

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

August 23, 2019

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

KAUAI

Amend Prior Board Action of May 11, 2018, Item D-1, Amend Prior Board Action of July 28, 2017, Item D-10, Consent to Assignment of Fifty Percent (50%) Interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Lessee under General Lease No. S-4649, from Albert Ficker, Assignor, to Chester Hunt, Assignee; Acknowledgment that Lessee under General Lease No. S-4649 Will Thereby Become Chester Hunt, as Tenant in Severalty; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003;

The purpose of the amendment is to: (i) delete the portion of the Board approval stating that Chester Hunt will become the lessee under the lease, and instead confirm that the lessee will remain Ficker and Hunt, a Hawaii Partnership; and (ii) address the effect of a March 20, 1995 Extension of General Lease No. S-4649 (1995 Extension), and to specify that even though the extension incorporated a lease assignment premium provision into the lease, that provision and others in the 1995 Extension are unenforceable because they constitute an improper amendment of a public auction lease. Staff recommends an Amendment of the 1995 Extension to Eliminate all Terms and Conditions Therein That Are Inconsistent with General Lease No. S-4649 as Sold at Public Auction (except for the increase in the duration of the lease);

After-the-fact Consent to Sublease under General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Sublessor, to United States Postal Service, Sublessee; Approve 20-Year Extension of Lease Term, General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Lessee; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003.

The purpose of this amendment is to replace the Board-approved Recommendation in item 4b with “b. Ficker & Hunt, a Hawaii Partnership, shall complete the improvements as proposed and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2019, or the lease extension shall be subject to cancellation;”. This amendment will extend the deadline for the completion of the proposed improvements to give the Lessee more time.

BACKGROUND:

The Board action July 28, 2017, Item D-10, approved Chester Hunt’s acquisition of Albert Ficker’s 50% interest in the Partnership, and then noted that Mr. Hunt would become the lessee under the lease because the Partnership had been dissolved.

Since the date of the Board action, Mr. Hunt re-registered the Partnership and intends to maintain the Partnership as the lessee under the lease. The prior Board action needed to be amended to clarify that the Partnership will continue to be the lessee despite Mr. Hunt’s acquisition of 100% of the Partnership interest.

General Lease No. S-4649 was also set to expire on May 15, 2018 and the Lessee requested a 20-year lease extension pursuant to Section 171-36, HRS, to amortize the cost of proposed improvements to the property. The improvements included roof replacement, reconstruction of a portion of the building walls, and reconstruction of the concrete apron connecting the parking lot to the road.

At its meeting of July 10, 1981, under agenda Item F-20, the Board consented to the initial sublease to USPS for a period of 10 years commencing on July 25, 1983 and ending on June 30, 1993, with four 5-year options to extend, which were all exercised. The exercised option extended the approved sublease term to June 30, 2013.

USPS continued to occupy the property after June 30, 2013 under a lease between the Partnership and USPS dated June 23, 2013, which was not presented to the Board for consent. An after-the-fact consent to the sublease was therefore needed and had to be processed in conjunction with the lease extension request.

The Board action May 11, 2018, Item D-1, approved as amended amending prior Board

Action of July 28, 2017, Item D-10; After-the-fact Consent to Sublease under General Lease No. S-4649, Ficker & Hunt, as Sublessor, to United States Postal Service, as Sublessee; 20-Year Extension of Lease Term of General Lease No. S-4649. The Board amended the recommendation section by: (1) adding in recommendation 1a (a) that Ficker and Hunt shall come into good standing with the State Department of Commerce and Consumer Affairs within ninety (90) days of May 11, 2018; and (2) deleting recommendation 1(b); and (3) adding a requirement that the lease rent be reopened at fair market value (i.e., unimproved land) for the extended period. See Exhibit A.

Ficker & Hunt became in good standing with the State Department of Commerce and Consumer Affairs within the required time period and currently remains in good standing. In addition, rent was reopened at fair market value and accepted by Ficker & Hunt.

REMARKS:

According to Recommendation 4b of the Board action May 11, 2018, Item D-1, the Lessee was given a deadline of June 1, 2019 to complete the proposed improvements and provide staff with receipts to verify payment for the improvements. As of this date the Lessee's contractor has completed most of the improvements but is still working on the roof and siding replacement. The Lessee estimates that it might take another month or more for the contractor to complete the work. Staff recommends extending the deadline for the improvements to the end of the year, December 31, 2019, to give the Lessee enough time to complete the improvements.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of May 11, 2018, under agenda item D-1 by replacing the Board-approved recommendation in item 4b with:

“b. Ficker & Hunt, a Hawaii Partnership, shall complete the improvements as proposed and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2019, or the lease extension shall be subject to cancellation;”

2. All terms and conditions listed in its May 11, 2018 approval to remain the same.

Respectfully Submitted,


Kurt Yasutake
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



AMENDED

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

May 11, 2018

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

KAUAI

Amend Prior Board Action of July 28, 2017, Item D-10, Consent to Assignment of Fifty Percent (50%) Interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Lessee under General Lease No. S-4649, from Albert Ficker, Assignor, to Chester Hunt, Assignee; Acknowledgment that Lessee under General Lease No. S-4649 Will Thereby Become Chester Hunt, as Tenant in Severalty; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003;

The purpose of the amendment is to: (i) delete the portion of the Board approval stating that Chester Hunt will become the lessee under the lease, and instead confirm that the lessee will remain Ficker and Hunt, a Hawaii Partnership; and (ii) address the effect of a March 20, 1995 Extension of General Lease No. S-4649 (1995 Extension), and to specify that even though the extension incorporated a lease assignment premium provision into the lease, that provision and others in the 1995 Extension are unenforceable because they constitute an improper amendment of a public auction lease. Staff recommends an Amendment of the 1995 Extension to Eliminate all Terms and Conditions Therein That Are Inconsistent with General Lease No. S-4649 as Sold at Public Auction (except for the increase in the duration of the lease);

After-the-fact Consent to Sublease under General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Sublessor, to United States Postal Service, Sublessee; Approve 20-Year Extension of Lease Term, General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Lessee; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003.

BACKGROUND:

At its meeting of July 28, 2017, Item D-10, the Board of Land and Natural Resources (Board) consented to the assignment of a fifty percent (50%) interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership (Partnership), Lessee under General Lease No. S-4649, from Albert Ficker, Assignor, to Chester Hunt, Assignee, and

as amended

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

May 11, 2018 *Co.*

EXHIBIT A

acknowledged that lessee under General Lease No. S-4649 would thereby become Chester Hunt, as tenant in severalty. A copy of the approved Board submittal is attached EXHIBIT 1.

Since the date of the Board action, Mr. Hunt has re-registered the Partnership and intends to maintain the Partnership as the lessee under the lease. The prior Board action needs to be amended to clarify that the Partnership will continue to be the lessee despite Mr. Hunt's acquisition of 100% of the Partnership interest.

Additionally, under the premium assignment analysis portion of the July 28, 2017 submittal, staff explained that no assignment premium was due because General Lease No. S-4649 did not allow for a premium. While that statement was correct as to the lease as originally issued, it was not accurate in light of 1995 Extension of the lease the Board approved. Staff proposes to amend the July 28, 2017 Board action to address the effect of the 1995 Extension on the lease assignment premium issue, as well as to amend the 1995 Extension itself.

The Partnership is requesting consent to a sublease to the United States Postal Service (USPS), which the Board has not previously approved. Finally, the Partnership is requesting a 20-year extension of the lease based on substantial improvements to the lease premises.

APPLICANT:

Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Sublessor, to United States Postal Service, Sublessee, as to the request for after-the-fact consent to sublease, amendment of 1995 Extension and prospective 20-year lease extension.

LEGAL REFERENCE:

Sections 171-6, -22, and -36(a)(6), Hawaii Revised Statutes (HRS), as amended.
Act 207, Session Laws of Hawaii 2011.

LOCATION:

Portion of Government lands of Waimea situated at Kekaha Town Lots, Lots 3 and 4 (combined), Kekaha, Kauai, identified by Tax Map Key: (4) 1-3-008:003, as shown on the attached map labeled EXHIBIT 2.

AREA:

24,049 square feet, more or less.

TRUST LAND STATUS:

State Land Use: Urban
County of Kauai CZO: Neighborhood Commercial (C-N)

LEASE CHARACTER OF USE:

General commercial use.

SUBLEASE CHARACTER OF USE:

Post Office purposes.

TERM OF LEASE:

Original term of 25 years, commencing on May 16, 1980 and expiring on May 15, 2005.

A 13-year extension, which commenced on May 16, 2005, is scheduled to expire on May 15, 2018. The initial 25-year term, plus the 13-year extension equals an aggregate term of 38 years.

Lessee has requested a 20-year extension. The proposed extension would change the aggregate term of the lease to 58 years.

TERM OF SUBLEASE:

Five years, commencing on July 1, 2013 and expiring on June 30, 2018, which is past the scheduled lease expiration date of May 15, 2018. Additionally, the sublease provides for a five-year extension from July 1, 2018 to June 30, 2023, which the United States Postal Service has exercised even though General Lease No. S-4649 is presently scheduled to expire on May 15, 2018.

ANNUAL LEASE RENTAL:

Currently: \$16,800 per year or 4% of gross receipts, whichever is greater.¹

ANNUAL SUBLEASE RENTAL:

\$68,080.

¹ General Lease No. S-4649 as issued at auction provided that the percentage rent was 4%. The 1995 Extension changed the percentage to 5%. For the reasons discussed herein, the 1995 Extension is unenforceable insofar as it purported to amend the originally auctioned lease. The proper percentage rent is therefore 4%, at least until an appraisal determines otherwise.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

Pursuant to the Board's sublease rent participation policy of May 26, 2000, Item D-24, as amended on January 26, 2001, Item D-8, staff is recommending no adjustment to sublease rental because the sublease is for improved property only, the improvements are not owned by the State, and the lessee pays fair market rent.² General Lease No. S-4649 includes a percentage rent provision that requires the lessee to pay the greater of the base rent or "an amount equal to 4% of the gross proceeds for the year." However, the lease was sold at public auction on May 16, 1980 prior to the amendment of Section 171-36(a), HRS, that required the gross receipts of sublessees to be included in the lessee's reporting of gross receipts. See Act 104, Session Laws of Hawaii 1989. Staff believes that the later statutory amendment now codified at Section 171-36(a)(6) cannot be applied retroactively to this auction lease. Accordingly, staff is recommending no adjustment to lease rental under the Board's current policy.

RENTAL REOPENINGS:

The last rental reopening occurred on May 16, 2004; there are no further rental reopenings scheduled.

Reopenings for the extended term shall be on May 16, 2018 and May 16, 2028.

USE OF LOAN PROCEEDS:

The Partnership plans to remove the existing roof of the building on the lease premises and replace it with a new single-ply Thermoplastic polyolefin (TPO) roof system, remove and replace the existing parapet wall with new framing and T-111 siding (both sides), and saw-cut and remove the existing driveway apron with dimensions up to 18 feet long, 10 feet wide, and 8 inches deep, re-grade and re-compact the existing subgrade and form and pour a new rebar-reinforced concrete apron at an estimated cost of \$138,200. Copies of quotes for this work are attached as EXHIBIT 3.

² There was a subsequent adjustment to this policy in 2012, adding the underscored language below:

If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless: (i) that right and method of calculation are specifically stated in the lease, or (ii) participation in sublease rents is warranted considering the age of the improvements (including but not limited to the extent to which the improvements have been depreciated or amortized), lessee's expenditures to maintain the same in relation to sublease revenues, and the extent to which the lessee actually occupies and uses the lease premises for its own business.

However, the Board has not applied subsection (ii) of this policy in past subleasing situations involving the locations such as the Kanoelehua Industrial Area in Hilo. Accordingly, staff is not recommending application of the 2012 policy here.

DCCA VERIFICATION:

SUBLESSOR FICKER & HUNT PARTNERSHIP:

Place of business registration confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Registered business name confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Good standing confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

The Partnership is in the process of re-registering with the Department of Consumer Affairs, and intends to be in good standing by the date of the Board meeting. USPS is not required to register with the Department of Commerce and Consumer Affairs.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

With respect to the consent to sublease and requested extension of the lease, see the Exemption Notification attached as EXHIBIT 4.

REMARKS:

Amend Prior Board Action of July 28, 2017, Item D-10

The Board action of July 28, 2017, Item D-10, approved Mr. Hunt's acquisition of Mr. Ficker's 50% interest in the Partnership, and then noted that Mr. Hunt would become the lessee under the lease because the Partnership had been dissolved. Since the date of the Board action, however, Mr. Hunt has re-registered the Partnership and intends to maintain the Partnership as the lessee under the lease. The prior Board action needs to be amended to clarify that the Partnership will continue to be the lessee despite Mr. Hunt's acquisition of 100% of the Partnership interest.

Also, the premium assignment analysis portion of the staff submittal explained that no assignment premium was due to the State because General Lease No. S-4649 did not allow for a premium. While that statement was correct as to the lease as originally issued, it was not accurate in light of a March 20, 1995 Extension of General Lease No. S-4649 (1995 Extension) executed by the State and the Partnership. This fact was brought to staff's attention by the Department of the Attorney General (DAG) in response to staff's request for DAG to prepare the consent to assignment document. A copy of the 1995 Extension is attached as EXHIBIT 5.

Upon further discussion with DAG, however, DAG confirmed that an extension of a public auction lease cannot add new terms or terms that are inconsistent with the original lease as part of the extension. See State of Hawaii v. Kahua Ranch, 47 Haw. 28, 384 P.2d 581, affirmed on rehearing, 47 Haw. 466, 390 P.2d 737, rehearing denied, 47 Haw. 485, 391 P.2d 872 (1964):

The statutory provisions of Hawaii forbid any agreement between the State and a prospective bidder for a lease of State land inconsistent with

the terms of the notice of sale as published. Any such agreement contrary to the terms of the published notice of sale would be illegal and unenforceable.

47 Haw. at 36, 384 P.2d at 586.

Accordingly, an extension of a public auction lease can only extend the lease term subject to the terms and conditions of the original public auction lease. Insofar as the 1995 Extension added new or inconsistent terms to the lease, they are unenforceable. Staff is therefore including a recommendation that the prior Board action be amended to address the effect of the 1995 Extension, and to further authorize the amendment of 1995 Extension to eliminate all terms and conditions therein that are inconsistent with General Lease No. S-4649 as sold at public auction (except for increasing in the duration of the lease, which is authorized by law).

Because General Lease No. S-4649 as sold at public auction does not allow for the assessment of a premium on assignment, no premium is due on the assignment of the 50% partnership interest the Board approved at its meeting of July 28, 2017.

After-the-Fact Consent to Sublease to USPS

With respect to subleasing, General Lease No. S-4649 provides as follows:

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

At its meeting of July 10, 1981, under agenda Item F-20, the Board consented to the initial sublease to USPS for a period of 10 years commencing on July 25, 1983 and ending on June 30, 1993, with four 5-year options to extend, which were all exercised. The Board reviewed the sublease consent provision in the lease and, in accordance with Section 14 of the lease above-quoted, determined that the ground rent should be increased from \$3,900 per year to \$10,600 per year.³ The exercised options extended the approved sublease term to June 30, 2013.

USPS continued to occupy the property after June 30, 2013 under a lease between the

³ In 2000-2001, the Board adopted its sublease rent participation policy mentioned above under the heading "RECOMMENDED ADJUSTMENT TO LEASE RENTAL." Under that policy, there is no adjustment to sublease rental when the sublease is for improved property only, the improvements are not owned by the State, and the lessee pays fair market rent. All of those criteria are satisfied here.

Partnership and USPS dated June 23, 2013, which was not presented to the Board for consent. USPS has even exercised an option to extend the lease to June 30, 2023, notwithstanding that General Lease No. S-4649 is set to expire on May 15, 2018. The rent payable under the USPS lease for the period July 1, 2013 through June 30, 2023 is \$68,080 per annum.

An after-the-fact consent to the sublease is therefore needed and will have to be processed in conjunction with the lease extension request presented below. The ground rent under General Lease No. S-4649 for the period July 1, 2004 through May 15, 2018 is \$16,800 per year or 4% of gross receipts, whichever is greater. As discussed above, the Partnership's calculation of gross receipts is based on the sublease rent it receives from USPS and not on the gross receipts USPS earns at the property. General Lease No. S-4649 was issued at public auction on May 16, 1980 and the subsequent amendment of Section 171-36(a), HRS, to include a sublessee's gross receipts in the reporting of the lessee's gross receipts is inapplicable. Under the Board's current sublease rent participation policy, no adjustment to the lease rent is recommended.

20-Year Lease Extension

The current 38-year lease is set to expire on May 15, 2018. The Partnership is requesting 20-year lease extension pursuant to Section 171-36, HRS, to amortize the cost of planned improvements to the property, including roof replacement, reconstruction of a portion of the building walls, and reconstruction of the concrete apron connecting the parking lot to the road. An appraisal evaluation performed by a certified appraiser (EXHIBIT 6) has determined that the economic life of the proposed improvements will exceed the 20-year extension period requested to amortize the cost of the improvements. Reopenings for the extended term shall be on May 16, 2018 and May 16, 2028.

With the exception of the unauthorized sublease and inability to obtain percentage rent information from USPS (both of which matters will be resolved if the Board approves the recommendations below), the Lessee is in compliance with the terms and conditions of the lease. The Lessee is current with rent, insurance and performance bond. A recent inspection showed that the existing structures would benefit from the proposed property improvements.

The leased premises have been used substantially for the purpose for which they were leased.

RECOMMENDATION: That the Board:

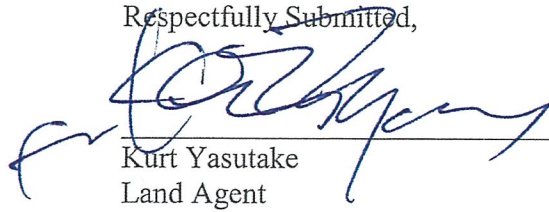
1. Amend its prior Board action of July 28, 2017, under agenda item D-10, by:
 - a. Deleting references in the Board approval stating that Chester Hunt will become the lessee under the lease, and instead confirming that the lessee will remain Ficker and Hunt, a Hawaii Partnership; and

- b. Deleting recommendation B of the submittal and replacing it with the following:

“B. Authorize the amendment of Extension of General Lease No. S-4649 dated March 20, 1995, to eliminate all terms and conditions therein that are inconsistent with General Lease No. S-4649 as sold at public auction (except for the increase in the duration of the lease).”

2. Declare that, after considering the potential effects of the proposed consent to sublease under and extension of lease, in accordance with Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and therefore exempt from preparation of an environmental assessment.
3. Consent after-the-fact to the sublease under General Lease No. S-4649, Ficker & Hunt, a Hawaii partnership, Lessor, to the United States Postal Service, Sublessee, 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 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 serve the interest of the State.
4. Authorize a 20-year extension of General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, 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 extension form, as may be amended from time to time;
 - b. Ficker & Hunt, a Hawaii Partnership, shall complete the improvements as proposed and submit to Land Division staff receipts verifying payment for the improvements by June 1, 2019, or the lease extension shall be subject to cancellation;
 - c. Review and approval by the department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Kurt Yasutake
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: May 11, 2018; D-1: Approved as amended.

Approved as amended. The Board amended the recommendation section by: (1) adding in recommendation 1a (a) that Ficker and Hunt shall come into good standing with the State Department of Commerce and Consumer Affairs within ninety (90) days of May 11, 2018; and (2) deleting recommendation 1(b); and (3) adding a requirement that the lease rent be reopened at fair market value (i.e., unimproved land) for the extended period.

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

July 28, 2017

Ref No.: GLS-4649

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

KAUAI

Consent to Assignment of Fifty Percent (50%) Interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Lessee under General Lease No. S-4649, from Albert Ficker, Assignor, to Chester Hunt, Assignee; Acknowledgment that Lessee under General Lease No. S-4649 Will Thereby Become Chester Hunt, as Tenant in Severalty; Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003.

APPLICANT(S):

Albert Ficker, as assignor, and Chester Hunt, as assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waimea situated at Kekaha Town Lots, Lots 3 and 4 (combined), Kekaha, Kauai, identified by Tax Map Key: (4) 1-3-008:003, as shown on the attached map labeled Exhibit A.

AREA:

24,049 square feet, more or less.

ZONING:

State Land Use: Urban
County of Kauai CZO: Neighborhood Commercial (C-N)

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 28, 2017 Go

EXHIBIT 1

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:

General commercial use.

TERM OF LEASE:

Original term of 25 years, commencing on May 16, 1980 and expiring on May 15, 2005.

A 13-year extension, which commenced on May 16, 2005, was scheduled to expire on May 15, 2018. An initial 25 years, plus 13 year extension for an aggregate of 38 years.

Lessee requested a 20-year extension, which staff is currently reviewing and working on. The proposed extension would change the aggregate term of the lease to 58 years.

ANNUAL RENTAL:

\$16,800.00, Due in semi-annual installments of \$8,400.00 on the 16th day of May and November of every year.

CONSIDERATION:

Chester Hunt exchanged a Mississippi property for Albert Ficker's 50% interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership. The tax assessed value of the Mississippi property is \$113,344.

RECOMMENDED PREMIUM:

Not applicable, as the lease does not allow for a premium.

DCCA VERIFICATION:

Assignor Albert Ficker and Assignee Chester Hunt, as natural persons, are not required to register with DCCA.

REMARKS:

General Lease S-4649 was issued to Chester Wayne Hunt for twenty-five years commencing on May 16, 1980 to May 15, 2005. The rent was set at \$3,900.00, which was paid semi-annually on the 16th of May and November of each year.

On July 10, 1981, under Item F-20, the Board of Land and Natural Resources approved, as amended, the consent to sublease of General Lease No. S-4649, Chester Hunt, sublessor, and the U.S. Postal Service and Fely Hashitate dba Hidden Treasure, sublessees. The amendment was to include a consent to mortgage of \$116,000.00 from Bank of Hawaii.

On July 24, 1981, under Item F-19, the Board approved to amend previous Board Action of July 10, 1981 Item F-20, by:

- a. Consenting to the sublease between Chester Hunt and the U.S. Postal Service, subject to (1) revising the annual rent from \$3,900.00 to \$5,420.00.
- b. Consenting to a \$150,000.00 mortgage in favor of Honolulu Mortgage Company, Inc., solely for the purpose of constructing the U.S. Post Office facility on the subject premises.

On September 10, 1982 under Item F-1-a, the Board consented to the assignment of lease from Chester Hunt, Assignor, to Ficker & Hunt, a Hawaii Partnership (FHHP), as Assignee.

On May 27, 1994 under Item F-4 the Board approved the extension of lease term for 13-years to meet the lending requirements of Bank of Hawaii, and also consented to the refinancing of an \$116,000.00 mortgage with Bank of Hawaii.

An immediate rental reopening was required, increasing the annual rent increased to \$6,120.00 for the reopening period May 27, 1994 to May 15, 2004.

Records of the Department of Commerce and Consumer Affairs (DCCA) shows the FHHP was canceled involuntarily on October 6, 1995 for failure to file annual statements with DCCA.¹

On April 16, 2004, FHHP notified Land Division Administration that it accepted the new rent determination of \$8,400 paid semi-annually for the time period May 16, 2004 to May 15, 2018.

By instrument dated April 21, 2017, Albert Ficker, as assignor, assigned his 50% interest in FHHP, also known as Ficker & Hunt Partnership, to Chester Hunt, assignee, resulting in Mr. Hunt remaining as the "sole partner." In light of the DCCA cancellation of the partnership in 1995 and the requirement that a partnership involve more than one partner, the lessee under the subject lease has essentially become Chester Hunt as tenant in severalty by operation of law (assuming the Board consents to the assignment of Mr. Ficker's partnership interest to Mr. Hunt). Staff is including a recommendation below that the Department of the Attorney General be authorized to prepare the consent to assignment of partnership interest and any other document requiring the Chairperson's signature that may be needed to establish Mr. Hunt as lessee under the lease, as tenant in severalty.

¹ Staff understands that a canceled partnership may continue to wind up its affairs after cancellation. The assignment of the 50% partnership interest from Albert Ficker to Chester Hunt is in conjunction with the winding up of the partnership business.

The State parcel, identified by Tax Map Key (4) 1-3-008:003, contains a 3,059 square foot building, a U.S. Post Office, and a 9,159 square feet concrete parking lot (Exhibit B).

As General Lease S-4649 is set to expire on May 18, 2018, Mr. Hunt has also requested a twenty (20) year lease extension, which staff is currently reviewing and working on. The proposed extension would change the aggregate term of the lease to 58 years.

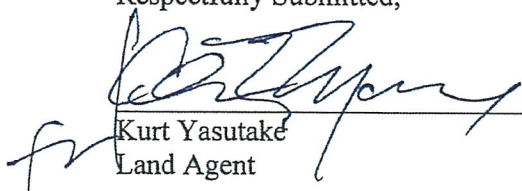
The assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION:

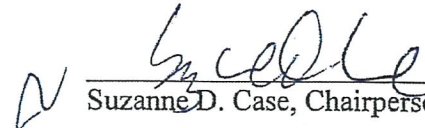
That the Board:

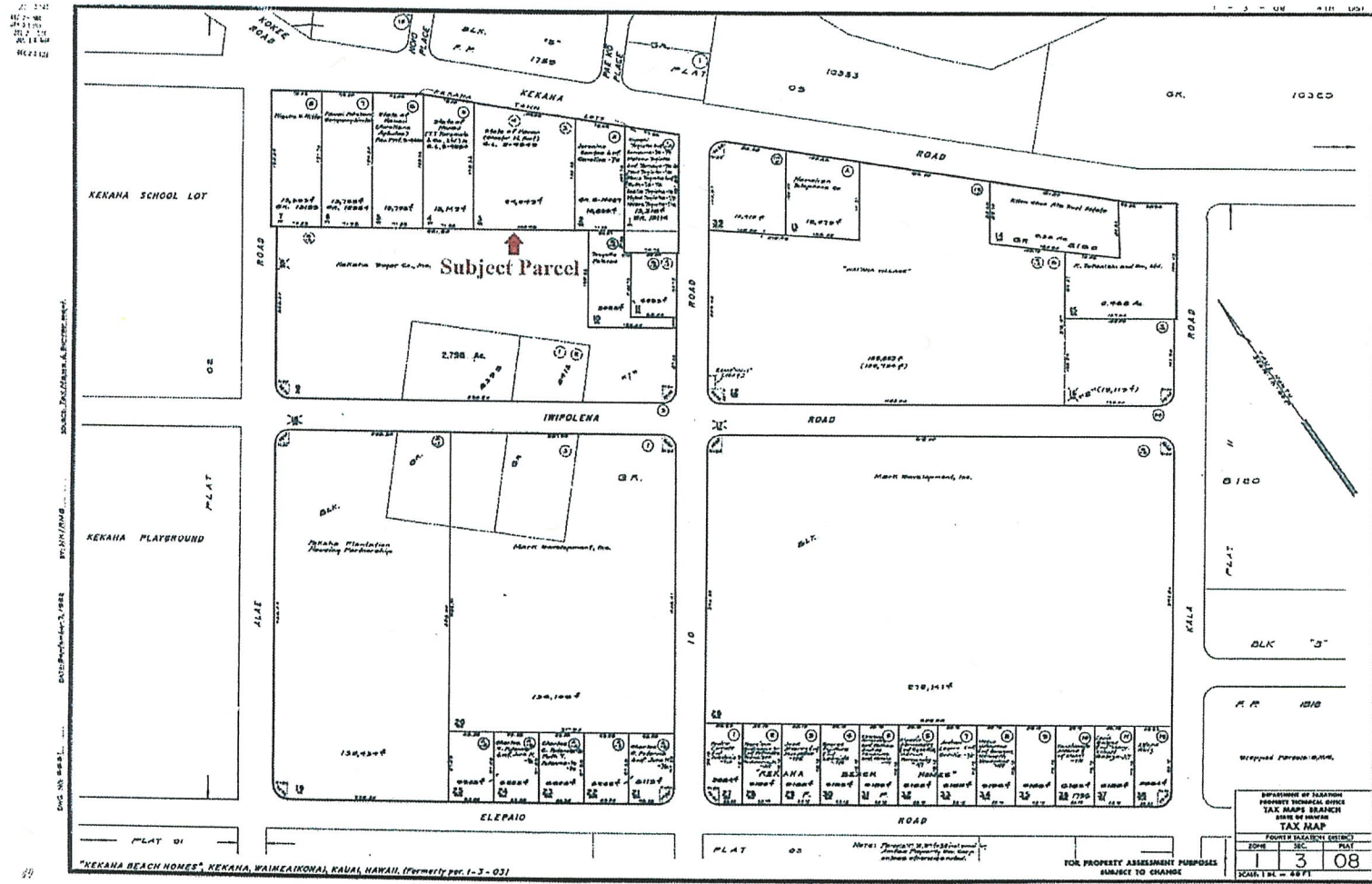
- A. Consent to the assignment of a fifty percent (50%) interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Lessee under General Lease No. S-4649, from Albert Ficker, as assignor, to Chester Hunt, as Assignee, subject to the following:
 1. The standard terms and conditions of the most current consent to assignment of partnership interest 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.
- B. Acknowledge that as a result of the consent given in Recommendation A above, the lessee under General Lease No. S-4649 will thereby become Chester Hunt as tenant in severalty. The Department of the Attorney General is authorized to prepare any other document for execution by the Chairperson that may be required to establish Chester Hunt as the lessee under the lease, as tenant in severalty.

Respectfully Submitted,


Kurt Yasutake
Land Agent

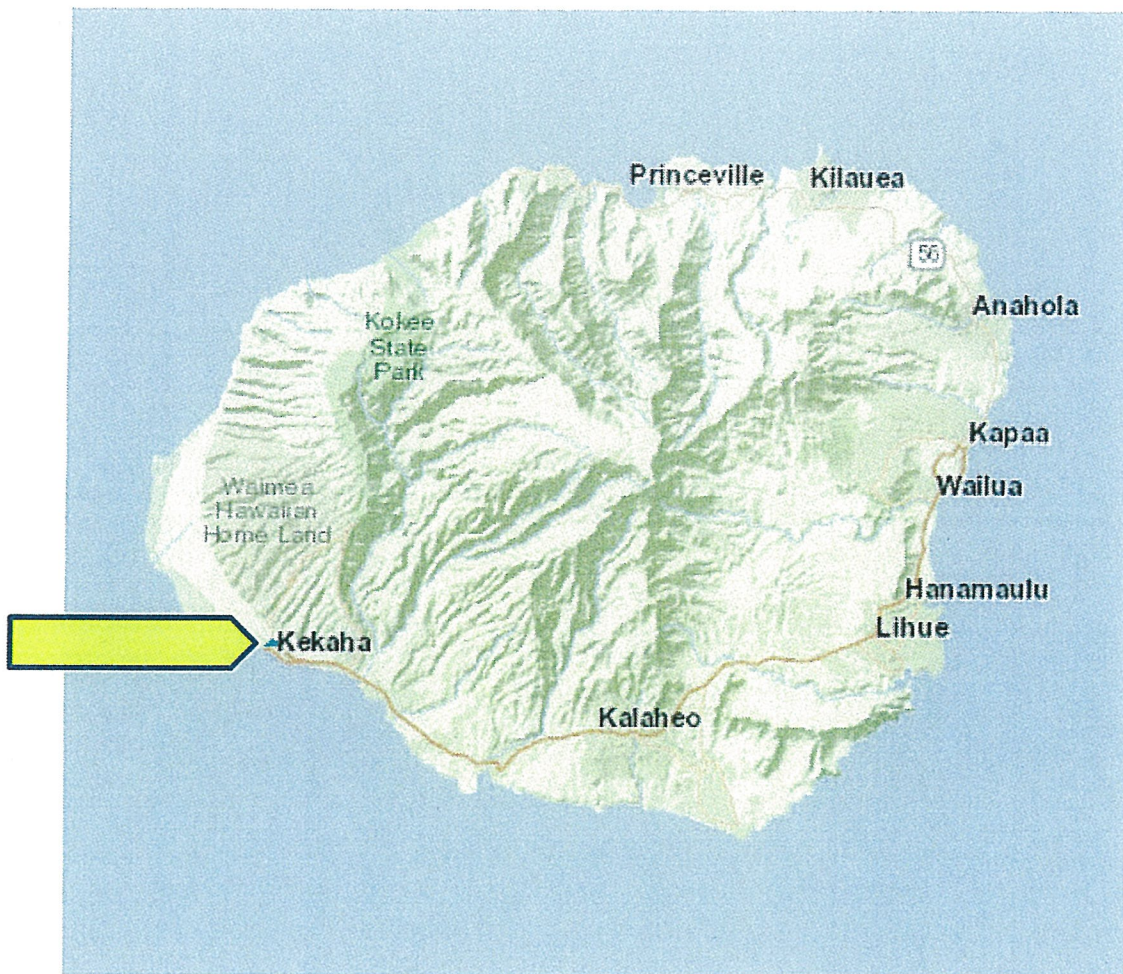
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson





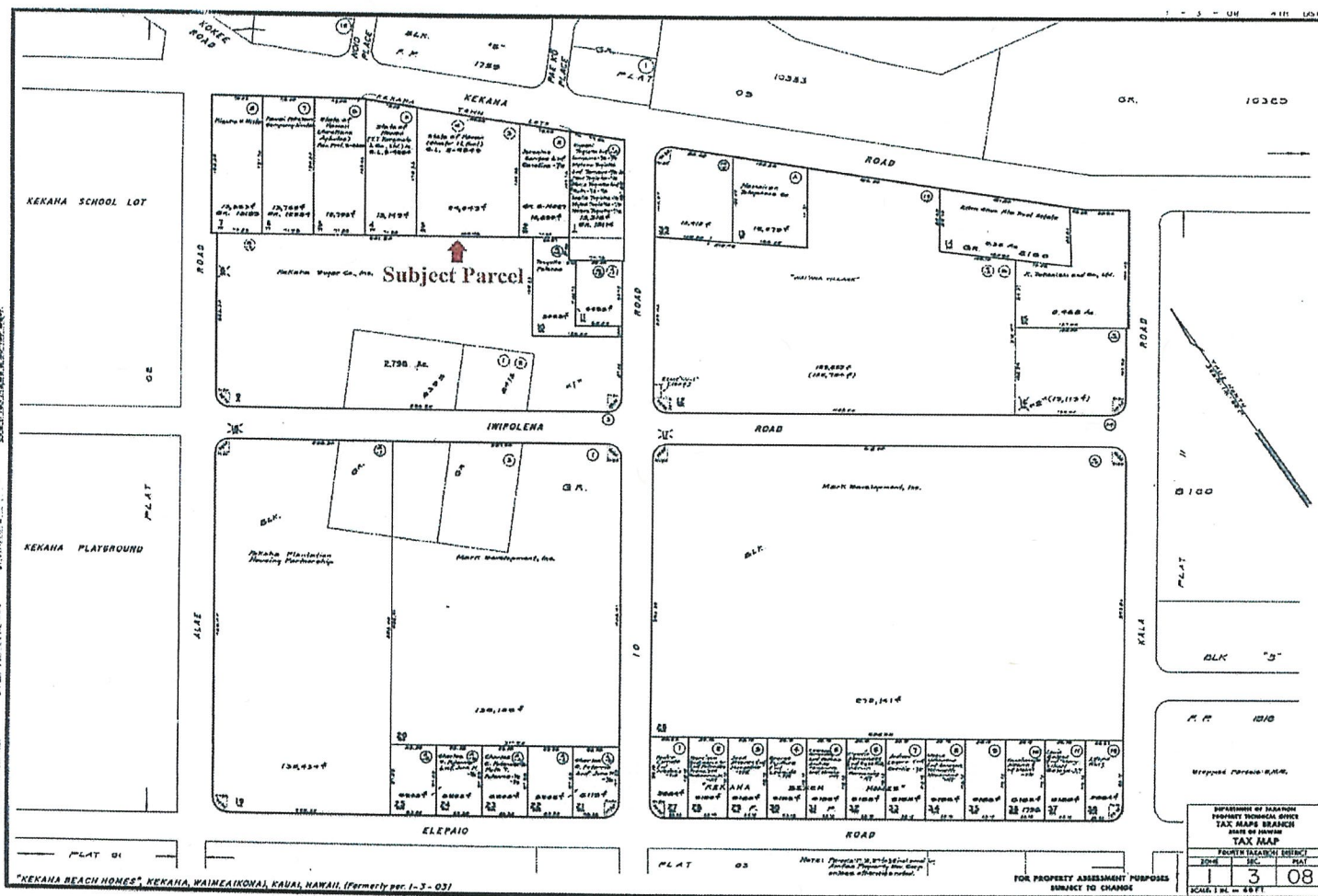




General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership

Tax Map Key: (4) 1-3-008:003

EXHIBIT 2



Chet,
Let me know if this works for you.
aloha
af



Plan Date:	n/a
Spec Date:	n/a
Addendum:	n/a

-	Remove Extant Roofing & Replace w/New Single-Ply TPO Roof System	\$	126,400.00
-	Remove & Replace Extant Parapet Wall w/New Framing & T-111 Siding (both sides)		
-			
-			
-			
-			

10. Temporary utilities (electricity, water, etc.)
11. Dewatering and shoring of grades
12. Hazardous material testing and abatement
13. Trash disposal or disposal containers
14. Protection of subcontractor's completed work
15. Substitute preparation of any kind
16. Demolition
17. Premium time for holidays and overtime

Print: _____
Name: Andrew Finn
Title: Business Development
Signature: _____

EXHIBIT 3

From: Julie Simonton Julie@PCCCHawaii.com
Subject: Kekaha Post Office
Date: April 12, 2017 at 2:33 PM
To: ChetHuntRealty@gmail.com

Chet-

Attached is our proposal for the Kekaha Post Office concrete replacement. Please let me know if you have any questions or need any additional information.

Thank you,

Julie Simonton, P.E.
Vice President
Pacific Concrete Cutting & Coring, Inc.
PO Box 662261
Lihue, HI 96766
Tel: 808-245-7171
Fax: 808-245-9393

Proposal No. 17-2007
PACIFIC CONCRETE CUTTING & CORING

License No. ABC-24013
Tel. 808/245-7171 *Fax: 808/245-9393 *Website: www.pccchawaii.com
Post Office Box 662261, Lihue, Kauai, Hawaii 96766

Attn: Chet Hunt	Job Name: Kekaha Post Office- Concrete Replacement
Company: Chet Hunt Realty	Job Number:
Address:	Job Location: Kekaha, Kauai, Hawaii
Tel: 808-635-5399	Email: ChetHuntRealty@gmail.com

DESCRIPTION OF WORK:

DATE: 4/12/17

PCCC is pleased to present the proposal for the following scope of work:

Concrete Replacement

Sawcutting and removal of the existing concrete driveway apron with dimensions up to 18-ft long x 10-feet wide x 8-inches in depth. Re-grading and recompaction of the existing subgrade. Forming and pouring of a new concrete apron up to 8-inches thick with 550 flex concrete, fiber, and reinforced with # 4 rebar 18-inches on center.

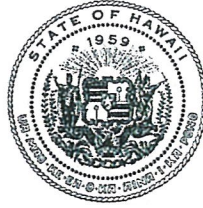
Scope of work includes sawcutting, vacuuming of slurry, removal/hauling/proper disposal of concrete, grading, and compaction.

Total Price: \$12,800.00 (tax included)

Price includes removal, hauling, and proper disposal of all debris generated by PCCC.

Excluded - layout, locating/cutting/capping of utilities; permits; geotechnical testing; barricades; signage; and landscaping repair/protection/replacement.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 11, 2018

EXEMPTION NOTIFICATION

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

Project Title:	After-the-fact Consent to Sublease under General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Sublessor, to United States Postal Service, Sublessee; Approve 20-Year Extension of Lease Term, General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Lessee.
Project / Reference No.:	GL S-4649
Project Location:	Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-3-008:003.
Project Description:	After-the-fact Consent to Sublease under General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Sublessor, to United States Postal Service, Sublessee; Approve 20-Year Extension of Lease Term, General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership, Lessee. The lease is currently scheduled to expire on May 15, 2018.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated 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 47, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."
Cumulative Impact of Planned Suc-	No. Lessee is requesting after-the-fact consent to a sublease to the United States Postal Service (USPS) and a 20-year extension of the

EXHIBIT 4

cessive Actions in Same Place Significant?:	lease. USPS has occupied the property since July 1983. The sublease and extension are a continuation of an existing use of this improved property for general commercial purposes, and more specifically, a post office. No new improvements that would alter the purpose or increase the capacity, density, height or dimensions of the existing structure are planned. Staff believes there are no cumulative impacts.
Action May Have Significant Impact on Particularly Sensitive Environment?:	No. The lease premises are located in an area already developed for commercial and residential use. No new improvements that would alter the purpose or increase the capacity, density, height or dimensions of the existing structure are planned. Staff believes there are no cumulative impacts.
Analysis:	This action involves a request for an after-the-fact consent to a sublease to USPS and a 20-year extension of the lease. USPS has occupied the property since approximately 1983. The sublease and extension are a continuation of an existing use of this improved property for general commercial purposes, and more specifically, a post office. No new improvements that would alter the purpose or increase the capacity, density, height or dimensions of the existing structure are planned. The sublease and lease extension approvals represent no or negligible expansion of the existing use. Therefore, staff believes the sublease and lease extension approvals result in no significant impact to the natural, environmental and/or cultural resources in the area, and that the actions should be found to be exempt from the preparation of an environmental assessment.
Consulted Parties:	County of Kauai Planning Department was consulted and had no comments.
Recommendation:	That the Board find 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.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

EXTENSION OF GENERAL LEASE NO. S-4649

between

STATE OF HAWAII

and

FICKER & HUNT, a Hawaii General Partnership,
whose business address is 4480 Ahukini Road,
Lihue, Hawaii 96766-1101

covering

LOTS 3 and 4 (Combined)
KEKAHA TOWN LOTS

situate at

Kekaha, Waimea (Kona), Kauai,
containing an area of 24,049 square feet

TABLE OF CONTENTS

	<u>Page</u>
TERM OF LEASE.....	1
ANNUAL RENTAL.....	2
REOPENING OF ANNUAL RENTAL.....	2
INTEREST RATE/SERVICE CHARGE.....	3
RESERVATIONS:	
1. Minerals and waters.....	4
2. Prehistoric and historic remains.....	4
3. Ownership of fixed improvements.....	4
AGREEMENTS AND COVENANTS BETWEEN PARTIES:	
1. Payment of rent.....	5
2. Taxes, assessments, etc.....	5
3. Utility services.....	5
4. Covenant against discrimination.....	5
5. Sanitation.....	5
6. Waste and unlawful, improper or offensive use of premises.....	5
7. Compliance of laws.....	5
8. Inspection of premises.....	6
9. Improvements.....	6
10. Repairs to improvements.....	6
11. Liens.....	6
12. Character of use.....	6
13. Assignments, etc.....	6
14. Subletting.....	7
15. Indemnity.....	7
16. Costs of litigation.....	8
17. Liability insurance.....	8
18. Bond, performance.....	9
19. Lessor's lien.....	9
20. Mortgage.....	9
21. Breach.....	10
22. Right of holder of record of a security interest.....	11
23. Condemnation.....	11
24. Right to enter.....	12
25. Inspection of prospective bidders.....	12
26. Acceptance of rent not a waiver.....	12
27. Extension of time.....	13

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
28. Justification of sureties.....	13
29. Waiver, modification, reimposition of bond and liability insurance provisions...	13
30. Quiet enjoyment.....	14
31. Surrender.....	14
32. Non-warranty.....	14
33. Hazardous materials.....	14
34. Hawaii law	15
35. Exhibits - Incorporation in lease	15
36. Headings	15
37. Partial invalidity	15
 SPECIAL CONDITIONS:	
38. Fire and extended coverage insurance	16
 DEFINITIONS	 17
SIGNATURE PAGE	18
ACKNOWLEDGMENT PAGE	19

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

EXTENSION OF GENERAL LEASE NO. S-4649

THIS AGREEMENT, made this 20th, day of March, 1995, 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 FICKER & HUNT, a Hawaii general partnership, whose business address is 4480 Ahukini Road, Lihue, Hawaii 96766-1101, hereinafter referred to as the "Lessee";

WITNESSETH:

WHEREAS, General Lease No. S-4649 was issued to CHESTER WAYNE HUNT, whose wife is Letitia Hunt, as his separate property, by Indenture made on October 8, 1980 and commencing on May 16, 1980, up to and including May 15, 2005, covering Lots 3 and 4 (Combined) of the Kekaha Town Lots, situate at Kekaha, Waimea (Kona), Kauai, Hawaii, containing an area of 24,049 square feet, subject to the terms, covenants and conditions set forth in the lease; and

WHEREAS, the general lease was assigned to Ficker & Hunt, a Hawaii general partnership, by Assignment of Lease executed September 7, 1982; and

WHEREAS, the Lessee has requested to extend General Lease No. S-4649 for an additional thirteen (13) years in order to refinance the remaining loan balance of \$116,000.00 to be used for leasehold improvements; and

WHEREAS, the Board of Land and Natural Resources is authorized under the provisions of section 171-36(b), Hawaii Revised Statutes, as amended, to modify or eliminate any of the foregoing restrictions of a lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes; and

WHEREAS, the Board of Land and Natural Resources at its meeting held on May 27, 1994, agreed to the extension of General Lease No. S-4649 with the additional provisions as hereinafter contained.

NOW, THEREFORE, in consideration of the rents, covenants and conditions contained herein and in General Lease No. S-4649, the Lessor hereby extends the term of the Lease for an additional thirteen (13) years, from May 16, 2005, up to and including May 15, 2018, upon the following terms and conditions:

1. The terms, conditions, and covenants contained in General Lease No. S-4649 dated October 8, 1980, shall continue to remain in full force and effect until the termination date of this Extension of General Lease No. S-4649, unless sooner terminated as hereinafter provided, and provided, and provided further, that where any of the provisions of this Extension of General Lease No. S-4649 conflict with the provisions of the General Lease No. S-4649, dated October 8, 1980, this Extension Agreement shall govern and control.

2. The Lessee shall pay to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a minimum annual rental or five percent (5%) of the gross receipts, whichever is greater, as provided hereinbelow, payable in advance, without notice or demand, of TWELVE THOUSAND TWO HUNDRED FORTY AND NO/100 DOLLARS (\$12,240.00) in semi-annual installments on May 16 and November 16, each and every year during the term, up to and including November 16, 2003.

A. The minimum annual rental and the percentage hereinabove reserved thereafter shall be reopened and redetermined as of the day following the expiration of the twenty-fourth (24th) year of the original lease.

B. Percentage rent. The term "gross receipts" means all receipts, income, and revenue derived from, related to, or connected with the commercial operations permitted by this lease excluding, however, State excise tax collected.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing 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 own 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. If Lessee has notified Lessor and appointed its appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of 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 appraisers 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 first 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.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

3. No assignment of the lease shall be permitted except for physical or mental disability or death, for a period of five (5) years from the effective date of any refinancing resulting from the extension granted herein. After the five (5) year period, the Board's consent to any assignment may be conditioned upon an assignment premium.

4. The proceeds of the ONE THOUSAND SIXTEEN AND NO/100 DOLLARS (\$116,000.00) loan shall be used as indicated on the Board submittal approved by the Board of Land and Natural

Resources for purposes of refinancing the existing loan used to construct the improvements required under the original lease.

5. The premises shall be used substantially for the purpose for which it was originally leased.

6. The aggregate of the initial term and any extension granted shall not be for more than fifty-five years.

7. The present rental shall not be less than the rental under the preceding term.

IN ADDITION TO THE ABOVE PROVISIONS, LESSEE AGREES TO THE FOLLOWING TERMS AND CONDITIONS:

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. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

3. Ownership of fixed 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.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. 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.

3. Utility services. The Lessee 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.

4. 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.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. 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.

7. 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.

8. 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.

9. 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, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or termination pursuant to a breach 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.

10. 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.

11. 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.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for general commercial use.

13. Assignments, etc. 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, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the Lessor; or (5) it is to the corporate successor of the Lessee; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee

of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, a copy of which is attached hereto as Exhibit "A." The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then Assignor, pursuant to the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium.

14. 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 of 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.

15. Indemnity. The Lessee shall 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.

16. Costs of litigation. In case the Lessor shall, without any fault on its 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.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind

and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within thirty (30) days after the Lessee's acceptance of the reopened rent, pursuant to the immediate rental reopening, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or 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 any assignment is made of the Lessee's property for the benefit of creditors, 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 written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or 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 the Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. 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 premises 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 were 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.

24. 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.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. 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.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee of the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. 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.

31. Surrender. 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, 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.

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

33. 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 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.

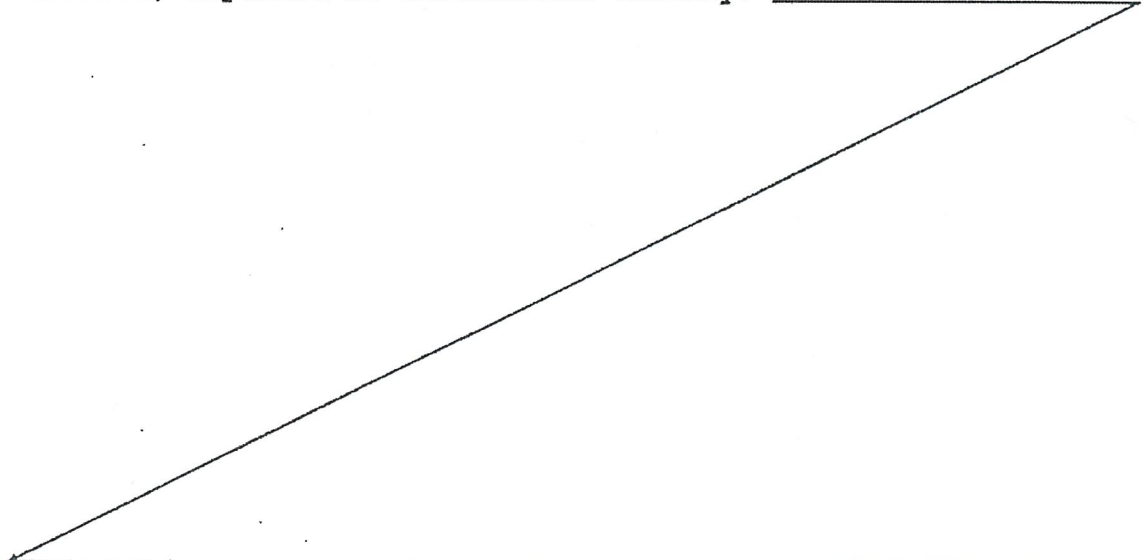
For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and 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.

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

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

36. 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.

37. 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.



SPECIAL CONDITIONS

38. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

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.

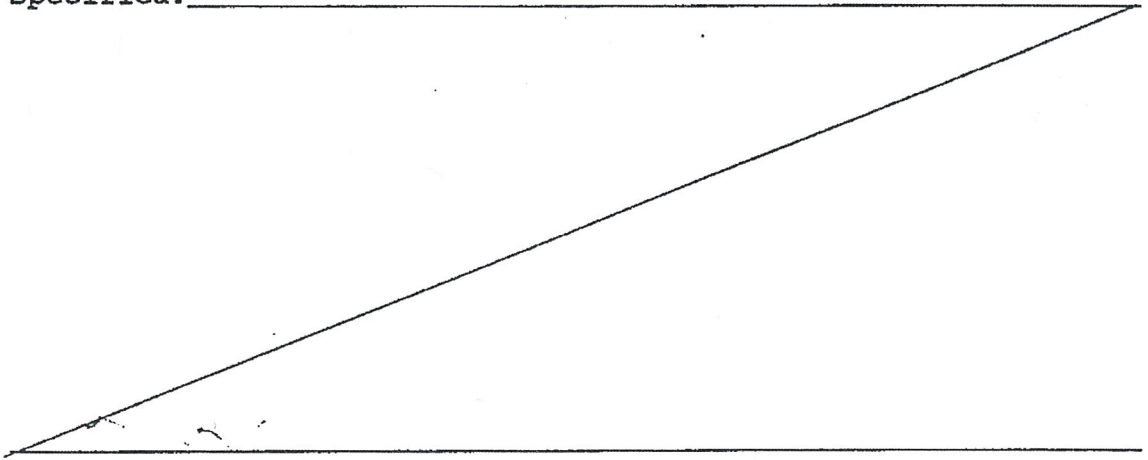
(b) "Lessee" means and includes the Lessee, its heirs, executors, administrators, successors or permitted assigns.

(c) "Holder of a 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.

Approved by the Board
of Land and Natural
Resources at its meeting
held on May 27, 1994.

STATE OF HAWAII

By [Signature]
Chairperson and Member
Board of Land and
Natural Resources

LESSOR

FICKER & HUNT, a Hawaii
general partnership

By [Signature]
Its PARTNER

And By [Signature]
Its Partner

LESSEE

STATE OF HAWAII, }
County of Kauai } ss:

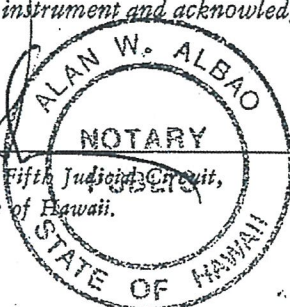
On this 9th day of March A. D. 1995, before me personally appeared,
Albert William Ficker & Chester Wayne Hunt

to me known to be the person ~~described~~ in and who executed the foregoing instrument and acknowledged
that they executed the same as their free act and deed.

My commission expires

ALAN W. ALBAO
Notary Public
Fifth Judicial Circuit
State of Hawaii
My Commission Expires
May 15, 1998

Notary Public, Fifth Judicial Circuit,
State of Hawaii.



ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a)(5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a)(5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned

improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

Actual cost:	\$500,000
CCI (most recent):	121.1
CCI (base year):	102.3
Expired term:	57 mos.
Whole term:	408 mos.

1. Adjusted Cost of Improvements or Renovations

Actual Cost X $\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Refrigerator

<u>Example</u>	Actual cost:	\$1,510
	CPI (most recent):	118.1
1. Adjusted Cost of Trade Fixture	CPI (base year):	104.6
	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1,705 - \$1,012 = \$693$$

SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	- 82,690	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	- 1,012	
	Adj Dep Cost Trade Fixtures:		- 693
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055

SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration.
 However, a premium of \$45,055 was paid to the state by the
 previous occupant from the \$600,000 consideration.

1.	Net Consideration <u>Received</u> :		\$1,000,000
2.	Consideration <u>Paid</u> :	\$600,000	
	Premium:	<u>- 45,055</u>	
	Net Consideration <u>Paid</u> :		\$554,945
3.	Adj Value Consideration (improvements):		
	\$554,945 X $\frac{156.4}{121.1}$	=	\$716,708
	Depreciation:		
	\$716,708 X $\frac{107 \text{ mos.}}{408 \text{ mos.}}$	=	<u>-187,960</u>
	Adj Dep Value Consideration:		- <u>528,748</u>
4.	Excess:		\$ 471,252
5.	Premium:	Percentage: 45%	\$ <u>212,063</u>

Appraiser's Evaluation Letter

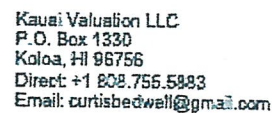
General Lease No. S-4649, Ficker & Hunt, a Hawaii Partnership

Tax Map Key: (4) 1-3-008:003

Thank you for your business!



1. The charges at the rate of 100 paise per Rs. 100 of the sum of cash and shall not be more than that of the annual rate of eight per cent (8%) per annum. If the rate of interest payable shall exceed the highest rate of interest payable in the market for the period of 12 months commencing from the date of the payment of the sum of cash, the rate of interest payable shall be the rate of interest payable in the market for the period of 12 months commencing from the date of the payment of the sum of cash. For any sums received for payments made, the Government shall not be responsible for any loss or damage sustained by the Government or any of its officers or employees in the course of the discharge of their duties.



Kofoa, HI 96756

KAUAI VALUATION

EXHIBIT 6



Curtis J. Bedwell, MAI
Certified General Real Estate Appraiser
State of Hawaii License No. CGA - 1007
Expiration Date 12/31/2019
808-755-5883
curtisbedwell@gmail.com