

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

May 26, 2017

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

Ref: GL S-5661

OAHU

Consent to Amendment No. 1 to the Covenant of Purpose, Use and Ownership Affecting the Kapiolani Community College Culinary Institute of the Pacific as Part of General Lease No. S-5661, University of Hawaii, Lessee; Kapahulu, Waikiki, Honolulu, Oahu; TMK (1) 3-1-042:011

APPLICANT:

University of Hawaii

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kapahulu, Waikiki, Honolulu, Oahu, identified by Tax Map Key: (1) 3-1-042:011, as shown on the attached map labeled **Exhibit A**.

AREA:

7.878 acres, more or less.

ZONING:

State Land Use District: Urban/Conservation  
City and County of Honolulu LUO: F-1/P-2

TRUST LAND STATUS:

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

CURRENT USE STATUS:

General Lease No. S-5661 to University of Hawaii for educational purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, 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." Item 46 states, "Creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

APPLICANT REQUIREMENTS:

None

BACKGROUND:

Pursuant to General Lease No. S-5661 ("Lease"), the University of Hawaii ("UH") leases the subject 7.878-acre State parcel ("Property") for educational purposes. It is a 65-year lease commencing on September 1, 2004, and expiring on August 31, 2069 and the Property is currently a part of the Kapiolani Community College ("KCC") campus. KCC is in the process of constructing the Culinary Institute of the Pacific ("Project") on the Property.

On or about April 14, 2012, UH was awarded a financial assistance grant from the Economic Development Administration ("EDA") in the amount of \$2,416,000 ("EDA Award") to help construct the Project. UH subsequently accepted and signed the EDA Award Agreement. Under the EDA Award Agreement, UH was required to meet certain preconditions in order to receive the funding, including recording a Covenant of Purpose, Use and Ownership ("Covenant") against the Property in favor of EDA. The Covenant prohibits UH, during the 20-year useful life of the Project ("Project Useful Life"), from alienating its leasehold interest in the Property or using the Property for purposes other than that permitted under the EDA Award Agreement. The Board consented to the filing of the Covenant at its meeting on December 13, 2013 (Item D-26). The Covenant was recorded with the Bureau of Conveyances on June 17, 2015. **Exhibit C**.

After the Covenant was recorded, EDA informed UH that in order to release the funds under the EDA Award Agreement, a new or amended covenant was required as the original Covenant did not meet all of EDA's requirements. UH and EDA have since negotiated an Amendment No. 1 to the Covenant, as set forth in **Exhibit D**.

REMARKS

In the original Covenant, UH was restricted from alienating any interest in the Property or using the Property for any purposes other than, and different from, those purposes set forth in the EDA Award Agreement and application submitted by UH to EDA.

EDA is requiring that the Covenant be amended to clarify that pursuant to applicable federal regulations, the Project and the Property may not be used for: (1) inherently religious activities prohibited by applicable federal laws ("Religious Use Restriction") and (2) any purpose that would violate the non-discrimination requirements in 13 C.F.R. 302.20 ("Anti-Discrimination Restriction").

The Religious Use Restriction, as required by 13 C.F.R. 314.10, will be effective during the 20-year Project Useful Life and will subsequently continue for the duration of the Lease term. The Anti-Discrimination Restriction was previously imposed on the Property when it was acquired from the federal government in 2001.

At the expiration of the Project Useful Life, or at any time prior to the end of the Lease term, UH may, in accordance with applicable federal regulations, seek EDA's release of the Religious Use Restriction by paying or reimbursing EDA for the value of EDA's federal interest in the Project and the Property. The Anti-Discrimination Restriction would remain on the Property as it was a condition imposed by the federal government at the time the State acquired the Property.

Staff did not solicit comments from other agencies as the subject request is an amendment to the existing Covenant which had been previously approved by the Board and recorded with the Bureau of Conveyances.

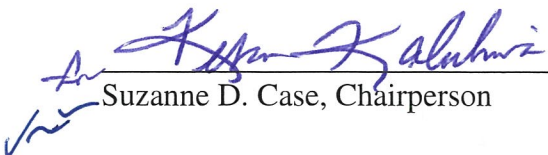
RECOMMENDATION: That the Board consent to the Amendment No. 1 attached as Exhibit D hereto, subject to the following:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. 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.

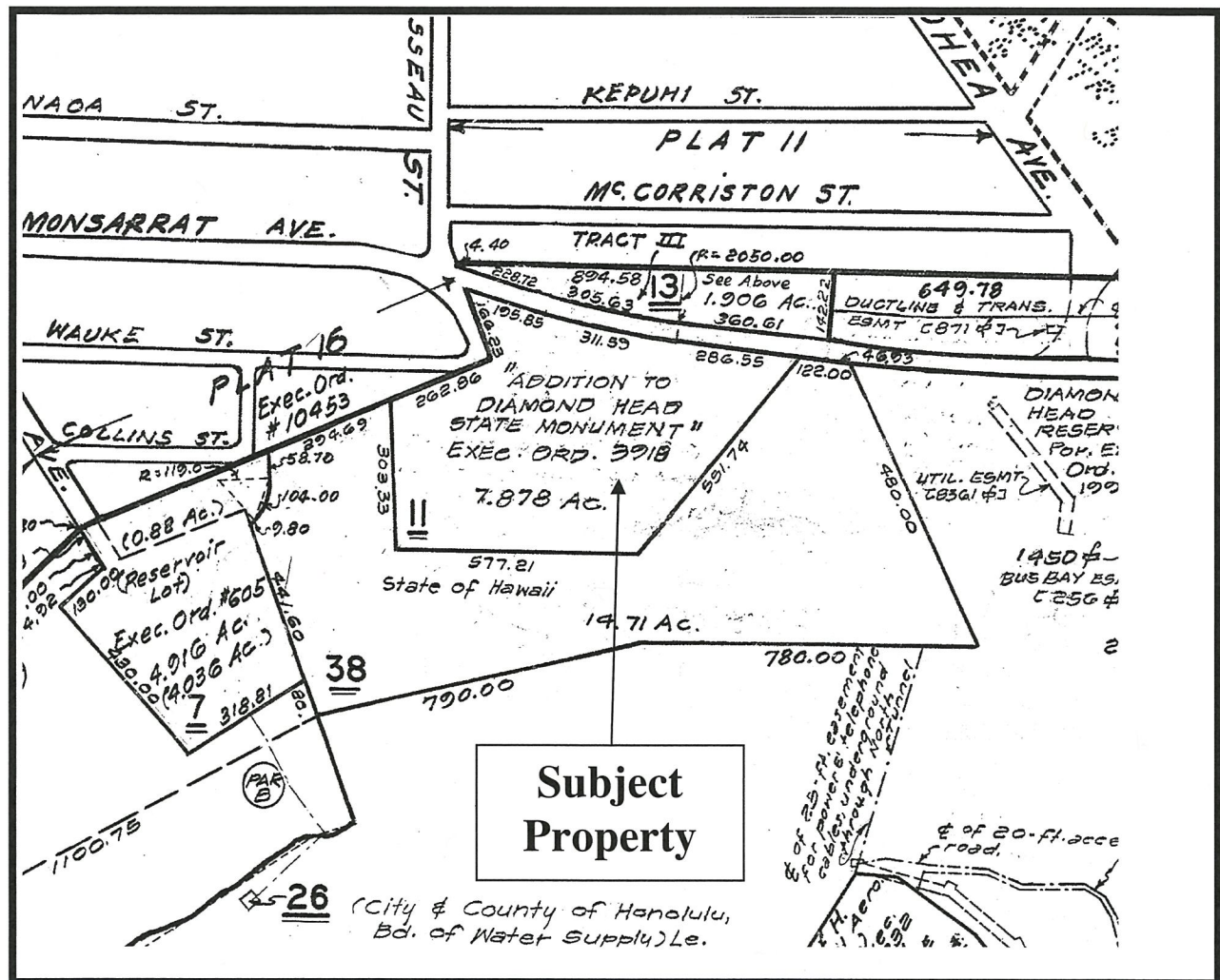
Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson





**TMK (1) 3-1-042:011**

# EXHIBIT A



## EXEMPTION NOTIFICATION

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

Project Title: Consent to Amendment No. 1 to the Covenant of Purpose, Use and Ownership

Project / Reference No.: GL 5661

Project Location: Kapahulu, Waikiki, Honolulu, Oahu; TMK (1) 3-1-042:011

Project Description: Consent to Amendment No. 1 to the Covenant of Purpose, Use and Ownership Affecting the Kapiolani Community College Culinary Institute of the Pacific

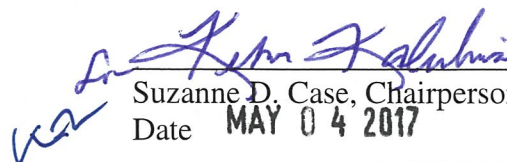
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, 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." Item 46 states, "Creation or termination of easement, covenants, or other rights in structures or land."

The request is triggered by the amendment in the grant documentation required by the federal agency. The lessee is not planning to have any new improvement to the subject area. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: University of Hawaii was consulted and indicated no objections to the request.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
Suzanne D. Case, Chairperson  
Date MAY 04 2017

## EXHIBIT B

RECORDS FOLLOWS:  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
DOCUMENT NO. -- Doc A-56460918  
DATE & TIME -- June 17, 2015 3:29 PM

**LAND COURT** **REGULAR SYSTEM**  
**AFTER RECORDATION, RETURN BY MAIL ( X ) PICK-UP ( )**

Office of Procurement and Real Property Management  
University of Hawai'i  
1400 Lower Campus Road, Room 15  
Honolulu, Hawaii 96822  
Attention: Lynn Nakamasu Phone: 956-2115

**TITLE OF DOCUMENT:**

COVENANT OF PURPOSE, USE AND OWNERSHIP

**PARTIES TO DOCUMENT:**

UNIVERSITY OF HAWAII

UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE,  
ECONOMIC DEVELOPMENT ADMINISTRATION

**PROPERTY DESCRIPTION:**

FORMER CANNON CLUB SITE  
TMK: (1) 3-1-042:011 (Por.)

**LIBER/PAGE:**

**DOCUMENT NO.:**

**TRANSFER CERTIFICATE OF TITLE**

**EXHIBIT "C"**



## COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this 17<sup>th</sup> day of JUNE, 2015, by and between the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawai'i, whose address is 2444 Dole Street, Bachman Hall, Room 202, Honolulu, Hawai'i, 96822 (hereafter with its successors and assigns collectively called "Recipient") and the UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION, whose address is Main Commerce Building, Washington, D.C. 20230 (hereafter with its successors and assigns collectively called "EDA"):

### RECITALS:

WHEREAS, Recipient submitted an application, designated as EDA Award (Project) No. 07-01-06814, for financial assistance pursuant to the Public Works and Economic Development Act of 1965 (Pub. L. 108-373, 42 U.S.C. 3121, et seq.), (hereafter the "Act"); and

WHEREAS, by offer of Award, dated June 15, 2012, EDA offered to Recipient a financial assistance award in the amount \$2,416,000.00 (hereinafter called "Award Amount") to assist in financing the Public Works and Economic Development Facilities Program --Culinary Institute of the Pacific at the Kapi'olani Community College, a University of Hawai'i entity in Honolulu, HI (hereafter called the "Project"); and

WHEREAS, the Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereafter with all improvements thereon collectively called the "Property"); and

WHEREAS, on July 17, 2012, Recipient accepted the Offer of Award (hereafter called "Award Agreement") subject to certain terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations (hereafter "CFR"), Part 314; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereafter collectively called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314, 15 CFR Part 24, and 15 CFR Part 14; and

WHEREAS, under the authority of the Act, EDA is not authorized to permit Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage, or hypothecate the Project to any party without prior approval from EDA, unless EDA is repaid its share of the market value of the Project, as set forth below; and

WHEREAS, Recipient is leasing the Property described in Exhibit "A" attached hereto under that certain State of Hawai'i Department of Land and Natural Resources General Lease





No. S-5661 between the State of Hawai'i, by its Board of Land and Natural Resources ("Land Board"), as lessor, and Recipient, as lessee, dated August 16, 2004 (hereafter the "Lease"); and

WHEREAS, Recipient, as said lessee of the Property under the Lease, agreed to record this Covenant against Recipient's leasehold interest in the Property in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the Property described in Exhibit "A" attached hereto; and

WHEREAS, the Land Board took action and approved this Covenant at its regularly scheduled meeting held on December 13, 2013 (Item D-26); and

WHEREAS, the State of Hawai'i Bureau of Conveyances (hereafter the "Bureau"), which is located at 1151 Punchbowl Street, Room 121, Honolulu, Hawai'i 96813, is the proper office to record this Covenant against Recipient's leasehold interest in the Property, and

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient, Recipient hereby covenants and agrees as follows:

1. Estimated useful life of Project. The estimated useful life of the Project is twenty (20) years as determined by the EDA pursuant to paragraph 11(d) of the Special Award Conditions of the Award Agreement and said twenty (20) year period shall commence running on February 1, 2015 (hereafter "Start Date").

2. Recipient shall not sell, transfer, convey, or mortgage the Property. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with the funds made available through this Award Agreement, nor shall Recipient use the Property for purposes other than the Project Purposes, without the prior written approval of the Assistant Secretary, Economic Development Administration or his/her designee or successor (hereafter the "EDA Assistant Secretary"). Such approval may be withheld until such time as Recipient first pays to EDA the amount of the award funds disbursed or, at the option of the EDA, the federal government's fair share of the Property as provided in the Code of Federal Regulations, Title 13, Part 314. The federal government's fair share of the Property shall be the amount computed by multiplying the percentage of the federal participation in the total cost of the grant program or the Project to the fair market value of the Property at the time of the proposed: (a) conveyance of the Property or (b) use that is not consistent with the Project Purposes.

3. Recipient to compensate EDA for non-Project purposes use or unauthorized conveyance. Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed or mortgaged without the prior written approval of the EDA Assistant Secretary, Recipient will compensate the



federal government in the amount of the grant funds disbursed or at the option of the federal government, the federal government's fair share of the Property as described above.

4. Recipient to record Covenant. Pursuant to 13 CFR 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any portion of the Award Amount or any award funds by EDA under the Award Agreement, Recipient shall execute and place on record against Recipient's leasehold interest in the Property acquired or improved in whole or in part with the funds made available through this Award Agreement, this Covenant of Purpose, Use and Ownership (hereafter the "Covenant"). Recipient further agrees that whenever the Property is sold, leased, or otherwise conveyed pursuant to the CFR, Title 13, Part 314, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership substantially similar to this Covenant. EDA will, in its sole discretion, determine whether the Covenant is satisfactory. EDA may require an opinion of counsel from Recipient confirming that the Covenant is valid and enforceable according to its terms and has been or will be properly recorded.

5. Covenant constitutes a reasonable restraint on alienation. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

6. Covenant runs with the land. This Covenant, upon recordation with the Bureau against Recipient's leasehold interest in the Property, shall run with the land, but shall be effective only during the twenty-year useful life of the Project and said Covenant shall be deemed terminated and of no further force or effect, without any action by Recipient or EDA: (a) from and after February 1, 2035, which is the date that said twenty-year period commencing on the Start Date expires or (b) such other earlier termination date as may be agreed upon between EDA and the Recipient.

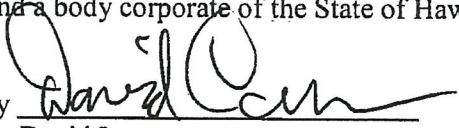
7. Execution of other documents. Recipient will work with EDA to have EDA approve and execute such other documents as may be deemed necessary to effect the proper recordation of the Covenant with the Bureau against the Recipient's leasehold interest in the Property.

[Remainder of page intentionally left blank]  
[Signature page to follow]



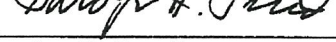
IN WITNESS WHEREOF, Recipient has hereunto set its hand as of the day and year first above written by their duly authorized officer(s). A completed duly recorded copy of this Covenant shall be forwarded to EDA.

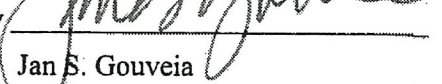
UNIVERSITY OF HAWAI'I, the state university  
and a body corporate of the State of Hawai'i

By   
David Lassner  
Its President

Approved as to form:

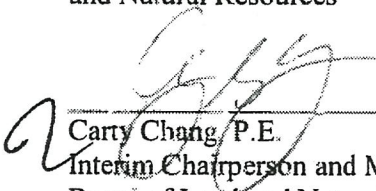
Office of University General Counsel:

By   
Darolyn H. Lendio  
Its Vice President for Legal Affairs  
and University General Counsel


By   
Jan S. Gouveia  
Its Vice President for Administration

Approved:

State of Hawai'i, by its Board of Land  
and Natural Resources

  
Carty Chang, P.E.  
Interim Chairperson and Member  
Board of Land and Natural Resources

Approved as to Form:

  
Deputy Attorney General

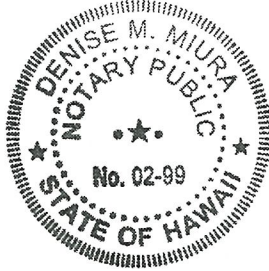
Approved by the Board at its meeting  
held on December 13, 2013, Item D-26





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

On this 17<sup>th</sup> day of JUNE, 2015, before me appeared David Lassner, to me personally known, who being by me duly sworn, did say that he is the President of the University of Hawai'i, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed on behalf of said University of Hawai'i by authority of its Board of Regents, and said David Lassner, as said President, acknowledged said instrument to be the free act and deed of said University of Hawai'i.



Denise M. Miura  
Print Name: Denise M. Miura  
Notary Public, First Circuit  
State of Hawaii  
My Commission Expires: 3-17-18

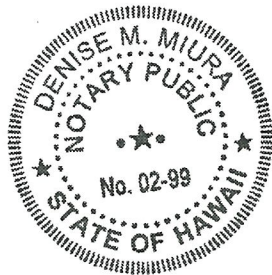


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|---|--------------------|
| Date of Document: <u>JUN 17 2015</u> # Pages: <u>10</u>   |                    |
| or <input type="checkbox"/> Undated at time of notarization   |                    |
| Name: <u>Denise M. Miura 1<sup>st</sup></u> First Circuit   |                    |
| Doc. Description: <u>covenant of Purpose, Use &amp; Ownership btwn. UH and US Dept. of Commerce</u> |                    |
| <u>Denise M. Miura</u>  | <u>JUN 17 2015</u> |
| Notary Signature  | Date               |
| NOTARY CERTIFICATION  |                    |



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

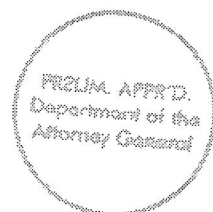
On this 17<sup>th</sup> day of JUNE, 2015, before me appeared Jan S. Gouveia, to me personally known, who being by me duly sworn, did say that she is the Vice President for Administration of the University of Hawai'i, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed on behalf of said University of Hawai'i by authority of its Board of Regents, and said Jan S. Gouveia, as said Vice President for Administration, acknowledged said instrument to be the free act and deed of said University of Hawai'i.



Denise M. Miura  
Print Name: Denise M. Miura  
Notary Public, First Circuit  
State of Hawaii

My Commission Expires: 01-17-18

|  |                    |
|--|--------------------|
| Date of Document: <u>JUN 17 2015</u> # Pages: <u>10</u>  |                    |
| or <input type="checkbox"/> Undated at time of notarization  |                    |
| Name: <u>Denise M. Miura 1st</u> First Circuit   |                    |
| Doc. Description: <u>Covenant of Purpose, Use &amp; ownership btwn UH and US Dept. of Commerce</u> |                    |
| <u>Denise M. Miura</u>   | <u>JUN 17 2015</u> |
| Notary Signature   | Date               |
| NOTARY CERTIFICATION   |                    |





**STATE OF HAWAII**

**SURVEY DIVISION**

**DEPT. OF ACCOUNTING AND GENERAL SERVICES**  
**HONOLULU**

C.S.F. No. 23,366

September 24, 2002

**FORMER CANNON CLUB SITE**

**Kapahulu, Waikiki, Honolulu, Oahu, Hawaii**

Being a portion of Land Patent 8165, Part B, Land Commission Award 8559-B, Apana 32 to William C. Lunalilo conveyed by The Trustees of the William C. Lunalilo Estate to the Minister of Interior by deed dated June 17, 1884 and recorded in Liber 88, Pages 223 and 224 (Land Office Deed 136), conveyed to the State of Hawaii by the United States of America by deed dated March 30, 2001 and recorded in Document No. 2001-050474 (Land Office Deed S-28444).

Being also all of Diamond Head State Monument, Governor's Executive Order 3918.

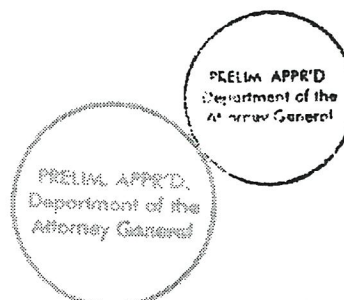
Beginning at the east corner of this parcel of land and on the south side of Diamond Head Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LEAHI" being 3559.09 feet North and 2193.95 feet East, thence running by azimuths measured clockwise from True South:-

1. 34° 55' 551.74 feet along Diamond Head State Monument,  
Part 1, Governor's Executive Order 3642;
2. 85° 00' 577.21 feet along Diamond Head State Monument,  
Part 1, Governor's Executive Order 3642;

**EXHIBIT "A"**

-1-

EXHIBIT A  
Page 1 of 3





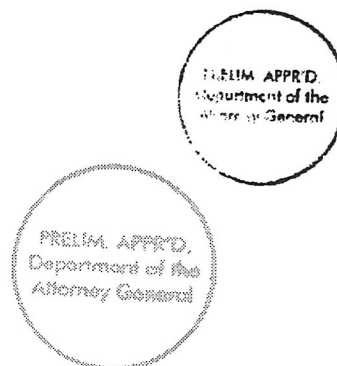
September 24, 2002

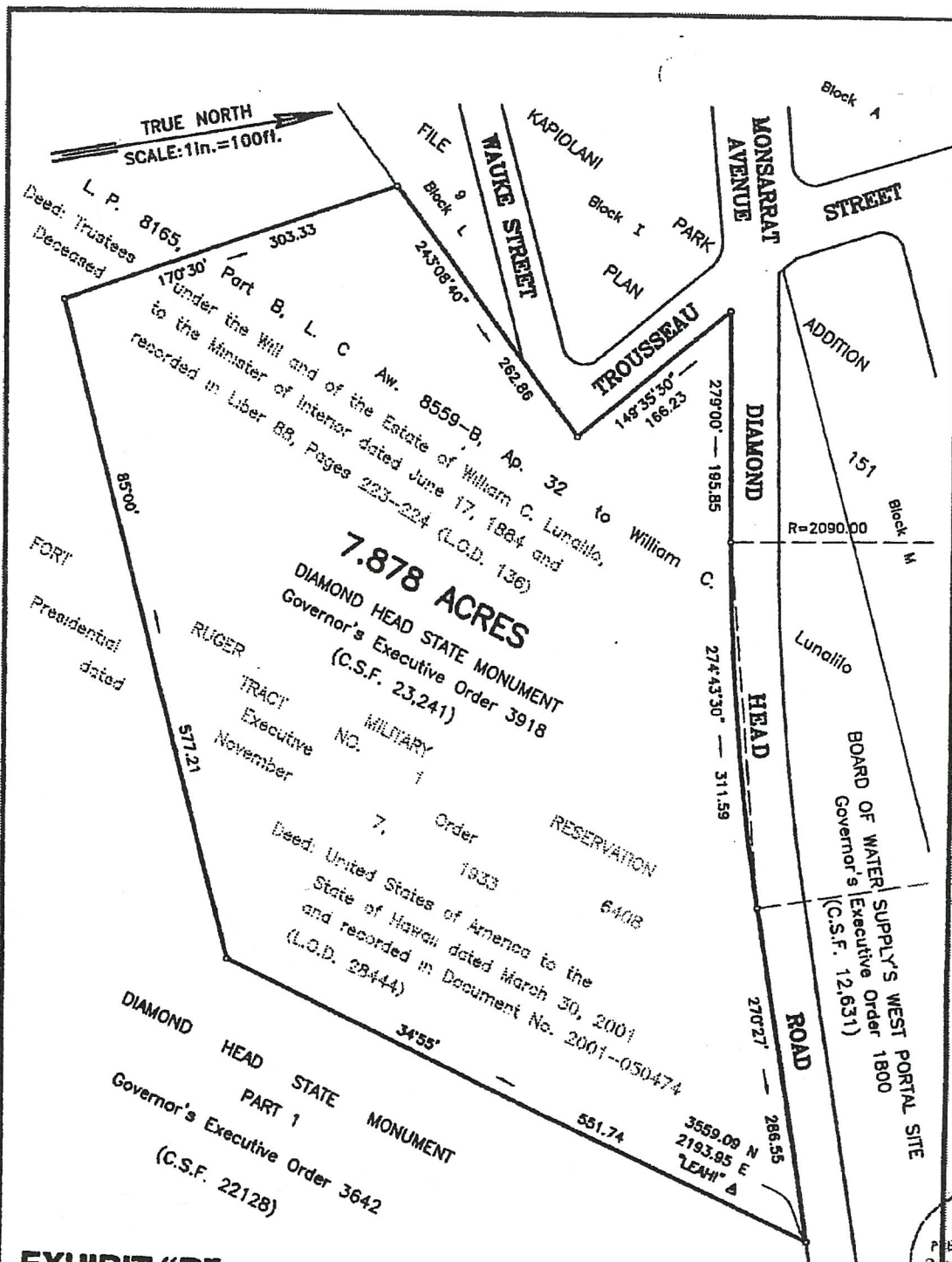
3. 170° 30' 303.33 feet along Diamond Head State Monument,  
Part 1, Governor's Executive Order 3642;
4. 243° 08' 40" 262.86 feet along Lot 9, Block L of Kapiolani Park  
Addition, File Plan 151 and the south side  
of the intersection of Wauke Street and  
Trousseau Street;
5. 149° 35' 30" 166.23 feet along the northeast side of Trousseau  
Street;
6. 279° 00' 195.85 feet along the south side of Diamond Head  
Road;
7. Thence along the south side of Diamond Head Road on a curve to the left with a  
radius of 2090.00 feet, the chord azimuth  
and distance being:  
274° 43' 30" 311.59 feet;
8. 270° 27' 286.55 feet along the south side of Diamond Head  
Road to the point of beginning and  
containing an AREA OF 7.878 ACRES.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Reid K. Siarot  
Reid K. Siarot  
Land Surveyor gm

Compiled from CSF 23241  
and other Govt. Survey  
Records.





## EXHIBIT "B" FORMER CANNON CLUB SITE

Kapahulu, Waikiki, Honolulu, Oahu, Hawaii

JOB 0-401(2001)  
C. BK.

Scale: 1 inch = 100 feet

REDUCED  
NOT TO SCALE

TAX MAP: 3-1-42: 11

C.S.F. NO. 23,386

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

FDR September 24, 2002

EXHIBIT A  
Page 3 of 3

PRELIM. APPR'D.  
Department of the  
Attorney General

**AMENDMENT NO. 1 TO**  
**COVENANT OF PURPOSE, USE AND OWNERSHIP**

THIS AMENDMENT NO. 1 TO COVENANT OF PURPOSE, USE AND OWNERSHIP ("1<sup>st</sup> Amendment") dated this \_\_\_\_\_ day of \_\_\_\_\_, by and between the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawai'i, whose address is 2444 Dole Street, Bachman Hall, Room 202, Honolulu, Hawai'i, 96822 (hereafter with its successors and assigns collectively called "Recipient") and the UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION, whose address is Main Commerce Building, Washington, D.C. 20230 (hereafter with its successors and assigns collectively called "EDA"):

RECITALS:

WHEREAS, the EDA, pursuant to the Award Agreement offered to make available the Award Amount (\$2,416,000.00) to assist in financing the Project; and

WHEREAS, the Recipient, as a condition of the Award Agreement recorded in the State of Hawai'i Bureau of Conveyances, the appropriate office for the recording of public records affecting real property ("Bureau of Conveyances"), a Covenant of Purpose, Use, and Ownership on June 17, 2015 as Document No. 56460918 (hereafter the "1<sup>st</sup> Covenant"); and

WHEREAS, the Recipient is leasing the Property from the Land Board under the Lease; and

WHEREAS, the Recipient is constructing the Project upon a portion of the Property; and

WHEREAS, the Project is part of a larger multi-phase facility ("Facility") and the Project constitutes a portion of the first phase of the Facility, specifically the "Asian & Multi-Function Lab" building; and

WHEREAS, in addition to the construction of the "Asian & Multi-Function Lab" building, the first phase of the Facility also includes a second cooking laboratory, an outdoor cooking area, several support buildings, roadways, parking areas, accessways, utilities, landscaping, and other required grading and site preparation work; and

WHEREAS, the other planned phases of the Facility include a competition cooking theatre and a real-time restaurant training operation; and

WHEREAS, the improvements to the Property funded by the EDA Award, including matching funds, are limited to the "Asian & Multi-Function Lab" building which will consist of approximately 6,634 square feet and is identified and generally depicted in Exhibit B attached hereto and incorporated herein by reference, together with certain equipment contained therein that are purchased in whole or in part with funds made available through this Award Agreement, all of which constitute a portion of the first phase of the Facility; and

**EXHIBIT "D"**



WHEREAS, the 1<sup>st</sup> Covenant restricted Recipient from alienating any interest in the Property or using the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore; and

WHEREAS, Recipient recorded in the Bureau of Conveyances the 1<sup>st</sup> Covenant restricting use of the Property to Project Purposes ("Project Purposes Restriction") against Recipient's leasehold interest in the Property so as to constitute notice to all persons of the Project Purposes Restriction on title to and use of the Property and the Project; and

WHEREAS, EDA and Recipient seek flexibility in this specific and individually unique circumstance to amend the 1<sup>st</sup> Covenant to recognize certain limitations described in 13 C.F.R. 314.10 regarding the release of covenants relating to the use of the Project and the Property: (a) for inherently religious activities prohibited by applicable federal laws ("Religious Use Restriction") and (b) for any purpose that would violate the non-discrimination requirements in 13 C.F.R. 302.20 ("Anti-Discrimination Restriction") (the Religious Use Restriction and the Anti-Discrimination Restriction are collectively the "2<sup>nd</sup> Covenant"); and

WHEREAS, EDA and the Recipient desire that Recipient, as a pre-condition of EDA's release of the 1<sup>st</sup> Covenant, including the Project Purposes Restriction, commit to amending the Covenant to: (a) require that the Religious Use Restriction, as clarified in this 1<sup>st</sup> Amendment will continue to be effective after the expiration of the Project Useful Life (as defined herein) and for the duration of the Lease and (b) confirm that the Anti-Discrimination Restriction remains in effect,

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and the Recipient, the Recipient and EDA agree that the 1<sup>st</sup> Covenant is hereby amended to confirm Recipient's agreement to the following:

1. Defined Terms. All terms defined in the 1<sup>st</sup> Covenant with initial capital letters will have the same meaning within and when used in this 1<sup>st</sup> Amendment.

2. Estimated useful life of Project. Paragraph 1 (Estimated useful life of Project) is hereby deleted and amended to read as follows:

"1. Estimated useful life of Project. The estimated useful life of the Project is twenty (20) years as determined by the EDA pursuant to paragraph 11(d) of the Special Award Conditions of the Award Agreement ("Project Useful Life") and said Project Useful Life shall commence running on February 1, 2015 (hereafter "Start Date")."

3. Execution of other documents. Paragraph 7 will hereby be moved to be the last paragraph in the Covenant, as amended, and renumbered as paragraph 12 (Execution of other documents).

4. 2<sup>nd</sup> Covenant. The following will be added as Paragraph 7 (2<sup>nd</sup> Covenant):

“7. 2<sup>nd</sup> Covenant. The following covenant will remain in effect after February 1, 2035:

‘After February 1, 2035, the Property shall not be used: (a) for inherently religious activities prohibited by applicable federal laws (“Religious Use Restriction”) or (b) for any purpose that would violate the non-discrimination requirements in 13 C.F.R. 302.20 (“Anti-Discrimination Restriction”) (the Religious Use Restriction and the Anti-Discrimination Restriction are collectively the “2<sup>nd</sup> Covenant”).’”

5. Release of Covenant. The new paragraph 8 shall be added and read as follows:

“8. Release of Covenant. The Recipient and EDA acknowledge that at the end of the Project Useful Life, the Recipient may request a release of the Federal Interest and the 1<sup>st</sup> Covenant in accordance with 13 CFR part 314, which release will not be withheld except for good cause, as determined in EDA’s sole discretion; provided, however, that in accordance with 13 CFR part 314, the 2<sup>nd</sup> Covenant remains in place and runs with the land. Release of the 1<sup>st</sup> Covenant or the 2<sup>nd</sup> Covenant without EDA permission is a violation of 13 CFR part 314 and may require repayment of the Federal Share.”

6. Enforcement of Religious Use Restriction. The following will be added as Paragraph 9 (Enforcement of Religious Use Restriction):

“9. Enforcement of Religious Use Restriction in 2<sup>nd</sup> Covenant. After February 1, 2035, should the Property be used for inherently religious activities prohibited by applicable federal laws, the Federal government shall be compensated for the Federal Share, as determined by EDA in accordance with the applicable federal laws and regulations.”

7. Release of Religious Use Restriction. The following will be added as Paragraph 10 (Release of Religious Use Restriction):

“10. Release of Religious Use Restriction. So long as the possession and use of Project and the Property has been in compliance with the Religious Use Restriction, then before the expiration (August 31, 2069) or sooner termination of the Lease, the Recipient will request removal of the Religious Use Restriction with repayment of the Federal Share, which shall be determined by EDA in accordance with the applicable federal laws and regulations. As used herein, “**Federal Share**” shall have the same meaning as in 13 CFR 314.5 and generally means the amount computed by multiplying the percentage of the federal participation in a project to the fair market value of any property attributable to EDA’s participation in the project as of the date of the event with respect to which the Federal Share is being calculated, as determined by EDA pursuant to the Regulations. In this case, the property attributable to EDA’s participation in this Project is limited to the “Asian & Multi-Function Lab” building identified and generally depicted in the attached Exhibit B and certain equipment therein purchased in whole or in part with funds made available through this Award Agreement.”

8. Continuing Anti-Discrimination Restriction. The following will be added



as Paragraph 11 (Continuing Anti-Discrimination Restriction):

“11. Continuing Anti-Discrimination Restriction. At all times there remains a continuing covenant on the land for non-discrimination as recorded in the Quitclaim Deed from the United States of America, acting by and through the Administrator of General Services, as grantor, and the State of Hawaii, as grantee, dated March 30, 2001, and recorded on April 9, 2001 as Document Number 2001-050474 (“Quitclaim Deed Covenant”). EDA and the Recipient agree that this Quitclaim Deed Covenant meets the Anti-Discrimination Restriction requirement of the 2<sup>nd</sup> Covenant in that it prohibits the use of the Property for any purpose that would violate the non-discrimination requirements contained in 13 CFR 302.20. As such, EDA should be advised of any action to modify the Quitclaim Deed Covenant or any potential violations.”

9. No other changes. Except for the changes described in this 1<sup>st</sup> Amendment, all other terms and conditions of the 1<sup>st</sup> Covenant shall remain unchanged, unaltered, and in full force and effect.

IN WITNESS WHEREOF, the Recipient and the EDA have, by their duly authorized officers, executed the 1<sup>st</sup> Amendment as of the day and year first above written. A completed duly recorded original or certified copy of this 1<sup>st</sup> Amendment shall be forwarded to EDA.

EDA:

Economic Development Administration, U.S.  
Department of Commerce:

Approved:

\_\_\_\_\_  
Katherine Chekouras  
Regional Counsel, Seattle Regional Office  
U.S. Department of Commerce  
Economic Development Administration

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RECIPIENT:

UNIVERSITY OF HAWAI‘I, the state university  
and a body corporate of the State of Hawai‘i

Approved as to Form:

Office of University General Counsel:

\_\_\_\_\_  
Bruce Y. Matsui  
Its Associate General Counsel

By \_\_\_\_\_  
Jan S. Gouveia  
Its Vice President for Administration



Approved for recordation purposes:

State of Hawai'i, by its Board of Land  
and Natural Resources

\_\_\_\_\_  
Suzanne Case  
Chairperson and Member  
Board of Land and Natural Resources

Approved as to Form:

Approved by the Board at its meeting  
held on \_\_\_\_\_, Item \_\_\_\_\_

\_\_\_\_\_  
Linda L. Chow  
Deputy Attorney General

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

ss.

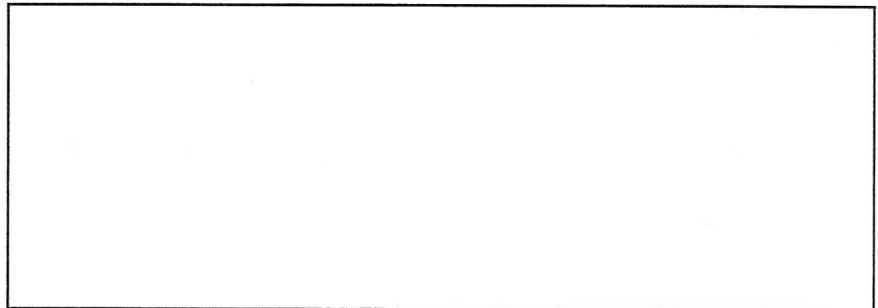
On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2017, before me, a notary Public in the State of Washington, personally appeared A. Leonard Smith, Regional Director for the UNITED STATES DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_



)

On this \_\_\_\_ day of \_\_\_\_\_, before me appeared Jan S. Gouveia, to me personally known, who being by me duly sworn, did say that she is the Vice President for Administration of the University of Hawai'i, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed on behalf of said University of Hawai'i by authority of its Board of Regents, and said Jan S. Gouveia, as said Vice President for Administration, acknowledged said instrument to be the free act and deed of said University of Hawai'i.

My Commission Expires:

(Seal)