portion of said Premises, this Sub-lease shall cease and terminate.

33. Building construction. All building construction shall be in full compliance with all laws, rules and regulations of the federal, state, and county governments and in accordance with plans and specifications submitted to and approved by the Sub-Lessor prior to commencement of construction. Sub-Lessor recognizes the Premises are in a state of disrepair and requires a significant amount of cleanup and repair, and as such, Sub-Lessor acknowledges and agrees that the existence of or the need for cleanup of the Premises and repairs to the improvements or buildings on the Premises shall not constitute a default or breach of section 33 so long as the Sub-Lessee is diligently working towards repairing and or improving the conditions of the Premises in accordance with the Plan provided that no other federal, state or county agency has issued a notice of violation in connection with the cleanup or repair of the Premises or improvements. Any new violation shall be considered a breach of this Sub-lease.

34. Clearances. The Sub-Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

35. Time of essence. Time is of the essence in all provisions of this Sub-lease.

36. 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 stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

37. Removal of trash. The Sub-Lessee shall be responsible for the removal of all illegally dumped trash upon the Premises within ninety (90) days from the date of execution of the Sub-lease and shall so notify the Sub-Lessor in writing at the end of ninety (90) days.

38. Phase I environmental site assessment. Prior to termination or revocation of the subject Sub-lease, at its own cost, Sub-Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this Sub-lease or automatically prevent termination or revocation of the Sub-lease. The Sub-Lessor, at its sole option, may refuse to approve termination or revocation, unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Sub-Lessor may, at its sole option if Sub-Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Sub-Lessee.

39. Survey and boundary stakeout. Sub-Lessee shall be solely responsible for any survey and boundary stakeout of the Sub-leased Premises.

40. Sub-Lessee's acceptance of Premises and improvements. The Sub-Lessee accepts the Premises and improvements in "as is, where is" condition with all defects, whether latent or patent.

41. Special Conditions:

(a) Premises Improvement and Management Plan. Prior to the execution of this Sub-lease, the Sub-Lessee shall provide and receive written approval from the Sub-Lessor of a "Premises Improvement and Management Plan" otherwise referred to in this document as the "Plan". The Plan shall clearly state how the Sub-Lessee will address all of the necessary improvements and conditions that are identified by the Sub-Lessor and shall include, but not be limited to, a discussion of the following items:

i. Existing cesspool concerns on the property.

- ii. Permanent sewage handling solution.
- iii. How they will ensure safe building and property conditions and compliance with all applicable laws relevant to Ho'omana's intended use(s).
- iv. Development of Standard Operation Procedures and safety measures for access and use on days where flooding is probable and/or experienced as the property is situated in the 100 year flood plain.
- v. How improvements to the existing structures or new structures will pro-actively mitigate flood damage.
- vi. Plans for getting the building and property up to State and County codes/regulations for the purposes Ho'omana intends (should it not currently be up to code). This should include but not be limited to fire access and fire code.
- vii. Plans to ensure the property and structure are compliant with the American Disability Act.
- viii. Parking lot layout, construction and delineation of stalls.
- ix. Confirmation of the Department of Water Supply's domestic water availability and that an official meter device is in place to monitor and accurately invoice the Sub-lessee for its water use.
- x. Addressing safety issues related to the adjacent drainage ditch.
- xi. How Ho'omana will fund its operations and pay for the required repairs and improvements.
- xii. The Plan shall include schedule for its implementation. The Sub-Lessor reserves the right to terminate this Sub-Lease should the Sub-Lessee fail to implement any portion of the Plan in a timely manner.

- (b) Reporting. The Sub-Lessee shall provide an annual comprehensive status report to the Sub-Lessor which provides an update on the condition of the property including photos, descriptions that convey that the property is being kept in a clean condition, and remains safe for the operations of the Sub-Lessee.



- (c) Unsafe Conditions. In the event an unsafe condition is identified (including flooding of the site, structural failures, tree-fall, etc.) , the Sub-Lessee shall notify the Sub-Lessor within 72 hours to apprise Sub-Lessor of the condition, including the date and estimated time of the event, a full description, and a brief summary of how operations will need to be amended due to the unsafe condition. Sub-Lessee shall then provide to Sub-Lessor, a plan for resolving the condition within 30 calendar days of the incident and then abide by the plan to enable the resolve and any associated mitigation measures.
- (d) No excavation shall be allowed without the approval of the Sub-Lessor.

#### 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) "The CEO" means the Chief Executive Officer of the Office of Hawaiian Affairs or his successor.

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

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land Sub-Leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest .

(d) "Premises" means the land Sub-leased and all buildings and improvements now or hereinafter constructed and installed on the land Sub-leased.

(e) "Waste" includes, but is not limited to, (1) permitting the Premises, 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 Premises; and (3) failure to employ all of the usable portions of the Premises.

(f) "Days" shall mean calendar days unless otherwise specified.

(g) "Plan" means the Sub-Lessee's Premises Improvement and Management Plan which is described in Section 40 (a)

DRAFT

IN WITNESS WHEREOF, Office of Hawaiian Affairs, by its CEO, has caused the seal of the be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Office of Hawaiian Affairs Board of Trustees at its meeting held on _____.	OFFICE OF HAWAIIAN AFFAIRS
	By _____ Kamana'opono Crabbe, Ph. D. Chief Executive Officer
	SUB-LESSOR
	HOOMANA INC.
	Its _____
	SUB-LESSEE

Approved as to Form:

\_\_\_\_\_  
Ernest Kimoto  
OHA Corporate Counsel

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

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

On this day of \_\_\_\_\_ before me personally appeared, to me known ,  
who being by me duly sworn, did say that he/she is the Administrator for the Office of  
Hawaiian Affairs (OHA), a body corporate of the State of Hawaii, and that in the absence of  
a seal that said instrument was signed in behalf of OHA by authority of its Board of  
Trustees, and the said Administrator acknowledged said instrument to be the free act and  
deed of said OHA.

Notary Public, State of Hawaii  
My commission expires : -----