

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

April 26, 2013

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

KAUAI

Amendment of General Lease No. S-5221 to Kauai Economic Opportunity, Inc., Lessee, for Flower and Foliage Farm Purposes, Kapaa, Kawaihau (Puna), Kauai, Hawaii, Tax Map Key: (4) 4-6-004:013. The Purpose of the Amendment is to Allow the Lessee to Pay Nominal Rent Instead of Fair Market Rent.

APPLICANT:

Kauai Economic Opportunity, Inc., a Hawaii non-profit (eleemosynary) corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapaa situated at Kapaa, Kawaihau (Puna), Kauai, identified by Tax Map Key: (4) 4-6-004:013, as shown on the attached map labeled Exhibit A.

AREA:

5.75 acres, more or less.

ZONING:

State Land Use District: Agriculture  
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

CHARACTER OF USE:

Flower and Foliage Farm purposes.

LEASE TERM:

Twenty-five (25) years, commencing on January 1, 1992 and expiring on December 31, 2017.

ANNUAL RENT:

\$1,365.00 for the period January 1, 2001 to December 31, 2011.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term. Pursuant to page 1 of the amendment of lease dated April 12, 1995.

DCCA VERIFICATION:

Place of business registration confirmed: YES  
Registered business name confirmed: YES  
Applicant in good standing confirmed: YES

REMARKS:

At its meeting of February 23, 1990, item F-11, the Board of Land and Natural Resources approved the issuance of a direct lease to Kauai Economic Opportunity, Inc. (Lessee) to construct, operate, and maintain a shelter for the homeless, and a flower and foliage farm. The lease term was set at fifty (50) years. General Lease No. S-5221 was thereafter executed as of April 8, 1992, but made effective as of January 1, 1992.

At its meeting of February 10, 1995, item F-13, the Board of Land and Natural Resources waived the requirement to build a homeless shelter in General Lease No. S-5221 and reduced the lease term from fifty (50) years to twenty-five (25) years. An amendment to lease was thereafter executed as of April 12, 1995.

The final rental reopening for this lease was scheduled for January 1, 2012. By letter dated December 16, 2010, Land Division notified Lessee that it could apply for nominal rent under current Land Board policy. See Exhibit B attached. The rental reopening, which requires Land Division to pay the cost of the appraisal report, was held in abeyance pending receipt of Lessee's application to qualify for non-profit status. The application and supporting materials were only received this year. In the meantime, Lessee continued to pay the old rent under the lease (\$1,365.00 per year).

The Land Board is authorized to lease State lands to qualifying eleemosynary (charitable) organizations at nominal rent. The statutory authority is as follows:

**§171-43.1 Lease to eleemosynary organizations.** The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

A section 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while a section 501(c)(3) organization is a privately organized charitable organization.

When considering lease dispositions to, or rental reopenings for, eleemosynary organizations, the Land Board may therefore set the rent by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for a lease to a charitable organization be no less than \$480 per year. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent and the minimum rent of \$480 per year. In order to have a standard nominal rent for qualifying non-profit tenants, staff generally recommends rent be set at \$480 per year.

Lessee recently submitted an Application and Qualification Questionnaire, a copy of which is attached as Exhibit C (excluding the voluminous attachments to the application). The application provides information on Lessee's operations, services, program measurements, budget and funding, and includes evidence of Lessee's 501(c)(3) status as Exhibit D.

In conclusion, staff is recommending the Land Board authorize the amendment of General Lease No. S-5221 to adjust the annual rent for the final five-year period of the lease to be \$480. This would be consistent with other qualifying non-profit tenants.

**RECOMMENDATION:** That the Board:

1. Authorize the amendment of General Lease No. S-5221, Kauai Economic Opportunity, Inc., Lessee, for the purpose of adding that effective January 1, 2012 to December 31, 2017 the annual rent shall be FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00) per annum, subject to:

- A. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

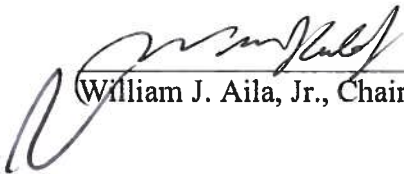
Respectfully Submitted,



---

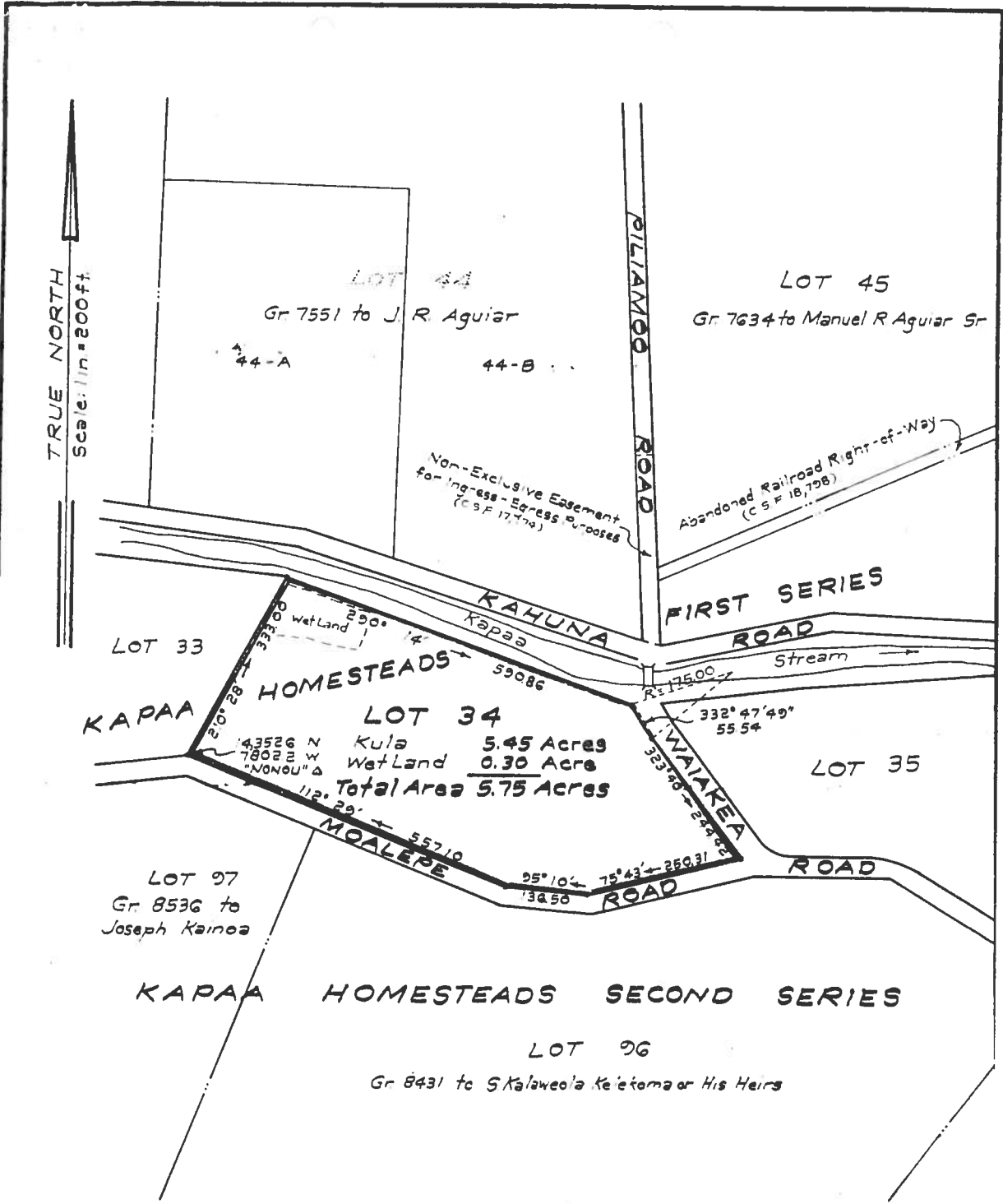
Marvin Mikasa  
Land Agent

APPROVED FOR SUBMITTAL:



---

William J. Aila, Jr., Chairperson



TRUE NORTH  
 Scale: 1 in = 200 ft

**LOT 34**  
**KAPAA HOMESTEADS, FIRST SERIES**  
 Kapaa, Kawaihau, (Puna), Kauai, Hawaii  
 Scale: 1 inch = 200 feet

JOB K-137(81)  
 C BK Compared with Lot 34 dated March 9, 1961



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

December 16, 2010

PM 2:55:15  
DEC 21 '10

OLNR KOLD ROAD

Ms. MaBel Ferrero-Fujiuchi  
Chief Executive Officer  
Kauai Economic Opportunity, Inc.  
Box 1027  
Lihue, Hawaii 96766

Dear Ms. Ferrero-Fujiuchi:

Subject: General Lease No. S-5221

This letter is to follow-up my earlier telephone call. General Lease No. S-5221 is scheduled for a lease reopening on January 1, 2012. Your lease says:

The rental for any ensuing rental period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its owner appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

The Land Board pursuant to Section 171-43.1, Hawaii Revised Statutes authorized the issuance of your lease. Furthermore, under this authority, the Land Board may lease, at a nominal consideration. Currently, the Land Board now offers other non-profits throughout the State, \$480 per year minimum rent.

If you wish to be reconsidered by the Land Board, I have enclosed our Application and Qualification Questionnaire for Non-profits. Please review, complete and return the Questionnaire with your back-up materials to my office.

**EXHIBIT B**

If you have any questions, please contact my office at 587-0426. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlene E. Unoki".

Charlene E. Unoki  
Assistant Administrator

cc: Land Board Member  
District Office  
Central Office

**APPLICATION AND QUALIFICATION QUESTIONNAIRE**  
(Non-Profit)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

**Part I: General Information**

1. Applicant's legal name: Kauai Economic Opportunity, Incorporated
2. Applicant's full mailing address:  
2804 Wehe Road, Lihue, Hawaii 96766
3. Name of contact person: Brigitte Correia – Fiscal Officer  
Contact person Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_
4. Applicant is interested in the following parcel:  
Tax Map Key No.: RP 4-4-6-004-013-0000-001 Location: 7035 Waiakea Rd., Kapaa, Hawaii 96746  
If Applicant is current lessee: General Lease No: \_\_\_\_\_
5. When was Applicant incorporated? March 16, 1965
6. Attach the following:
  - A. Articles of Incorporation
  - B. Bylaws
  - C. List of the non-profit agency's Board of Directors
  - D. IRS 501(c)(3) or (c)(1) status determination
  - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
  - F. Audited financial statements for the last three years. If not audited, explain why.  
If Applicant is a new start-up, attach projected capital and operating budgets.
  - G. Any program material which describes eligibility requirements or other requirements to receive services

**Part II: Qualification**

7. Is Applicant registered to do business in Hawaii: Yes/No  
 Yes  No
8. Has Applicant received tax exempt status from the Internal Revenue Service? Yes/No  
 Yes  No
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? Yes/No  
 Yes  No

List all such licenses and accreditations required: \_\_\_\_\_

10. Is Applicant in default or otherwise not in good standing with any State department (e.g. POS agency, DCCA, DLNR, etc.)? Yes  No

If yes, explain:

**EXHIBIT C**



---



---



---

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list: Yes/No

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap? Yes/No

If yes, explain:

---



---



---

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below: Yes/No

<u>Agency</u>	<u>Contract Term</u>	<u>Contract Amount</u>
<u>See Attached Financial Audits</u>	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private fundors and/or staff or Board members who possess significant experience in Applicant's service field.

NA

---



---



---



---

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?  
The KEO Horticulture Program works with Kauai's unemployed and low-income persons, immigrants, and refugees to become self-employed in their own small farming business. Using farmland that is already leased by KEO, clients will have the opportunity to take classes on raising crops, small farm management and to raise a small, specialized crop that they can sell to distributors or end consumers. KEO staff will educate each client in the skills needed to create a profitable farming enterprise and fosters their development throughout a twelve-month period. The program targets low-income persons who are at or below the 150 percent of the Federal Poverty Guidelines.
16. What are the specific objectives of these activities?  
The goal of the program is to alleviate the conditions of poverty by assisting low-income persons to become self-reliant and self-sufficient through training, education, and self-employment in agriculture. A comprehensive program has been established that will move the participants through barrier identification, goal setting, skill development, and the start up phase of their business.
17. Describe the community need for and the public benefit derived from these activities.  
The unemployment rate at the end of 2012 in Kauai County is 8.80 percent (U.S. avg. is 8.60%). The recent job growth is negative with jobs on Kauai decreasing by 1.98 percent. Although the economic forecast looks promising with the upturn in the visitor industry, Kauai's economic climate still remains fragile, and precarious and subject to negative influences of the economy around the world.
18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7) other applicable characteristic(s).  
The program targets unemployed or underemployed low-income Kauai residents who are at or below the 150 percent of the Federal Poverty Guidelines.
19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level, ethnic background, income level, disability, etc.  
Applicant's household income must be at or below 150% of the Federal Poverty Guideline.
20. Do you require membership to participate in these activities? Yes  No   
If yes, list the requirements of becoming and remaining a member:

21. How many unduplicated persons will engage in the activities annually?

Activity	<u>Persons Per Year</u>
Horticulture Training	6

---

---

---

22. Is State funding made available for the activities to be conducted on the leased premises?

Yes  No

If yes, by which State agency: \_\_\_\_\_

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.  
Not applicable – KEO will only provide education and hands on training on the leased property.

---

---

---

Development of the Land

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.

NA

---

---

---

---

25. What improvements to the land do you intend to make and at what cost?

NA

---

---

---

---

26. How will the improvements be funded?

NA

---

---

---

---

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed.

NA

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:

NA

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

Kauai Economic Opportunity, Inc

Applicant Name Applicant Name

By: [Signature] By: [Signature]

Its: Chief Executive Officer Its: [Signature]

Date: 3/19/13

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Notary Public

County of: Kauai

State of: Hawaii

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

RECEIVED  
DEC 29 1975  
REGISTERED

Internal Revenue Service

Internal Revenue Service

Date: DEC 22 1975 In reply refer to Wendelburg L-178, Code  
Determination Section (213) 688-4887

Kauai Economic Opportunity, Incorporated  
2786 Wehe Road  
Lilue, Hawaii 96766

Purpose: Charitable  
Accounting Period Ending: Feb. 28

Gentlemen:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

We have further determined you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in section 70(b)(1)(A)(vi) and 509(a)(1).

You are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. You are not liable for the taxes imposed under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes. If you have any questions about excise, employment, or other Federal taxes, please let us know.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If your purposes, character, or method of operation is changed, please let us know so we can consider the effect of the change on your exempt status. Also, you should inform us of all changes in your name or address.

H 2

(Over)

Form 1-178 (Rev. 8-7)

**EXHIBIT D**

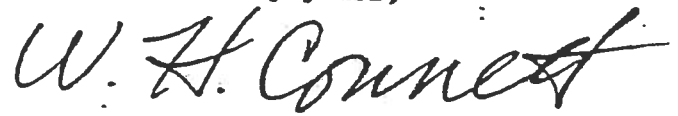
If your gross receipts each year are normally more than \$5,000, you are required to file Form 990, Return of Organization Exempt From Income Tax, by the 15th day of the fifth month after the end of your annual accounting period. The law imposes a penalty of \$10 a day, up to a maximum of \$5,000, for failure to file a return on time.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

Please keep this determination letter in your permanent records.

Sincerely yours,



District Director

tp

This letter supersedes our letter of May 27, 1965.