

APPENDIX B
MEMORANDUM OF LEASE

This Memorandum of Lease is made this 14th day of February 2017, by and between _____, a _____ (the "**Successful Bidder**"), whose mailing address is _____, and the STATE OF HAWAII, by and through its **Department of Land and Natural Resources** ("**DLNR**"), whose mailing address is P.O. Box 621, Honolulu, Hawaii 96809.

RECITALS:

A. DLNR is the owner of those certain parcels of land consisting of approximately 9,005 square feet, more or less, situated at the corner of Kili Hau Street and Kakoi Street, Moanalua, Honolulu, Island of Oahu, Hawaii, and identified by Tax Map Key No: (1) 1-1-064:006 (the "**Premises**").

B. On February 14, 2017, DLNR conducted a public auction (the "**Auction**") for a 20-year ground lease (the "**Lease**") over the Premises as described in the published Notice of Sale appearing in the Honolulu Star-Advertiser on December 9, 2016 and revised on December 20, 2016, and the Public Auction Bid Packet issued pursuant to said notice (the "**Public Auction Bid Packet**").

C. Pursuant to the Public Auction Bid Packet, the winning bidder at the Auction will be issued the Lease upon the winning bidder's satisfaction of certain terms and conditions.

D. The Successful Bidder was the winning bidder at the Auction with a minimum annual base rent bid of \$_____.

E. The Successful Bidder has executed an Affidavit stating that the Successful Bidder is not in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or any of its political subdivisions, and that the Successful Bidder has not during the five (5) years preceding the date of the Auction had a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof.

F. The Successful Bidder has paid to DLNR the sum of \$13,675.50 concurrently with its execution of this Memorandum of Lease.

G. DLNR and the Successful Bidder desire to enter into this Memorandum of Lease to confirm that the Successful Bidder was the winning bidder at the Auction and set forth the terms and conditions that must be satisfied by the Successful Bidder prior to DLNR issuing the Lease to the Successful Bidder.

NOW, THEREFORE, the parties hereby agree as follows:

1. Issuance of Lease. The Successful Bidder hereby agrees to rent and lease from DLNR, and DLNR agrees to demise and lease to the Successful Bidder, the Premises for the minimum annual base rent bid stated above in accordance with the terms, covenants, and conditions set forth herein below.

2. Conditions to Issuance of the Lease. DLNR will issue the Lease to the Successful Bidder upon the Successful Bidder's completion of all of the following conditions:

- a. The Successful Bidder shall, within one (1) working day from the date of the Auction pay in cash, or certified check or cashier's check made payable to the Department of Land and Natural Resources:
 - (i) All charges required by law and all costs incurred by DLNR, including but not limited to the cost of survey maps and descriptions, documents, advertising costs related to the Notice of Sale document, and conveyance taxes (if any), all such amounts being non-refundable (collectively referred to as the "**Reimbursable Costs**"); and
 - (ii) The difference between fifty per cent (50%) of the minimum annual base rent bid by the Successful Bidder and the amount paid pursuant to Recital F above. The amounts paid pursuant to this Section 2.a.(ii) and Recital F, above, shall be collectively referred to as the "**Initial Deposit**".
- b. The Successful Bidder shall properly execute and return the Lease to DLNR within thirty (30) calendar days from the date DLNR transmits the Lease to the Successful Bidder.

3. Condition of the Premises; Due Diligence. The Premises shall be leased in an "**as is**" condition, without any representations or warranties made by the State or DLNR as to the condition of the Premises or suitability of the Premises for the use proposed by the Successful Bidder or for any other uses permitted in the Lease. DLNR does not warrant the accuracy of any of the information provided to the Successful Bidder.

The Successful Bidder is solely responsible for conducting its own due diligence. The Successful Bidder shall have sixty (60) calendar days from the date of the auction to conduct a due diligence investigation, determine the suitability of the Premises, and to decide if the Successful Bidder will continue with the lease of the Premises (the "**Due Diligence Period**"). The Chairperson may extend the Due Diligence Period provided any extension(s) of the Due Diligence Period may be conditioned on the Successful Bidder's payment of an extension fee(s). Extension fees shall be in an amount not to exceed ten percent (10%) of the minimum annual base rent successfully bid at the auction per thirty (30) day extension period, or portion thereof. Said fee(s) shall not be refundable or applied against any subsequent rents or other assessments owed by the Successful Bidder.

The Successful Bidder shall be responsible for all costs associated with its due diligence investigation. Copies of all due diligence reports shall be provided to DLNR and shall identify DLNR as an authorized user of said reports.

The Successful Bidder may, as the result of its due diligence investigation, elect not to proceed with the lease of the Premises by providing written notice to the Chairperson prior to the expiration of the Due Diligence Period. In the event the Successful Bidder provides such written notice of its decision not to proceed with the lease, DLNR shall retain the Reimbursable Costs and twenty percent (20%) of the Initial Deposit, return eighty percent (80%) of the Initial Deposit to the Successful Bidder, and neither the Successful Bidder nor DLNR shall have any further rights, duties or obligations regarding the lease for the Premises.

4. Default. In the event the Successful Bidder fails to fulfill any of the above obligations within the stated deadlines, DLNR may, by written notice from the Chairperson, terminate all rights of the Successful Bidder to obtain the Lease and all obligations of DLNR to issue the Lease to the Successful Bidder.

In the event of any termination due to the Successful Bidder's default of any of the obligations set forth in Section 2.a. above, DLNR may, at its option, retain as liquidated damages the Reimbursable Costs (if paid) and twenty percent (20%) of the Initial Deposit (or any portions thereof paid by the Successful Bidder).

In the event of any termination due to the Successful Bidder's default of any of the obligations set forth in Sections 2.b or 2.c. above, DLNR may, at its option or unless otherwise described therein, retain as liquidated damages the Reimbursable Costs and entire Initial Deposit. The retention of said sums shall be in addition to any other rights or remedies to which DLNR may be entitled.

5. Commencement Date of Lease. The commencement date of the Lease shall be no later than thirty (30) calendar days from the date DLNR transmits the Lease to the Successful Bidder for execution pursuant to Section 2 above; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

6. Public Auction Bid Packet. The terms and conditions of the Public Auction Bid Packet by this reference are incorporated herein and made a part hereof; provided, however, that in the event of a conflict between the terms of the Public Auction Bid Packet and this Memorandum of Lease, the terms of this Memorandum of Lease shall control.

7. Review of Lease Document. The Successful Bidder acknowledges that it is responsible for reviewing the Lease document and ensuring full performance of all terms and conditions, some of which require performance within a specific timeframe after the Lease is executed, including but not limited to, the submittal to DLNR of the required performance bond and certificate(s) of insurance.

8. Governing Law. This Memorandum of Lease shall be governed by and construed in accordance with the laws of the State of Hawaii.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease as of the day and year first above written.

Name of Successful Bidder

Name:

Title:

Name:

Title:

Chairperson

Board of Land and Natural Resources

