

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

July 13, 2018

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

PSF No.: 18HD-060  
HAWAII

Amendment of General Lease No. S-5513, Hospice of Hilo, Lessee, Piihonua, South Hilo, Hawaii, Tax Map Key: (3) 2-3-032:011.

The purpose of the amendment is to set the annual rent for the remainder of the lease term, from October 1, 2017 until the expiration of the lease on September 30, 2062, at minimum rent, as previously established by the Board.

APPLICANT:

Hospice of Hilo, dba Hawaii Care Choices, a Hawaii, private, non-profit Internal Revenue Code Section 501(c)3 corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Piihonua situated at South Hilo, Hawaii identified by Tax Map Key: (3) 2-3-032:011, as shown on the attached map labeled Exhibit A.

AREA:

2.134 acres, more or less.

ZONING:

State Land Use District: Urban  
County of Hawaii CZO: RS-10

TRUST LAND STATUS:

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

CHARACTER OF USE:

Hospice and allied purposes.

LEASE TERM:

Sixty-Five (65) years, commencing on October 1, 1997 and expiring on September 30, 2062.

ANNUAL RENT:

\$480.00 per annum, from October 1, 2007 to September 30, 2017.<sup>1</sup>

RENTAL REOPENINGS:

At the 10<sup>th</sup>, 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup>, 50<sup>th</sup> and 60<sup>th</sup> years of the lease term.

DCCA VERIFICATION:

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

BACKGROUND:

At its meeting of January 26, 1996, under agenda item F-6, the Board approved the direct issuance of a 65-year lease to Hospice of Hilo, a Hawaii private, non-profit Internal Revenue Code Section 501(c)3 corporation (Lessee), for hospice and allied purposes. General Lease No. S-5513 (GLS-5513) commenced on October 1, 1997 and expires on September 30, 2062. For the initial 10 years of the lease, the annual rent was set at \$730, which the lease states was twenty-five percent (25%) of the fair market value rent.

The lease originally provided that subsequent rent reopenings were to be at fair market rental at the time of reopening. However, to be consistent with the original 1996 Board action approving the lease, the lease was amended on August 16, 2006 to provide that rent for the entire term is to be nominal, with “nominal” being defined as twenty-five percent (25%) of the fair market value rent as determined by independent appraiser, subject to review and approval by the Chairperson. The amendment also specified that the Lessee is to pay for the appraisal upon reopening.

At the first rental reopening effective October 1, 2007, an independent appraiser determined the nominal rent under the lease to be \$6,800 per annum for the next ten years

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<sup>1</sup> Minimum Rent Policy: The current minimum rent is set at \$480.00 per annum for dispositions with recurring payments, as approved by the BLNR at its meeting of May 13, 2005, under agenda item D-19.

of the lease term. Lessee objected to this rent, and at its meeting of March 23, 2007, item D-2, as amended at its meeting of May 11, 2007, item D-4, the Board considered Lessee's request for reconsideration of rent under GLS-5513. The Board reviewed statutory authority under which nominal rent to eleemosynary organizations is authorized:

§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 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.

The Board then discussed its adoption of the minimum rent policy its meeting of May 13, 2005, under agenda item D-19, which provides in part that the minimum rent for leases be no less than \$480 per year. The Board approved Lessee's request and set the rent under GLS-5513 at \$480 per year for the period October 1, 2007 to September 30, 2017. A second lease amendment dated June 1, 2007 was thereafter executed to memorialize the Board action.

At its meeting of August 28, 2009, under agenda item D-10, the Board approved a third amendment of lease to allow mortgaging of the leasehold premises with Board consent. A third amendment of lease dated August 19, 2010 was executed to memorialize the Board approval regarding mortgages. At its meetings of October 25, 2013, item D-3, and December 13, 2013, item D-13, the Board consented to a sublease of the premises to allow the installation of a photovoltaic system on the premises, and approved a fourth lease amendment to authorize subleasing. The photovoltaic system was installed to lower Lessee's electrical costs. A fourth amendment of lease to allow subleasing was executed with an effective date of February 5, 2014.

REMARKS:

By letter dated March 1, 2018, (attached as Exhibit B), Lessee requested the approval of minimum rent of \$480.00 per annum for the second rent reopening period covering the period October 1, 2017 to September 30, 2027. In recent years, the Board has scrutinized minimum rent requests more closely, requiring the applicant to provide information on its operations, services to the community at large, program measurements, budget and funding as part of minimum rent justification. Lessee has provided that information in the attached letter (Exhibit B).

In summary, Lessee explains that it serves a geographic area of over 2,000 square miles and over 1,000 individuals a year, their families and the community. Lessee reports it has grown from a largely volunteer-based program with an annual budget of \$250,000 to a



structured Medicare program with 86 staff members and approximately 70 volunteers, with a current budget above \$7,000,000. In 2018, budgeted revenue is \$7,363,525 and expenses are \$7,840,926. Lessee explains that the loss of 6.48% is due to palliative and hospice care not being fully covered by reimbursements, and in the case of bereavement care – not covered at all, making the support of donors and foundations, and the County and State essential to fully meet the needs of the chronically/terminally ill and those who love and later grieve for them. Lessee provides community benefits in the form of palliative care, hospice care and bereavement care in East and South Hawaii.

Lessee has been compliant with all lease terms and conditions in the past ten (10) years. Although there have been a couple defaults for liability insurance, they were all cured in the time allowed.

Staff is recommending that the rent be set at minimum rent, as may be established by the Board from time to time, through the end of the lease term. The current lease provision requires an appraisal be conducted every ten years. Although the lease, as amended, purports to place the cost of the appraisal on the Lessee, the Department of the Attorney General has since determined for other leases that the cost of a reopening appraisal must be borne by the State under Section 171-17, HRS. It does not make financial sense for the State to procure an appraisal when the market rent must be discounted by 75% pursuant to the lease. To reduce staff time and administrative costs of rent reopenings for this lease, staff suggests that the lease be amended to provide that the rent for the remaining term will be the minimum rent established by the Board from time to time (currently \$480 per annum). The specific amendments proposed are noted below.

Page 1 of GLS-5513 provides in part that:

The annual rental shall be nominal, with nominal being defined as twenty-five percent (25%) of the fair market annual lease rental as determined by independent appraisal, subject to review and approval by the Chairperson.

Staff recommends this language be deleted in its entirety and replaced with the following:

The annual rental shall be the minimum rent established from time to time by the Board for eleemosynary organizations pursuant to Section 43.1, HRS, as may be amended. As of October 1, 2017, the minimum rent approved by the Board is FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00) per annum.

Paragraph B of GLS-5513, relating to Rental Reopening Periods, states:

B. The annual rental reserved shall be reopened and redetermined as of the day following the expiration of the tenth (10<sup>th</sup>), twentieth (20<sup>th</sup>), thirtieth (30<sup>th</sup>), fortieth (40<sup>th</sup>), fiftieth (50<sup>th</sup>), and sixtieth (60<sup>th</sup>) years of the term.

Staff recommends that this provision be deleted as rental reopenings will no longer be

required under the lease.

Paragraph C of GLS-5513, relating to Rent Determination, states:

“C. Determination of rental upon reopening of the annual rental. The annual rental shall be nominal, with nominal being defined as twenty-five percent (25%) of the fair market annual lease rental as determined by independent appraisal, subject to review and approval by the Chairperson. The cost of the appraisal shall be the responsibility of the Lessee. 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 paid for by the Lessee, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair marked rental as determined by the 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 the Lessor’s appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by the Lessor’s appraiser shall be deemed to have been accepted by the Lessee and shall be the fair market rental as the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee’s appraiser shall complete his appraisal and forty-five (45) days from the date of the Lessee’s appointment of the appraiser.

The two appraisers shall review each other’s reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraiser shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.”

Staff recommends that Paragraph C be deleted in its entirety since for the remaining term of the lease, the annual rent will be minimum approved by the Board for eleemosynary organizations.

RECOMMENDATION:

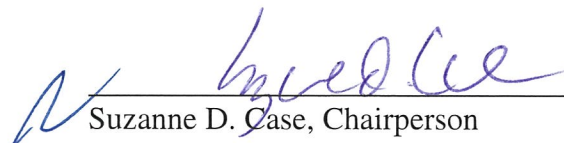
That the Board:

1. Amend General Lease No. S-5513, as amended, to Hospice of Hilo, Lessee, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - 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,

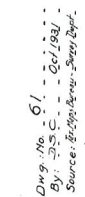
  
\_\_\_\_\_  
Dan K. Gushiken  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson



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**Exhibit A**  
**Page 1 of 2**



**GLS-5513 (Hospice of Hilo)**  
**Piihonua, South Hilo, Hawaii, TMK: (3) 2-3-032:011**





Formerly  
**HOSPICE of HILO**

1011 Wai'anuenue Avenue  
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March 1, 2018

Mr. Dan K. Gushiken, Land Agent  
State of Hawaii  
Department of Land and  
Natural Resources, Land Division  
75 Aupuni Street Room 204  
Hilo, Hawaii 96720

2018 MAR -5 P 12: 11

RECEIVED  
LAND DIVISION  
HILO, HAWAII

**Subject: Request to continue receiveing minimum rent charge for rental period (10/1/2017 – 9/30/2027) under General Lease No. S-5513 to Hospice of Hilo dba Hawai'i Care Choices, Lessee situated at Piihonua, South Hilo, Hawaii, TMK: (3) 2-3-032:011.**

Dear Mr. Gushiken,

Hospice of Hilo, dba Hawai'i Care Choices (HiCare), a private, non-profit 501(c) 3 agency, has compassionately served the palliative, hospice and bereavement needs of the east and south portions of Hawai'i County since 1983, a geographic area of over 2000 square miles. HiCare serves over 1000 individuals a year, their families and the community, with a proven track record of quality care and support. Over the last 35 years the organization has grown from a largely volunteer-based program, with an annual budget of \$250,000 to a structured Medicare program with 86 staff members and approximately 70 volunteers, with a current budget above \$7million.

As of January 2018, Hospice of Hilo changed its public-facing name to Hawai'i Care Choices (HiCare) to better reflect the organization's broader scope of services. Hospice continues to be a core service offering, but meeting community needs in the past ten years has meant adding services that go beyond hospice care. With the addition of our Community-Based Palliative Care Program – Kupu Care, and other non-hospice services planned for the future, our new name, Hawai'i Care Choices more correctly communicates who we are.

**In 2018 Hospice of Hilo, dba Hawai'i Care Choices projects \$7,363,525 in operating revenue.** Over 68% of this revenue is from Medicare reimbursement for services provided to patients and their families, with 17% from commercial insurance, and the remaining 15% from Medicaid, physician services and self-pay.

**Our budgeted total operational expenses for 2018 are \$7,840,926,** a loss of 6.48% due to palliative and hospice care not being fully covered by reimbursements, and in the case of bereavement care – not covered at all, making the support of donors and foundations, and the County and State essential to fully meet the needs of our chronically/terminally ill and those who love, and later grieve for them.

**Community Benefit – In 2017 HiCare provided:**

- **PALLIATIVE CARE:** to **127 patients** in our Community-Based Palliative Care Program – Kupu Care, giving an extra layer of clinical and emotional support to seriously ill patients. Data from the second year of service, for Congestive Heart Failure (CHF) and Cancer patients showed a **79% overall reduction in ER visits, a 78% overall decrease in hospital admission rates, and a 75% overall decrease in ICU days,** when compared to patient experience before palliative care services. Also, HiCare launched (November 2017) its Transitions of Care Services

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Mr. Dan K. Gushiken  
Page 2  
March 1, 2018

with HHSC East Hawai'i Region to improve care for Hilo Medical Center patients moving from inpatient status to home or other care settings. (11 patients served since November 2017)

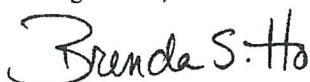
- **HOSPICE CARE:** to **563 patients**, of which 70% were elderly and/or low-income, in their homes or inpatient care center, ensuring every individual was able to die in a dignified way, surrounded by their loved ones. **161** received comprehensive inpatient care at the Pōhai Mālama Care Center.
- **BEREAVEMENT CARE:** to **560 individuals** from within HiCare programs and outside the community, who received over **3177 hours** (1807 sessions) of free grief support services. Of these individuals served, **91** were children.

HiCare serves a market with a high population of Medicare enrollees, many of whom are dually eligible for Medicaid. As our island's senior population continues to grow, and health care focus shifts from acute to chronic illnesses, the need to change from one-time interventions that correct a single problem to the ongoing management of multiple diseases, disabilities, and complex social issues increases.

It is Hospice of Hilo, dba Hawai'i Care Choices' hope that the State continues its tradition of visionary leadership in healthcare by pledging its continued support behind this model of care which positively affects the health and well-being of the residents of Hawai'i County. In a recent vision report from Med-Quest Hawaii 'Ohana Nui Project Expansion (HOPE) Program outlines, "the health and well-being of individuals with complex needs must be addressed in order to begin to bend the cost curve."

Any increase in lease rent to **TMK: (3) 2-3-032:011** will directly and adversely impact patients and families in East Hawai'i, lessening our ability to provide the care they so deeply need. Therefore, Hospice of Hilo, dba Hawai'i Care Choices humbly requests the granting of the minimum rent charge for rental period **(10/1/2017 – 9/30/2027)** under **General Lease No. S-5513 to Hospice of Hilo dba Hawai'i Care Choices.**

In gratitude,



Brenda S. Ho  
Chief Executive Officer