

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

March 27, 2020

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

PSF No: 19HD-029

Hawai'i

Approve Plans and Specifications for Substantial Improvements to Lease Premises and Development Agreement for Extension of Lease, General Lease No. S-3742, JH Moku Ola, LLC, Lessee; Authorize 30-Year Extension of Lease Term, General Lease No. S-3742, JH Moku Ola, LLC, Lessee; Lot 29, Waiakea Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:014.

Mutual Agreement for Additional Rent From Sublease, General Lease No. S-3742, JH Moku Ola, LLC, Lessee/Sublessor, to Maui Varieties Investments, Inc. Sublessee, Waiakea Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:014.

APPLICANT AND REQUEST:

Development Agreement and Lease Extension:

Lessee JH Moku Ola, LLC, a Hawaii limited liability company, is requesting an extension of General Lease No. S-3742 of 30 years, commencing on November 12, 2028 and expiring on November 11, 2058 for an aggregate term (initial term plus all extensions) of 95 years.<sup>1</sup>

Sublease:

JH Moku Ola, LLC, a Hawaii limited liability company, as Sublessor, to Maui Varieties Investment, Inc., a Hawaii corporation, as Sublessee.

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<sup>1</sup> Initial term of 55 years commencing on 11/12/1963 and expiring on 11/11/2018. Board previously approved a 10-year extension at its meeting of 9/11/15, Item D-1.

LEGAL REFERENCE:

Sections 171-36(a)(6), -191 and -192, Hawaii Revised Statutes (HRS), as amended, and Act 149, Session Laws of Hawaii 2018.

LOCATION:

Portion of Government lands of Lots 8 to 13 inclusive, Waiakea Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-058:014, as shown on the attached map labeled Exhibit 1.

AREA:

2.165 acres, more or less.

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:

Allowed uses under the County of Hawaii zoning code, ML-20, Limited Industrial.

TERM OF LEASE:

Original term of 55 years, commencing on November 12, 1963 and expiring on November 11, 2018. Board approved extension of 10 years commencing on November 12, 2018 and expiring on November 11, 2028.<sup>2</sup>

Requested extension of 30 years commencing on November 12, 2028 and expiring on November 11, 2058.

TERM OF SUBLEASE:

9.5 years, commencing on May 12, 2019 and expiring on November 11, 2028.

ANNUAL RENTAL:

Current rent is \$85,260.00, due in quarterly installments of \$21,315.00 on February 12<sup>th</sup>, May 12<sup>th</sup>, August 12<sup>th</sup> and November 12<sup>th</sup> of each year. The rent for the requested lease extension period is as follows:

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2 September 11, 2015, Agenda Item D-1

November 12, 2028: \$104,750  
November 12, 2038: \$140,775  
November 12, 2048: \$189,190

ANNUAL SUBLEASE RENTAL:

\$300,000.00.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

\$ 9,828.00 per year. (Refer to attached Exhibit 2 for analysis of sublease rental income.)

RENTAL REOPENINGS:

Rental re-openings in the original term were at the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> years of the original term. A rental reopening for the current extended term was determined by an appraisal that projected the rent for the extension period of November 12, 2018 through November 11, 2028. Rents were determined by independent appraisal for the entire requested lease extension period as noted above. Accordingly, there are no further rent re-openings under the lease.

DCCA VERIFICATION:

SUBLESSOR:

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

SUBLESSEE:

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

APPLICANT REQUIREMENTS:

Applicant shall:

1. Comply with the requirements of Act 149, Sessions Laws of Hawaii 2018;
2. Execute the development agreement substantially in the form of Exhibit 4 attached hereto and proceed with lessee's proposed plans and specifications for improvements in connection with the extension of the lease term of GL S-3742 pursuant to Act 149; and

3. Execute the approved lease extension for the premises.

BACKGROUND:

In order to qualify for financing of the proposed improvements they will be making to the property and to amortize the expense thereof, the lessee, JH Moku Ola, LLC submitted a request to extend General Lease No. S-3742, pursuant to Act 149, Session Laws of Hawaii 2018.<sup>3</sup> The renovations and improvements are necessary to keep the existing structures in a viable condition and to accommodate a sublease tenant wanting to occupy a portion of the lease property.

At its meeting of June 28, 2019, under agenda item D-3 (Exhibit 3), the Board of Land and Natural Resources (Board) authorized the Land Division to negotiate a development agreement as required in Act 149. The Board also consented to the sublease to Maui Varieties Investments, Inc., the business wanting to occupy a portion of the property. The Board deferred staffs' recommendation for increasing the rent based on the sublease rent to be paid to the lessee by the sublessee and asked staff to inquire with the Department of the Attorney General (AG) whether the lease, as amended, allows the Board to charge additional rent based on sublease rent collected and report back to the Board. Based on the AG's response, staff has the right to increase the rent under the subject lease.

At its meeting of December 13, 2019, under agenda item D-4, the Board approved increasing the rent based on the rent paid to the lessee by the sublessee but deferred a decision on the amount of additional rent. Staff was asked to work with the lessee on an appropriate amount and report back to the Board along with a breakdown of the miscellaneous allowances as to the exact amount if improvement, insurance and maintenance allowances.

REMARKS:

Lease Extension:

Act 149 stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount.<sup>4</sup>

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<sup>3</sup> Hawaii Revised Statutes §171-192.

<sup>4</sup> Percentage rents on gross receipts are not payable under the Department's industrial leases, and the appraiser did

The lessee has submitted a proposed development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192(a), HRS, as amended. The lessee has worked with staff on the development agreement and has submitted plans for the improvements to the leasehold property (Exhibit 4).

Act 149 defines “substantial improvements” to mean “any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent (30%) of the market value of the existing improvements...”. The lessee provided a summary appraisal report prepared that determined the market value of the leasehold improvements on the subject property to be \$1,185,000 as of December 1, 2018. Thirty percent of this amount is \$335,500.

The lessee has requested the term of the lease be extended for an additional thirty (30) years to November 11, 2058 and is prepared to enter a contract for improvements in the amount of \$800,000.

The proposed improvements consist of extensive renovations to both warehouses and the open areas. Repairs include replacing damaged roll up doors, roof repairs, repainting and/or replacing side wall of both buildings. Replace existing cesspool with septic system and improve site drainage by installing two (2) drywells and repave open areas.

Also included in the improvements will be an air conditioning system for building B. The system will consist of four (4) Toshiba Carrier units along with R13 insulation on all walls. Other improvements include interior/exterior painting and interior lighting. Details are attached as exhibits to the development agreement. The development agreement provides that the improvements must be completed by March 31, 2022. In view of lessee’s commitment to convert from cesspool to septic system and invest \$800,000 in substantial improvements when Act 149 only requires \$335,000 based on the value of existing improvements, staff believes the development proposed is of sufficient worth and value to justify the requested 30-year extension.

An appraisal has determined the lease rent for the extension period beginning November 12, 2028. The lessee reviewed the appraisal and has agreed to the proposed lease rent for the extension period. (see Exhibit C attached to Exhibit 4). Consistent with the limitations of Act 149, the requested 30-year lease extension does not extend the original lease’s fixed rental period by more than 40 years.<sup>5</sup>

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not include a percentage rent component to the rents determined for the lease extension period.

<sup>5</sup> The original lease term was 55 years. A previous 10-year extension brought the lease term to 65 years. The requested 30-year extension would bring the aggregate lease term to 95 years. In short, if the requested extension is approved, there would be exactly 40-years of lease extensions beyond the original term.

Lease Rent Adjustment:

As explained above, staff was asked to work with the lessee on a mutually agreeable increase in the lease rent derived from the income received for the sublease rent. The lessee provided staff with insurance and maintenance costs for the lease property and along with a return of investment percentage and real property tax figure, staff was able to calculate a sublease rent adjustment worksheet that determined the rent adjustment to be \$11,328.00 Staff has reviewed the rent adjustment with the lessee and lessee has accepted the rent increase for the remaining term of the existing lease

RECOMMENDATION: That the Board:

1. As required by Act 149, Session Laws of Hawaii 2018, and Sections 171-191 and -192, HRS, determine that:
  - a. The development proposed is of sufficient worth and value to justify the extension;
  - b. The estimated time to complete the improvements and expected date of completion is 24 months after execution of the development agreement; and
  - c. The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, for the period of through November 11, 2058 is:

November 12, 2028: \$104,750

November 12, 2038: \$140,775

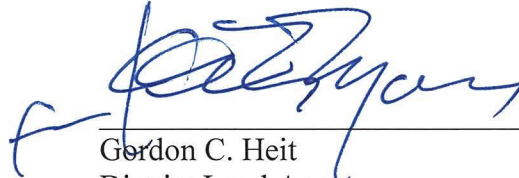
November 12, 2048: \$189,190

There is no percentage rent payable on gross receipts.

2. Approve the development agreement for JH Moku Ola, LLC substantially in the form of Exhibit 4 attached hereto and the proposed plans and specifications for the improvements by lessee in connection with the extension of the term of General Lease No. S-3742, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Subject to the lessee fulfilling all of the Applicant Requirements listed above, authorize the extension of General Lease No. S-3742, JH Moku Ola, LLC, Lessee, covering the subject area 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 extension, amendment and restatement of lease document form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Approve an increase in rent in the amount of \$11,328.00 per year under General Lease No. S-3742, JH Moku Ola, LLC, Lessee, based on the rental rate charged to Sublessee Maui Varieties Investments, Inc., as calculated in Exhibit 2. The increase shall apply through the sublease term expiring on November 11, 2028.

Respectfully Submitted,



Gordon C. Heit  
District Land Agent

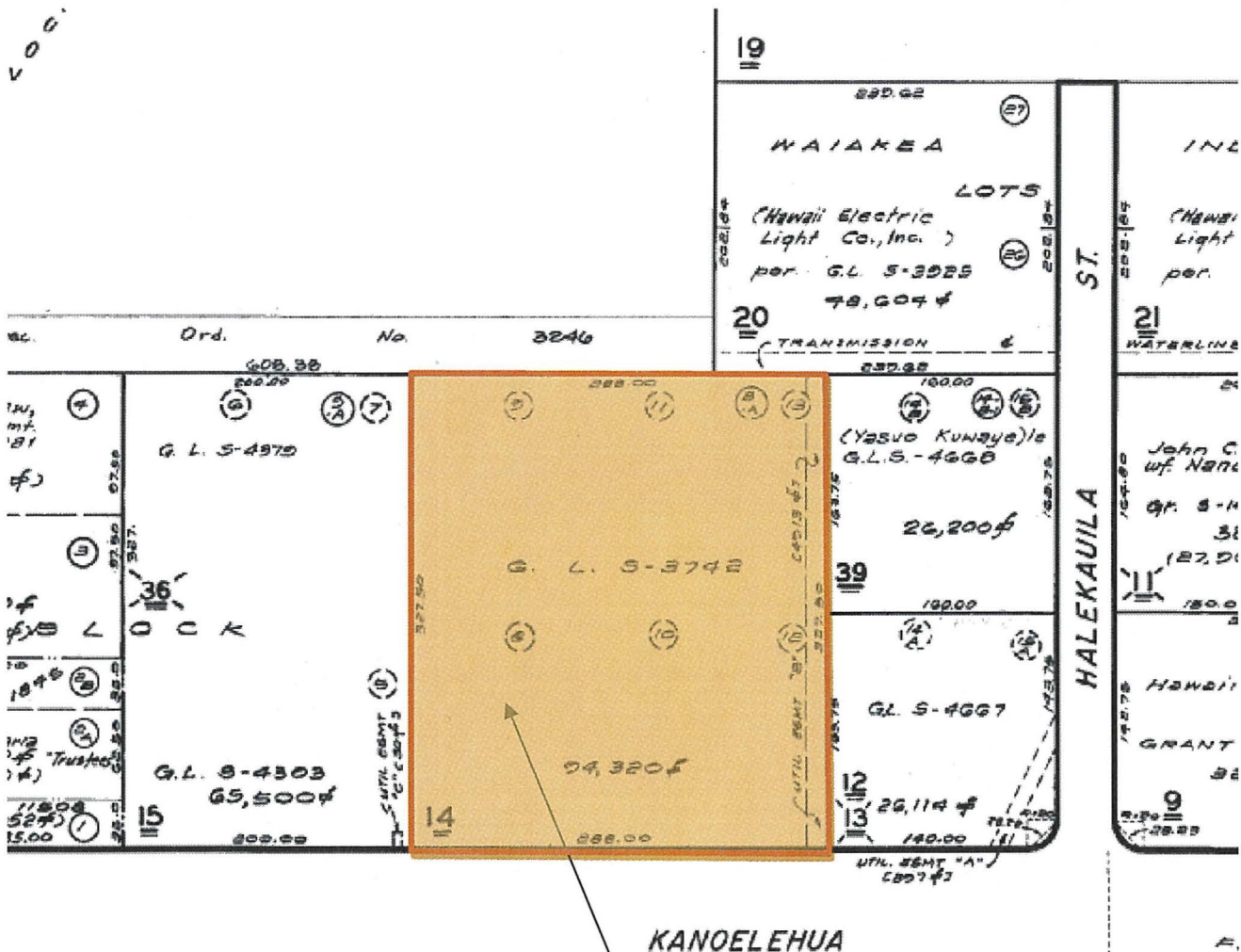
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

# EXHIBIT 1

TMK: (3) 2-2-058:014



SUBJECT PROPERTY



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 961-9590  
FAX: (808) 961-9599

March 10, 2020

MEMORANDUM

TO: Suzanne D. Case, Chairperson  
THROUGH: Russell Y. Tsuji, Division Administrator  
FROM: Gordon C. Heit, District Land Agent  
SUBJECT: In-House Recommendation – Rent Adjustment Calculation

GL No.:	S-3742
Lessee/Sublessor:	JH Moku Ola, LLC
Sublessee:	Maui Varieties Investment, Inc.
Location:	Waiakea, South Hilo Hawaii
Lease Area:	2.165 acres (94,307 square feet) (Total building area – 22,000 sq. ft.)
Sublease Area:	74,000 square feet (includes 14,000 sq. ft. bldg.)
Tax Map Key:	(3) 2-2-058:014
Char. of Use:	Allowed uses under COH ML-20, Limited Industrial

We have been requested to provide an in-house evaluation of the sublease premium due to the State for the subleasing of a portion of GL S-3742 JH Moku Ola, LLC, Lessee/Sublessor to Maui Varieties Investment, Inc., Sublessee. The sublease documents and information provided by Lessee were analyzed and staff applied the formula approved by the Land Board on January 26, 2001, agenda item D-8, and modified by the Board at its meeting on August 24, 2012, agenda item D-14, comprising of the Sublease Rent Participation Policy.

The original term of this lease was for 55 years, commencing on November 12, 1963 and expiring on November 11, 2018. At its meeting of September 11, 2015, agenda item D-1, the Board approved an extension of the lease for an additional 10 years to allow the Lessee to amortize self-financed improvements in the amount of \$37,000.00.<sup>1</sup> These improvements were completed by September 30, 2016.

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<sup>1</sup> Improvements included replacement of existing roof, gutters and downspout, re-siding of exterior walls and electrical improvements.

**EXHIBIT 2**

In addition to the extension, the lease was also amended to provide that the Board shall have the right to review and approve the rent to be charged to the sublessee and shall have the right to revise the rent for the premises based on the rental rate charged to the sublessee.

The Lessee has submitted a proposal to sublease a portion of the lease area to Maui Varieties Investments, Inc. (doing business as Ace Hardware Hawaii). The subleased portion of the property includes 60,000 sq. ft. of open storage area as well as 14,000 sq. ft. of warehouse space. The Sublessee proposes to utilize the property as a distribution center for the company's retail outlets on the island of Hawaii. In addition, Sublessee will have a retail operation in the warehouse.

Staff was guided by the approved Rent Participation Policy item 1I(ii) for lessees paying fair market rent which states:

*"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."*

The Lessee made improvements to the lease in the amount of \$37,000 as a condition of the 10-year extension and therefore will need to amortize its cost over the remaining term of the lease. Furthermore, the Lessee is requesting a 30-year extension of the lease pursuant to Act 149 SLH 2018 and will be making additional improvements to the property. These improvements include the installation of a septic system, modifications to the warehouse to accommodate the sublessee's retail operation and resurfacing the parking lot.

Given the age of the improvements on the property, the lessee is anticipating an annual expense of approximately \$30,000 for maintenance for both warehouse structures, fencing and the open paved areas. The lessee has provided a summary of annual maintenance report for year ending in 2019 (Exhibit X).

The lessee is also requesting a 30-year extension to amortize improvements to the warehouse structures and property to accommodate the sublessee's business. The lessee will be seeking a loan for the improvements in the amount of \$800,000 at an initial rate of 4.25% for the first 10 years.

The following calculation allows for amortization of the Lessee's financial improvements (\$800,000 x 4.25% interest = \$34,000) along with allowances for property insurance (\$8,000), average annual maintenance costs (\$30,000), General Excise Tax, and Real Property Tax.

CALCULATION:

Annual Ground Rent	\$ 85,260.00
Annual Sublease Rent	\$300,000.00
Less G. E. Tax	\$ -12,750.00
Less Real Property Tax	\$ -16,706.00
Misc. Allowances	\$ -72,000.00
Total Allowances	<u>\$ -86,456.00</u>
Total Sublease Rent	\$113,284.00
Income to Land	\$ 300,000.00
Annual Ground rent	\$ -85,260.00
Total Allowances	<u>\$ -86,456.00</u>
Total Amount	\$ 113,284.00
DLNR Rent Participation	<u>10%</u>

**Additional Annual Rent Due \$11,328.00**

Based on the analysis above, staff is recommending that the Board increase the current annual lease rent by \$11,328.00 due to the excess income derived from the sublease.

cc: District Branch Files  
Central Files

### JH MOKU OLA LLC BUILDING REPAIRS

Invoice Date	Invoice#	Vendor	Description of Work	Invoice Amount
2/8/2019	201981	Zen Woodworking, Inc.	Steel buliding roof repair location where needed. Gable Flashing / Wide ridge caps / Replace and seal screw due to leaks / Treat and prime rust area's.	\$ 2,218.28
3/20/2019	201985	Zen Woodworking, Inc.	Repair Pot Holes / With cement.	\$ 815.67
5/5/19	7783	Heart of Plam Hawaii	Demo and removal of rubbish from office & mesonine of previous construction material (building #2)	\$ 5,500.00
5/10/19	10606	DHM REPAIR	Repair damaged gate welding.	\$ 167.10
5/10/19	201989	Zen Woodworking, Inc.	Main entry gate repair to, due to criminal damaging entire gate. Emergency repair same day.	\$ 2,577.77
7/31/19	1293	N. REGO Contracting, Inc.	To furnish labor, material and equipment to fabricate, cut & weld existing 2 columns building B	\$ 1,173.00
9/5/19	1276	Gerard Call Electric, Inc.	Provide labor and material to repair the electrical meterring equipment wall. Install new sheet metal backing and new Helco splice box.	\$ 5,990.00
9/5/19	3234	Takamine construction, Inc.	Replace (1) purlin and flashing on front of building. Install (2) purlins on interior of building. Re- install 5/8" dry on back wall under z purlin in Bay 1 & 2. Replace existing z purlin	\$ 5,650.00
10/9/19	3272	Takamine construction, Inc.	Remove and repave cracked area of asphalt pavement 1,500 sq. ft. Hose bid leak: cut-out valve and install new ball valve and dug up leaking pipe and capped pipe.	\$ 7,373.00
12/12/19	201998	Zen Woodworking, Inc.	Gutters repairs where bracket damaged accured.	\$ 986.94
				\$ 32,451.76

### EXHIBIT X

**AMENDED**

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

June 28, 2019

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

PSF: 19HD-029

Hawai'i

**Authorize the Department of Land and Natural Resources, Land Division, to Negotiate a Development Agreement for a 30-Year Extension of Lease Term, General Lease No. S-3742, JH Moku Ola, LLC, Lessee; Lot 29, Waiakea Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:014.**

**Consent to Sublease, General Lease No. S-3742, JH Moku Ola, LLC, Lessee, to Maui Varieties Investments, Inc. Sublessee, Waiakea Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:014**

*as amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
June 28, 2019

APPLICANT AND REQUEST:

Development Agreement for Lease Extension:

Lessee JH Moku Ola, LLC, a Hawaii limited liability company, is requesting an extension of General Lease No. S-3742 of 30 years, commencing on November 12, 2028 and expiring on November 11, 2058 for an aggregate term (initial term plus all extensions) of 95 years.<sup>1</sup>

Sublease:

JH Moku Ola, LLC, a Hawaii limited liability company, as Sublessor, to Maui Varieties Investment, Inc., a Hawaii corporation, as Sublessee.

LEGAL REFERENCE:

Sections 171-36(a)(6), -191 and -192, Hawaii Revised Statutes (HRS), as amended, and Act 149, Session Laws of Hawaii 2018.

<sup>1</sup> Initial term of 55 years commencing on 11/12/1963 and expiring on 11/11/2018. Board previously approved a 10-year extension at its meeting of 9/11/15, Item D-1.

LOCATION:

Portion of Government lands of Lots 8 to 13 inclusive, Waiakea Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-058:014, as shown on the attached map labeled Exhibit A.

AREA:

2.165 acres, more or less.

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:

Allowed uses under the County of Hawaii zoning code, ML-20, Limited Industrial.

TERM OF LEASE:

Original term of 55 years, commencing on November 12, 1963 and expiring on November 11, 2018. Board approved extension of 10 years commencing on November 12, 2018 and expiring on November 11, 2028.<sup>2</sup>

Requested extension of 30 years commencing on November 12, 2028 and expiring on November 11, 2058.

TERM OF SUBLEASE:

9.5 years, commencing on May 12, 2019 and expiring on November 11, 2028.

ANNUAL RENTAL:

Current rent is \$85,260.00, due in quarterly installments of \$21,315.00 on February 12<sup>th</sup>, May 12<sup>th</sup>, August 12<sup>th</sup> and November 12<sup>th</sup> of each year.

ANNUAL SUBLEASE RENTAL:

\$300,000.00.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

\$ 16,105.00 per year. (Refer to attached Exhibit B for analysis of sublease rental income.)

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> years of the original term. A rental reopening for the extended term was determined by an appraisal that projected the rent for the extension period of November 12, 2018 through November 11, 2028.

USE OF LOAN PROCEEDS:

The lessee proposes to complete general improvements to both warehouse structures as well as replace and upgrade the existing septic system and install two drywells. A complete list of improvements is attached as Exhibit C.

DCCA VERIFICATION:

SUBLESSOR:

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

SUBLESSEE:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to comply with the requirements of Act 149 Sessions Laws of Hawaii 2018, negotiate a development agreement with department staff, and return to the Board at a later date for review and approval of the development agreement and requested lease extension.

BACKGROUND:

As a result of Act 32, Sessions Laws of Hawaii 1962, the direct lease of public lands to victims of natural disasters, General Lease No. S-3742 was issued to Hilo Trailer Ltd. for a period of 55 years effective November 12, 1963. A condition of the direct lease was that for the first five years, the character of use be consistent with the business being relocated. Hilo Trailer, Ltd. was in the business of manufacturing trailers, truck bodies and unloaders.

On October 26, 1966 the lease was assigned from Honolulu Iron Works Company, Successor of Hilo Trailers, Ltd., as surviving corporation under merger agreement dated 10/31/1965 as Assignor, to Edward R. Kuwaye, James R. Kuwaye, Yasuo Kuwaye and Yoshinobu Kuwaye, doing business as co-partners under the firm name of Edward R.

Kuwaye & Company. At its meeting of March 10, 1967, under agenda item F-12, the Board consented to the change in character of use to include automotive repair and engine and parts sales.

The Board, at its meeting of January 12, 1979 under agenda item F-1-a, consented to the assignment of lease from Edward R. Kuwaye, James R. Kuwaye, Yasuo Kuwaye and Yoshinobu Kuwaye, dba co-partners under the firm name of Edward R. Kuwaye & Company as Assignors, to Yasuo Kuwaye, husband of Hanako Kuwaye, as Assignee.

At its meeting of April 12, 1990, under agenda item F-1-e, the Board consented to the assignment of lease from Yasuo Kuwaye, husband of Hanako Kuwaye, as Assignor to Yasuo Kuwaye, Trustee under that Revocable Trust Agreement of Yasuo Kuwaye dated April 9, 1986 and American Trust Co. of Hawaii, Inc., Corporate Trustee under that certain Revocable Trust Agreement of Yasuo Kuwaye dated April 9, 1986, as Assignees.

Further, at its meeting of July 8, 1994 under agenda item F-1-d, the Board consented to the assignment of lease from Yasuo Kuwaye, Trustee under that Revocable Trust Agreement of Yasuo Kuwaye dated April 9, 1986 and American Trust Co. of Hawaii, Inc., Corporate Trustee under that certain Revocable Trust Agreement of Yasuo Kuwaye dated April 9, 1986, as Assignor to Yasuo Kuwaye, Trustee under that certain unrecorded Revocable Trust Agreement of Yasuo Kuwaye dated April 9, 1986, as amended by Amended Revocable Trust Agreement of Yasuo Kuwaye (Self-Trusted Trust) dated March 23, 1993, as Assignee.

At its meeting of February 11, 2005 under agenda item D-8, the Board consented to the assignment of lease from Yasuo Kuwaye, Trustee under that certain unrecorded Revocable Trust Agreement of Yasuo Kuwaye dated April 9, 1986, and amended by Amended Revocable Trust Agreement of Yasuo Kuwaye (Self-Trusted Trust) dated March 23, 1993, as Assignor, to JH Moku Ola, LLC, as Assignee, who, at the time of the assignment, was a tenant subleasing a portion of the property.<sup>3</sup>

As indicated above, the original term of this lease was for 55 years, commencing on November 12, 1963 and expiring on November 11, 2018. At its meeting of September 11, 2015, agenda item D-1, the Board approved an extension of the lease for an additional 10 years to allow the Lessee to amortize the self-financed improvements made to the property.<sup>4</sup>

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3 As originally issued, the lease allowed the Lessee to "sublet a part of the leasehold premises without approval of the Board". However, the Board approved an amendment of the lease at its meeting of September 11, 2015, Item D-1, that changed the subleasing provision to require Board consent.

4 Improvements included replacement of existing roof, gutters and downspout, re-siding of exterior walls and electrical improvements.

LEASE EXTENSION:

With the Lessee's current lease set to expire on November 11, 2028, the Lessee is requesting an additional 30-year extension pursuant to Act 149, Session Laws of Hawaii 2018 (Act 149) in order to amortize the cost of additional improvements to the property. Act 149 allows up to a 40-year extension of leases located in the Hilo Community Economic District (HCED) based on "substantial improvements" to the lease premises:

"Substantial improvements" means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

The subject lease is located within the HCED as defined in Act 149. Lessee's proposed improvements include the replacement of the roof on the larger of the two warehouses on the property along with other renovations to the premises at a cost in excess of \$433,000.00 (Exhibit C).<sup>5</sup> An appraisal evaluation performed by a certified appraiser has determined that the economic life of the proposed improvements will exceed the thirty-five-plus-year period necessary to amortize the refurbishments. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$1,185,000.00. Lessee's proposed expenditure of \$433,000.00 represents 36.5% of the value of the existing improvements (\$1,185,000.00), and Lessee is only seeking a 30-year extension of the lease. Accordingly, Lessee's proposed expenditure appears to justify the requested 30-year extension under Act 149.

The subject parcel is located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that have been extended and are scheduled to expire within the next ten years. Most of the DLNR leases in this area were established pursuant to Act 4, First Special Session of 1960 and Act 32, Sessions Laws of Hawaii 1962 resulting from the destruction of the Hilo bay front caused by the 1960 tsunami. Businesses that were severely impacted by the tsunami were given the opportunity to relocate to the newly created industrial area of Kanoelehua. These acts provided the Lessees with an option to purchase the land within two years. Several businesses exercised this option creating an industrial area of mixed DLNR leases and fee simple properties.

Act 149 also stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed.

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<sup>5</sup> Once the requested lease extension is granted, Lessee will seek a consent to mortgage from the Board or Chairperson, as appropriate, in order to finance improvements to the property. The Lessee has prequalified for a loan from First Hawaiian Bank of up to \$500,000.00. As a condition of the loan, the bank is requesting the Lessee obtain an extension of the current lease including the known fixed rent for a minimum of 10 years beyond the established amortization period (minimum of 35-years).

The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount.

The Lessee has submitted a proposed development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192(a), HRS, as amended. Staff is requesting authority to negotiate the terms and conditions of the development agreement with Lessee and present it to the Board for approval at a later date, along with the improvement plans and specifications.

There are no outstanding rental reopening issues. The Lessee is current with rent, insurance and performance bond.

No agency comments were solicited on the request because it involves a lease extension; not a new disposition.

#### SUBLEASE:

The Lessee has submitted a proposal to sublease a portion of the lease area to Maui Varieties Investments, Inc. (doing business as Ace Hardware Hawaii). The subleased portion of the property includes 60,000 sq. ft. of open storage area as well as 14,000 sq. ft. of warehouse space. The Sublessee proposes to utilize the property as a distribution center for the company's retail outlets on the island of Hawaii. In addition, Sublessee will have a retail operation in the warehouse.

The Lessee has also indicated that the Sublessee will be making improvements to the facilities in addition to the above-mentioned improvements proposed by the Lessee. Details for these improvements will be provided to the Hawaii District Land Office at a later date.

Staff is recommending that the Board increase the annual lease rent by \$16,105, due to the excess income derived from the sublease.

#### RECOMMENDATION:


That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Authorize the Department of Land and Natural Resources, Land Division, to negotiate a development agreement with Lessee JH Moku Ola, LLC for a 30-year extension of General Lease No. S-3742, covering the State-owned parcel identified by Tax Map Key: (3) 2-2-058:014 pursuant to Act 149 Session Laws of Hawaii 2018 and Section 171-192, Hawaii Revised Statutes, as amended, with the

understanding that the authorization shall not be deemed to be an approval of the development proposal or lease extension at this time, as staff shall return to the Board at a later date for review and approval of development agreement and lease extension, including plans and specifications for improvements submitted by the Lessee.

2. Authorize the sublease of General Lease No. S-3742 between JH Moku Ola, LLC., as Sublessor, and Maui Varieties Investment, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
  - 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 interests of the State.

Respectfully Submitted,

  
fr Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:

  
✓ Suzanne D. Case, Chairperson

Land Board Meeting: June 28, 2019, D-3: Approved as amended.

Approved as amended. The Board authorized the Division to negotiate the Development Agreement for the 30-year extension and consented to the sublease but held off deciding on whether to increase the rent based on the sublease rent to be collected. Staff will inquire with the Department of the Attorney General on whether the lease, as amended allows the Board to charge additional rent based on the sublease rent collected, and if affirmative, staff will work with the lessee on an appropriate amount of rent increase for consenting to the sublease.

**DEVELOPMENT AGREEMENT**

**FOR**

**JH MOKU OLA, LLC**

\* \* \*

**Department of Land and Natural Resources  
Land Division**

**State of Hawaii**

**EXHIBIT 4**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and dated effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”), by and between the **STATE OF HAWAII**, by its Chairperson of the Board of Land and Natural Resources (“**Chairperson**”) by the authority granted by the Board of Land and Natural Resources (“**Board**”) at its meetings held on, for the Department of Land and Natural Resources, Land Division, whose principal place of business and post office address is 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96813 (“**State**”), and **JH MOKU OLA, LLC**, a Hawaii limited liability company, whose post office address is P.O. Box 4517, Hilo, Hawaii 96720 (“**Lessee**”).

### **RECITALS:**

A. The State owns in fee simple that certain parcel of land, a portion of government lands, situated at Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, shown as the shaded area on **Exhibit A** attached hereto, incorporated herein and made a part hereof. The parcel consists of approximately 94,320 square feet and is identified by Tax Map Key No. (3) 2-2-058:014. The parcel is currently leased to Lessee under General Lease No. S-3742, as amended, for a term of fifty-five (55) years from November 12, 1963 to November 11, 2018, which was extended through November 11, 2028 by Extension of General Lease No. S-3742, dated March 29, 2017 (“**Lease**”). The parcel shall be referred to hereinafter as the “**Subject Property**.”

B. On June 28, 2019, under Agenda Item D-4, the Board authorized the Land Division to negotiate with the Lessee, a Development Agreement for a thirty (30) year extension for General Lease No. S-3742 pursuant to Act 149, and Section 171-36(b), Hawaii Revised Statutes (“**HRS**”), as amended. Act 149 authorizes the Board to extend the term of leases for public lands within the Hilo community economic district for lessees who commit to substantial improvements to the existing improvements or to new substantial improvements so long as the length of the extension granted does not extend the original lease term by more than forty (40) years. Act 149 defines “substantial improvements” to mean “any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent (30%) of the market value of the existing improvements...”.

C. A summary appraisal report prepared for the Lessee determined the market value of the leasehold improvements on the Subject Property to be \$1,185,000 as of December 15, 2018. Thirty per cent of this amount is \$355,500.

D. Lessee has requested that the term of the lease be extended for an additional thirty (30) years to November 11, 2058 and is prepared to enter a contract for improvements in the amount of \$800,000.

E. Pursuant to Act 149 and as a condition to the requested extension of the term of the Lease, Lessee is required to negotiate and enter into a development agreement with the State for the terms and conditions of the proposed development and improvements to be constructed at

the Subject Property, subject to review and approval by the Board. No extension to the term of the Lease is to be approved until the State and Lessee mutually agree to the terms and conditions of the development agreement. At its meeting of \_\_\_\_\_, Item D- , the Board approved Lessee's proposed development and improvements to be constructed at the Subject Property, and the entering into of this Agreement.

F. This Agreement sets forth the terms and conditions that Lessee must satisfy and successfully perform in order for it to be issued, and retain the benefit of, an extension of the term of the Lease by the State for the Subject Property pursuant to Act 149.

### **AGREEMENT:**

In consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, the State and Lessee hereby mutually agree as follows:

1. Term. The term of this Agreement shall commence on the Effective Date and terminate on the Completion Date as defined in Paragraph 8 herein, unless terminated sooner pursuant to the terms of this Agreement.

2. Continuation of the Payment of Lease Rental. Lessee shall continue to pay to the State, throughout the term of this Agreement, all rent and other charges due by Lessee under the Lease pursuant to the terms and conditions of the Lease. Upon the execution of the instrument extending the Lease (the extended Lease, hereinafter called the "**Extended Lease**"), Lessee shall pay to the State the Revised Annual Rent as defined in Paragraph 3.A.3) herein, and all other rent and other charges due by Lessee under the Extended Lease pursuant to its terms and conditions.

3. Development Plan.

A. Pursuant to Act 149, prior to entering into a development agreement, Lessee prepared and submitted to the Board the plans and specifications of its proposed development plan for the substantial upgrades to the existing improvements on the Subject Property, a copy of which is attached hereto as **Exhibit B** incorporated herein and made a part hereof ("**Development Plan**"). All such plans and specifications of the Development Plan shall meet the requirements of and be in full compliance with this Agreement and all applicable municipal, county, state and federal regulations, rules, codes and ordinances. The Board reviewed the Development Plan at its meeting held on \_\_\_\_\_, Item D-\_, and determined that:

(i) The Development Plan proposed in this Agreement is of sufficient worth and value to justify the extension of the term of the Lease;

(ii) The estimated period of time to complete the Development Plan shall be twenty-four (24) months from receipt of a Notice to Proceed;

(iii) The minimum revised annual rent to be paid by Lessee shall be based on the fair market value of the Subject Property to be developed, as determined by an appraiser for the Board, (**“Revised Annual Rent”**).

(iv) The improvements which are included in the Development Plan are of sufficient worth and value to justify the requested extension of the lease; and

(v) The economic life of the improvements which are included in the Development Plan is more than forty (40) years;

B. This Development Agreement is subject to final approval by the Board, which may impose additional conditions for its approval. If the Board imposes additional conditions, then Lessee shall notify the State in writing if it rejects such conditions within thirty (30) days after Board approval, after which time Lessee shall be deemed to accept the additional conditions. If Lessee rejects such additional conditions within the thirty (30)-day period, the Board shall be deemed to have denied final approval of the Development Plan and to have elected to terminate this Agreement effective as of the date that is one (1) day after the date of the expiration of such thirty (30)-day period. Neither Lessee nor the State shall have any further rights, duties or obligations under this Agreement, except as to any provisions of this Agreement which expressly survive its termination.

C. Lessee shall have submitted evidence reasonably satisfactory to the Chairperson that Lessee has adequate funding and/or financing to fully develop the Subject Property in accordance with the approved Development Plan, including without limitation, pro forma financial statements for the project, financing and/or equity commitment letters, and confirmations/evidence of tax credit eligibility.

D. Notwithstanding anything contained in this Agreement to the contrary, no such final approval of the Development Plan by the State shall be deemed a warranty or other representation on its part that (1) Lessee will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Lessee to develop the Subject Property in accordance with the approved Development Plan; or (2) such approved Development Plan by the State and the plans and specifications of substantial upgrades to the existing improvements on the Subject Property described therein are legal or structurally safe or sound.

E. Lessee accepts the Revised Annual Rent as set forth in Exhibit C for the Extended Lease pursuant to its terms and conditions..

4. Condition of the Subject Property. The State makes no representations regarding the condition or suitability of the Subject Property and of the existing structures and improvements at the Subject Property for the approved Development Plan. Lessee shall, at its sole cost and expense, be responsible for conducting its own investigations and due diligence regarding the Subject Property and the existing structures and improvements at the Subject Property, and any site work necessary to implement the approved Development Plan, including

but not limited to the removal of hazardous materials, if any. Lessee acknowledges and agrees that it assumes all risks of development at the Subject Property.

5. Construction Period. Lessee shall have twenty-four (24) months from the Effective Date to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan (“**Construction Period**”). Lessee shall, at Lessee’s sole cost and expense, expeditiously and diligently seek to obtain all necessary and appropriate permits and/or other regulatory approvals from the Federal Government, State of Hawaii (including the State Legislature if applicable), and/or County of Hawaii (“**County**”) so as to enable Lessee to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan. Lessee shall use diligent and all commercially reasonable efforts to obtain all required permits and/or other regulatory approvals from the Federal Government, State of Hawaii and/or County.

6. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous material in completing the approved Development Plan at the Subject Property, 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 Subject Property any such materials except to use in the ordinary course of Lessee’s business, and then only after written notice is given to the State of the identity of such materials and upon the State’s consent, which consent may be withheld at the State’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 the 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 the State’s request concerning Lessee’s best knowledge and belief regarding the presence of hazardous materials on the Subject Property placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the Subject Property occurring while Lessee is in possession, or elsewhere if caused by the Lessee or persons acting under the Lessee. These covenants shall survive the expiration or earlier termination of this Agreement.

For the purpose of this Agreement, “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 ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

7. Bonds. Pursuant to Act 149, no construction shall commence until Lessee has filed with the State sufficient bonds conditioned upon the full and faithful performance of all the terms and conditions of this Agreement, which shall consist of a completion bond and a labor and materialmen’s bond in the amount of \$800,000 in such form and upon such terms and

conditions as may be approved by the State. The Development Plan proposes upgrades to the existing improvements at the Subject Property in the amount of \$800,000 (as defined and described below).

The Lessee shall, at its own cost and expense, within fifteen (15) days from the Effective Date of this Agreement, procure and deposit with the State and thereafter keep in full force and effect during the term of this Agreement, such bonds acceptable to the State in the amount of \$800,000 as aforesaid, which bonds shall name the State as obligee, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions and covenants of this Agreement, including, but not limited to, the completion of the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property on or before the date of completion, free from all liens and claims, pursuant to the approved Development Plan. Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property incorporated herein this Agreement. These bonds shall provide that in case of a breach or default of any of the terms of this Agreement, covenants, conditions and agreements of such bonds, the full amounts payable pursuant to the terms and conditions of such bonds shall be paid to the State as liquidated and ascertained damages and not as a penalty.

8. Completion of Construction; Inspection. Upon completion of the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan by Lessee, Lessee shall provide written notice to the State acknowledging and confirming the same. Representatives of the State and Lessee shall then conduct a final inspection and walk through of the Subject Property within fourteen (14) days of such written notice, and a "punch list" shall be mutually prepared and agreed upon by representatives of the State and Lessee within seven (7) days of such inspection and walk through of the Subject Property. Such punch list shall itemize any areas of construction that were not in accordance with the approved Development Plan, or any unauthorized construction or work not acceptable to the State or any other governmental agency having jurisdiction over such work. Lessee, at Lessee's sole cost and expense, shall immediately repair all deficiencies identified as potential safety hazards on the punch list, and all other deficiencies on the punch list shall be remedied within fourteen (14) days of the preparation of the same.

If the State is satisfied that completion of the substantial upgrades to the existing improvements on the Subject Property have been performed in accordance with the approved Development Plan by Lessee, including any and all punch list items, then the State shall confirm and notify Lessee of the same in writing ("**Completion Date**"), at which time Lessee shall have the right to terminate the bonds posted by Lessee pursuant to Paragraph 7 hereof.

9. Justification of Sureties. Any bonds required by this Agreement 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 (2) personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, HRS; 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 State security in certified checks, certificates of deposit (payable on demand or after a period the State may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the State a deed or deeds of trust of real property, all of a character which is satisfactory to State 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 State shall be determined by the State, and that the Lessee may, with the approval of the State, exchange other securities or money for any of the deposited securities if in the judgment of the State 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 State and that until this consent is granted, which shall be discretionary with the State, no surety shall be released or relieved from any obligation, except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove.

10. Waiver, Modification, Reimposition of Bond and Liability Insurance Provisions. Upon substantial completion of the improvements contemplated herein and after forty-five (45) days after the filing and publication of the Notice of Final or Substantial Completion by Lessee, and upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this Agreement on its part to be observed or performed, the State at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove, the State reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this Agreement.

11. Modifications to the Development Plan. Lessee shall be entitled to make changes or modifications to the approved Development Plan as may be required to address and satisfy any comments made or issues raised by the appropriate agencies of the Federal Government, State of Hawaii and/or County without the further consent or approval by the State, provided that: (a) Lessee provides advance written notice to the State of such changes or modifications, including a reasonably specific explanation as to why such changes or modifications are being undertaken and their anticipated effect; and (b) such changes or modifications: (i) do not materially alter or change the Development Plan as approved by the State; (ii) do not reduce the rents and all other charges to be paid by Lessee under the Lease or Extended Lease; (iii) do not provide for uses that are not permitted by applicable laws or ordinances; or (iv) do not adversely affect or delay the Construction Period for more than one hundred and eighty (180) days.

In addition, the State recognizes that from time to time the approved Development Plan may require changes or modifications initiated by Lessee. Lessee may make any such changes or modifications to said approved Development Plan with the prior written consent of the State, which consent may be withheld by the State in its sole and absolute discretion, provided that such changes or modifications: (a) do not materially alter or change the Development Plan as approved by the State; (b) do not reduce the rents and all other charges to be paid by Lessee under the Lease or Extended Lease; (c) do not provide for uses that are not

permitted by applicable laws or ordinances; or (d) do not adversely affect or delay the Construction Period for more than one hundred and eighty (180) days.

12. Agreement to Issue Extension of Term of Lease. Upon execution of this Agreement, the State will request the Department of the Attorney General to prepare the Extended Lease. Pursuant to Act 149, the Extended Lease shall reflect an extension term of approximately thirty (30) years. The Extended Lease will cover the aggregate extended term between November 12, 2028 through November 11, 2058, and will provide that in the event that the Lessee fails to successfully perform, timely satisfy or fully comply with any of the terms and conditions of this Agreement and/or approved Development Plan, the Extended Lease term will be rescinded and the Lease, together with its current termination date of November 11, 2028, will be reinstated. The State and Lessee will promptly sign the Extended Lease when the form thereof is approved by the Department of the Attorney General and Lessee.

13. Default; State's Right to Terminate Agreement and/or Rescind Lease Extension. The State may, at its option and in its sole and absolute discretion, upon written notice to Lessee without prejudice to any other remedy or right of action, terminate this Agreement and/or rescind the Extended Lease at any time for any one of the following reasons:

A. If Lessee fails to pay rent or any part thereof or any other charge, payment or amount it is obligated to pay or that is due by Lessee under the Lease or the Extended Lease, and this failure continues for a period of more than thirty (30) days after delivery by the State of a written notice of such breach or default and demand for cure, by personal service, registered mail or certified mail to Lessee that the same is past due;

B. If Lessee fails to observe or perform any of the material covenants, terms and conditions contained herein this Agreement, including but not limited to, those listed in subparagraphs (i) through (vi) herein, the Lease or the Extended Lease on the Lessee's part to be observed and performed, and such breach or default continues for a period of more than sixty (60) days after delivery by the State of a written notice of such breach or default and demand for cure, by personal service, registered mail or certified mail to Lessee of such breach or default, or if such breach or default in observance and performance of such other covenants cannot reasonably be cured within said sixty (60)-day period, then such longer time as may be required, provided that Lessee shall within said period commence such cure and thereafter diligently prosecute the same to completion within sixty (60) days thereafter;

(i) If Lessee fails to obtain any and all Federal Government, State of Hawaii (including the State Legislature if applicable), and County permits and approvals required and necessary for the completion of the approved Development Plan;

(ii) If Lessee becomes bankrupt or insolvent, or seeks protection under any provision of any bankruptcy or insolvency law or any similar law providing for the relief of debtors, or abandons the project contemplated under the approved Development Plan, or if any assignment is made of Lessee's rights hereunder for the benefit of creditors;

(iii) If the Subject Property or any part of the Subject Property, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime; or

(iv) If the Lessee is not in compliance with Section 171-192, HRS.

Any default under this Agreement by the Lessee shall be cause by the State to terminate this Agreement and rescind the Extended Lease, and the State shall have all other rights and remedies provided herein, in the Lease or by law with respect to a default by the Lessee under this Agreement. In addition, any default by the Lessee under the Lease or Extended Lease shall be cause by the State to terminate this Agreement and rescind the Extended Lease, and the State shall have all other rights and remedies provided herein, in the Lease or the Extended Lease, as applicable, or as otherwise provided by law with respect to a default by the Lessee under the Lease or Extended Lease.

Upon any early termination by the State under this Agreement, this Agreement shall terminate on the date as provided for in the State's written notice and shall become null and void except as to any provisions which expressly survive termination in this Agreement. The Extended Lease shall be rescinded and Lessee shall not be entitled to an extension of the term of the Lease for the Subject Property pursuant to Act 149. Upon the effective date of termination and without waiving any other remedies to which it may be entitled, the State shall be entitled to: (1) prosecute any claim against Lessee for fees, costs or other payments or charges that accrued prior to the effective date of termination, including the interest thereon; and (2) assert any claim that it may have against Lessee for any damages, costs, or expenses, suffered or incurred by the State, which obligations shall survive termination of this Agreement, the Lease and/or Extended Lease.

14. Non-Waiver. The waiver by the State of any breach by the Lessee of any term, covenant, or condition of this Agreement or the Lease, nor of the State's right of re-entry for breach of covenant, nor of the State's right to declare and enforce a forfeiture for any breach, and the failure of the State 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 such term, covenant, condition or option.

15. Liens. Lessee will not commit or suffer any act or neglect whereby the Subject Property or any improvements thereon or the estate or interest of the State therein shall at any time during the term of this Agreement become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will indemnify, defend and hold the State harmless from and against all loss, cost or expense with respect thereto (including reasonable attorney's fees). If any lien for work, labor, services or materials done for or supplied to the Subject Property by, on behalf of, or through Lessee is filed against the Subject Property, Lessee shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit, bond or other reasonably satisfactory alternative approved by the State, as the case may be. The foregoing covenants of Lessee shall survive expiration or any early termination of this Agreement.

16. Expenses to be Paid by Lessee. Pursuant to Act 149, Lessee shall pay all costs and expenses incurred by the State in connection with the processing, analyzing and negotiating of any request for a lease term extension and document, and the Development Agreement.

17. Observance of Laws, Ordinances and Regulations. Each party hereto, and their respective officers, agents, assigns, employees, consultants and/or contractors, or persons acting for or on its behalf, shall at all times observe and comply with all applicable laws, ordinances, rules and regulations of the federal, state, county and municipal governments, now in force or which may be in force.

18. Archaeology; Historic Preservation. Lessee, including any agent or contractor, upon encountering any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human remains, or any historic properties or burials, on the Subject Property, will immediately stop all work and contact the State DLNR Historic Preservation Division in compliance with Chapter 6E, HRS.

19. Recordation. This Agreement shall not be recorded. However, upon request by either the State or Lessee, a short form memorandum of this Agreement shall be prepared by the State and shall be duly executed and acknowledged in proper form and may be placed of record so as to give public notice as to the existence of this Agreement.

20. Notices. Any notice or demand to the State or Lessee provided for or permitted by this Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally within the respective County as applicable, the State or to any officer of Lessee, or (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to the other. Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, or receipt of Fax, or at 4:00 p.m. on the third business day after being deposited with the United States mail as aforesaid, as follows:

If to the State:	Board and Department of Land and Natural Resources 1151 Punchbowl Street, Room 220 Honolulu, Hawaii 96813 Attention: Chairperson Fax No.: (808) 587-0390
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And a copy to:	Department of the Attorney General Attention: Land/Transportation Division Kekuanaoa Building 465 South King Street, Suite 300 Honolulu, Hawaii 96813 Fax No.: (808) 587-2999
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If to Lessee:

JH Moku Ola, LLC  
P.O. Box 4517  
Hilo, Hawaii 96720  
Attention: Miles Sakane  
e-mail: miles-zenwoodworking@hawaii.rr.com  
Fax No.: (808) 959-0005

And a copy to:

Peter K. Kubota  
505 Kilauea Avenue  
Hilo, Hawaii 96720  
Phone (808) 935-2422  
e-mail: peter@kubotalaw.com

21. Status Reports; Lessee Cooperation. Lessee acknowledges that the State's staff may be required to periodically report to the Board during the term of this Agreement on the status of Lessee's progress of the approved Development Plan incorporated herein this Agreement. Lessee agrees to reasonably assist and meet with the State's staff in making such reports, including without limitation, upon commercially reasonable advance written notice, having a representative available to answer questions at any meetings of the Board at which such reports are given, providing information that State's staff reasonably requests for the purposes of making such reports, and being available to meet with the State's staff prior to the time such reports are made.

22. Costs and Attorney's Fees. Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants, terms and conditions of this Agreement, including, but not limited to, recovering possession of the Subject Property, or in the collection of delinquent fees, taxes, assessments, and any and all other amounts or charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.

23. Construction and Amendment. This Agreement has been negotiated extensively by Lessee and the State with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of this Agreement or any Exhibit attached hereto shall be effective unless incorporated in a written instrument executed by and between the State and Lessee. The State and Lessee agree to execute such other documents and instruments as may be reasonably requested by the other party and as may be necessary to effectuate the terms and conditions of this Agreement.

24. Governing Law. This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii.

25. Ratification. To the extent of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall govern and control

to the extent only where there is any conflict or inconsistency with regard to the terms and conditions that Lessee must satisfy and successfully perform in order for it to be issued an extension of the term of the Lease by the State for the Subject Property pursuant to Act 149.

26. 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 Agreement.

27. Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect which is not material to the transactions contemplated hereunder, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

28. Assignment. Any and all rights under this Agreement granted to Lessee may not be sold, assigned, conveyed or transferred in any manner by Lessee to any other person or entity. Notwithstanding the foregoing, however, Lessee may assign this entire Agreement and the development rights provided for herein to an institutional lender or lenders providing financing for the development of all or any portion of the Subject Property as security for the repayment of such loan or loans, with the prior written consent of the State.

29. State's Right to Assign. It is specifically understood and agreed that the State (through the Board) may convey or otherwise transfer the Subject Property subject to the terms and conditions of this Agreement, and assign this entire Agreement (including, but not limited to the assignment of any lease issued or to be issued under this Agreement) to any other department or agency of the State of Hawaii, subject to such department or agency affirmatively agreeing to accept such Subject Property subject to the terms and conditions of this Agreement and assuming all undertakings and obligations under this Agreement and/or the extension of the term of the Lease issued or to be issued under this Agreement. Upon any such assignment, Lessee agrees to attorn to the assignee on the terms and conditions of this Agreement, the lease, or any other lease that is part of this Agreement.

30. Development Rights. Upon the expiration or any early termination of this Agreement by the State for whatever reason, all development rights, permits, approvals, plans, specifications, etc. prepared by or for Lessee in connection with Lessee's efforts relating to the proposed development and improvements to be constructed at the Subject Property or under this Agreement shall, to the extent owned by and/or assignable by Lessee, vest with and become a part of the Subject Property of the State. At the request of the State, Lessee shall do all things reasonably necessary to assign to the State, all such development rights, permits, approvals, plans, specifications, etc.

31. Modification. This Agreement may only be amended or modified by written agreement signed by all parties; provided however, this Agreement may only be amended or modified with the approval of the Chairperson.

32. DLNR. Notwithstanding anything herein to the contrary, it is specifically understood and agreed by the parties that: (a) the “State” as used herein means the Department of Land and Natural Resources, State of Hawaii, and the “Chairperson” as used herein means the Chairperson of the Board of Land and Natural Resources; (b) whenever action is taken, or required to be taken by the “State” under this Agreement (e.g., approve, disapprove, consent or otherwise), it shall be deemed to be an act of only the Board of Land and Natural Resources, and shall not be construed to be the act of any other department or agency of the State of Hawaii. Lessee acknowledges and accepts the responsibility for obtaining all entitlements and governmental approvals from the other applicable governing boards, agencies and departments of the State, County and Federal Government.

33. No Third-Party Beneficiaries. No third-party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

34. Nondiscrimination. The use of the Subject Property shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or a physical handicap.

35. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

36. Time is of the Essence. Time is of the essence in all provisions of this Agreement.

37. Exhibits. The following exhibits are attached to this Agreement and deemed incorporated herein this Agreement by reference:

Exhibit A: Map of Subject Property

Exhibit B: Lessee’s Development Plan dated January 14, 2020.

Exhibit C: Revised Annual Rent For Extended Lease Term

[THE NEXT PAGE IS THE SIGNATURE PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Approved and Executed by the Chairperson  
pursuant to authority granted by the Board  
of Land and Natural Resources at its  
meetings held on \_\_\_\_\_

**STATE OF HAWAII**

By \_\_\_\_\_  
Chairperson of the Board of Land and  
Natural Resources  
State

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy Attorney General  
Dated: \_\_\_\_\_

**JH Moku Ola, LLC**  
a Hawaii limited liability company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Lessee

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of **JH MOKU OLA, LLC** a Hawaii limited liability company, and that the foregoing instrument was signed in behalf of said company by authority of its \_\_\_\_\_, and the said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said company.

Notary Public, State of Hawaii

---

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

**TMK: (3) 2-2-058:014**



**EXHIBIT B**  
**LESSEE'S DEVELOPMENT PLAN DATED JANUARY 14, 2020**



## Takamine Construction, Inc.

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### PROPOSAL

---

DATE: JANUARY 14, 2020  
TO: MILES AND YI SOON SAKANE  
OF (COMPANY): JH MOKU OLA LLC  
PROJECT NAME: IMPROVEMENTS TO PROPERTY  
TMK #: (3) 2-2-058:014  
PROJECT LOCATION: 845 KANOELEHUA AVE.  
HILO, HI 96720

---

We propose to furnish all material and perform all labor necessary to complete the following:

#### IMPROVEMENTS TO PROPERTY LOCATED AT 845 KANOELEHUA AVE.

#### CONDITIONS

1. This is a proposal based on site visit and drawings provided by lessee.
2. Any revisions or additions will require re-pricing by Takamine Construction, Inc.
3. Improvements to be completed within 6 months of notice to proceed.

#### SCOPE OF WORK:

1. Building A- Repair roof area as needed, also remove current top ridge vents and install wide new ridge Cap. Top screen opening to be in closed with metal siding panels. Repair and cut back roof overhang to avoid heavy wind lift, also install new purling due to rusted areas. Building A only. \$60,000
2. Building A- Replace damaged roll up door \$15,000
3. Building A- Repaint sidewalls and roof except for the South side wall. Apply (2) coats of Dev Flex 4020PF direct to metal paint. \$48,000
4. Building A- Replace South side wall siding. Remove electrical panels, window framing, conduits and re-install upon completion of siding install. Metal shall be pre-finished 24 ga. fastened with self-tapping stainless steel screws with pre-finished head and neoprene washers. Pattern to match existing. \$25,905



## Takamine Construction, Inc.

5. Building B- Repaint South and East sidewalls and roof. Apply (2) coats of Dev Flex 4020PF direct to metal paint. \$29,100
6. Building B-Install new metal wall siding on North and West sides. Metal shall be pre-finished 24 ga. fastened with self-tapping stainless steel screws with pre-finished head and neoprene washers. Pattern to match existing. \$53,000
7. Replace gutters and downspouts on both buildings A & B. \$18,000
8. Building B Install R30 insulation under roof. \$38,000
9. Engineering and design for septic and site drainage. Abandon (3) cesspools, pump out and backfill. Install (2) shallow drywells 7'-9" deep by 8' in diameter with 10" thick concrete grated inlet cover. Install (2) 1,250-gallon Jensen pre-cast concrete septic tanks With traffic rated leach field (infiltrators). Remove approximately 13,000 sq. ft. of existing asphalt pavement, regrade for proper drainage flow to sumps and repave with 2" thick asphalt pavement. \$186,000
10. Repair (2) restrooms in Building B. Paint interior and exterior, replace doors and hardware, supply and install new plumbing and electrical fixtures. \$15,000
11. Replace (2) steel exterior doors and hardware on Building B. \$4,260
12. Supply and install (4) Toshiba Carrier 4OTCQ AC units in Building B. Install R13 insulation on walls. \$219,000
13. Supply and install lighting on interior of building B. Lighting shall be 8' long, suspended from roof purlins with threaded rod at approximately 14' above finish floor. Fixture type shall be Lithonia CLX L96 18000LM SEF WDL MVOLT GZ10 40K 90 CRI (E10WLCP). \$66,000
14. Additional work and contingency for price increases. \$22,735

We propose to furnish material and labor, complete in accordance with the above specifications, for the sum of: Eight hundred thousand and 00/100 Dollars \$800,000

Payment to be made as follows: Progress payments

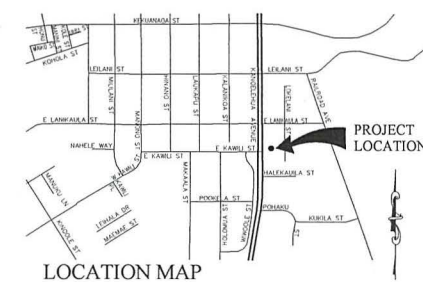
Contractor's Signature: \_\_\_\_\_

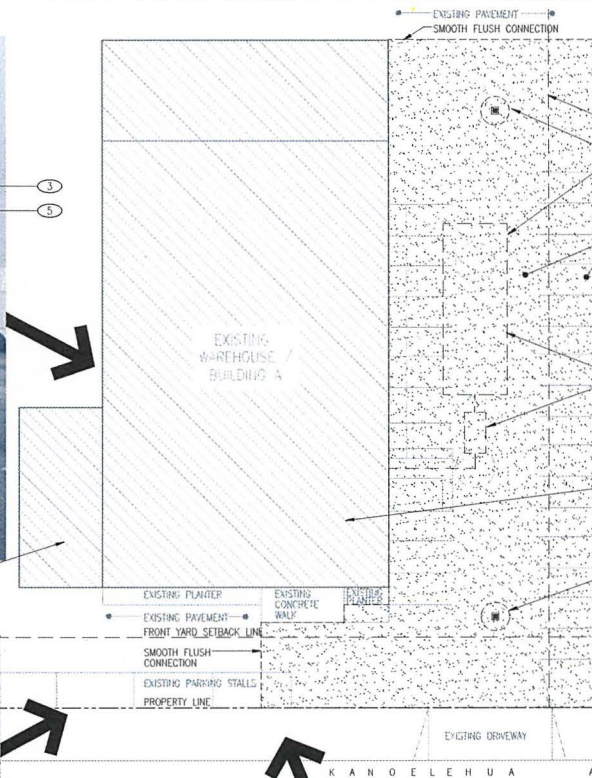
Craig S. Takamine

Acceptance of Proposal: The above price, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Owner's Signature: \_\_\_\_\_

Date: \_\_\_\_\_





**NOTES:**

1. Repaint sidewalks and roof. Paint (2) coats of Dev Flex 4020PF Direct to metal paint.
2. not used
3. Repair Roof area as needed, also remove current top ridge vents and install wide new 24 ga. ridge Cap. Top screen opening to be in closed with 26 ga. metal siding panels. Repair and cut back roof overhang to avoid heavy wind lift, also install new galvanized C purlin due to rusted area's. Building A only
4. Replace damaged roll up door building A only. Roll up door will be 24 ga. pre-finished galvanized steel with manual operated chain opening device.
5. Replace gutters and downspouts. Gutters shall be 6" pre-finished seamless aluminum with 4" dia PVC downspouts.
6. not used
7. Engineering and design for septic and site drainage. Abandon (2) cesspools, pump out and backfill. Install (2) shallow drywells 7'-9" deep by 8'-0" in diameter with 10" thick concrete grated inlet cover (approximate location). Install (1) 1,250 gallon Jensen pre-cast concrete septic tanks With traffic rated leach field (infiltrators).

Install shallow drywells 7'-9" deep by 8'-0" in diameter With 10" thick concrete grated inlet cover. (approximate location)

**ENLARGED SITE PLAN / EXISTING BUILDING A**

SCALE: 1/16" = 1'-0"



1

Install shallow drywells 7'-9" deep by 8'-0" in diameter With 10" thick concrete grated inlet cover. (approximate location)



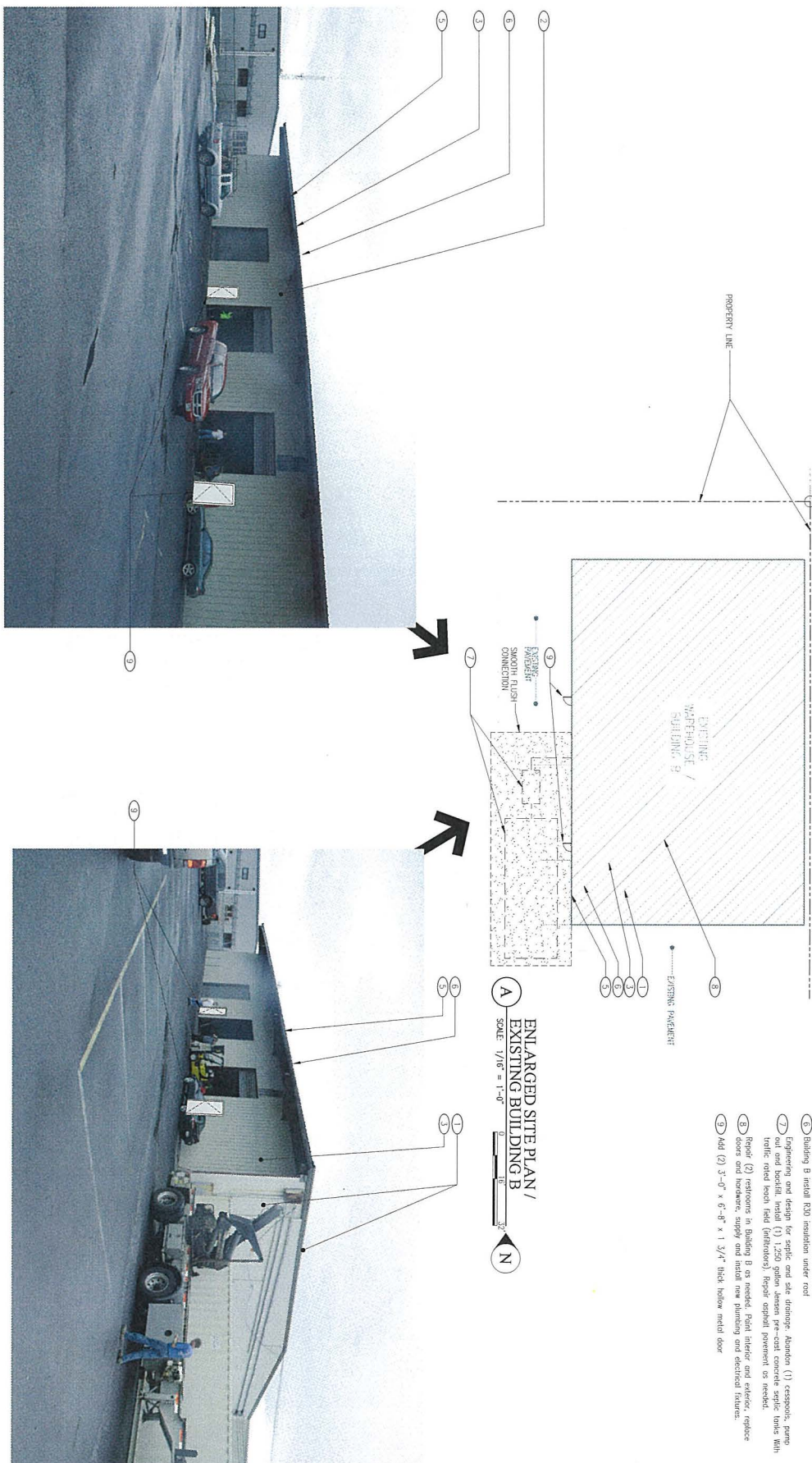
455 E. Lankford St.  
 Hilo, Hawaii 96720  
 Main (808) 933-7900  
 www.epc-hawaii.com

**ENLARGED SITE PLAN BUILDING A**

DATE	REV.	REV.	REV.	REV.
JULY, 2019	1			
AUGUST, 2019	2			
JANUARY, 2020	3			

**RENOVATION FOR:**  
 STATE OF HAWAII Fee Owner  
 JH MOKU OLA LLC Lessee  
 845 KANOELHUA AVENUE  
 SOUTH HILO, HAWAII  
 TMK: (3) 2-2-058:014

DRAWN BY:	DESIGNED BY:
K2	BF
CHECKED BY:	QC'D BY:
BF	YMF
JOB NO.	
15046-19-03	
DWG. NO.	



- NOTE:
- ① Repair South and East side walls and roof of Building B. Paint (2) coats of Bay for 4000°F. (heat) to metal.
- ② Install new metal wall to extend on Building B North and West sides. Metal wall be installed 24" to 30" outward with steel bracing strapping steel screws with pre-finished hood and inoperative valves. Return to metal exterior.
- ③ not used
- ④ Replace gutters and downspouts. Gutters shall be 6" pre-finished seamless aluminum with 4" dia PVC downspouts.
- ⑤ Building B install R30 insulation under roof
- ⑥ Engineering and design for septic and site drainage. Abandon (1) cesspool, pump out and backfill. install (1) 3200 gallon above pre-cast concrete septic tank. With toilet, install final field (liners). Septic system prevent to needed.
- ⑦ Repair (2) restrooms in Building B as needed. Paint interior and exterior. Replace doors and hardware, supply and install new plumbing and electrical fixtures.
- ⑧ Add (2)  $3' \times 10' \times 6'-8" \pm 1 \frac{1}{2}"$  thick below metal door

ENLARGED SITE PLAN  
BUILDING B

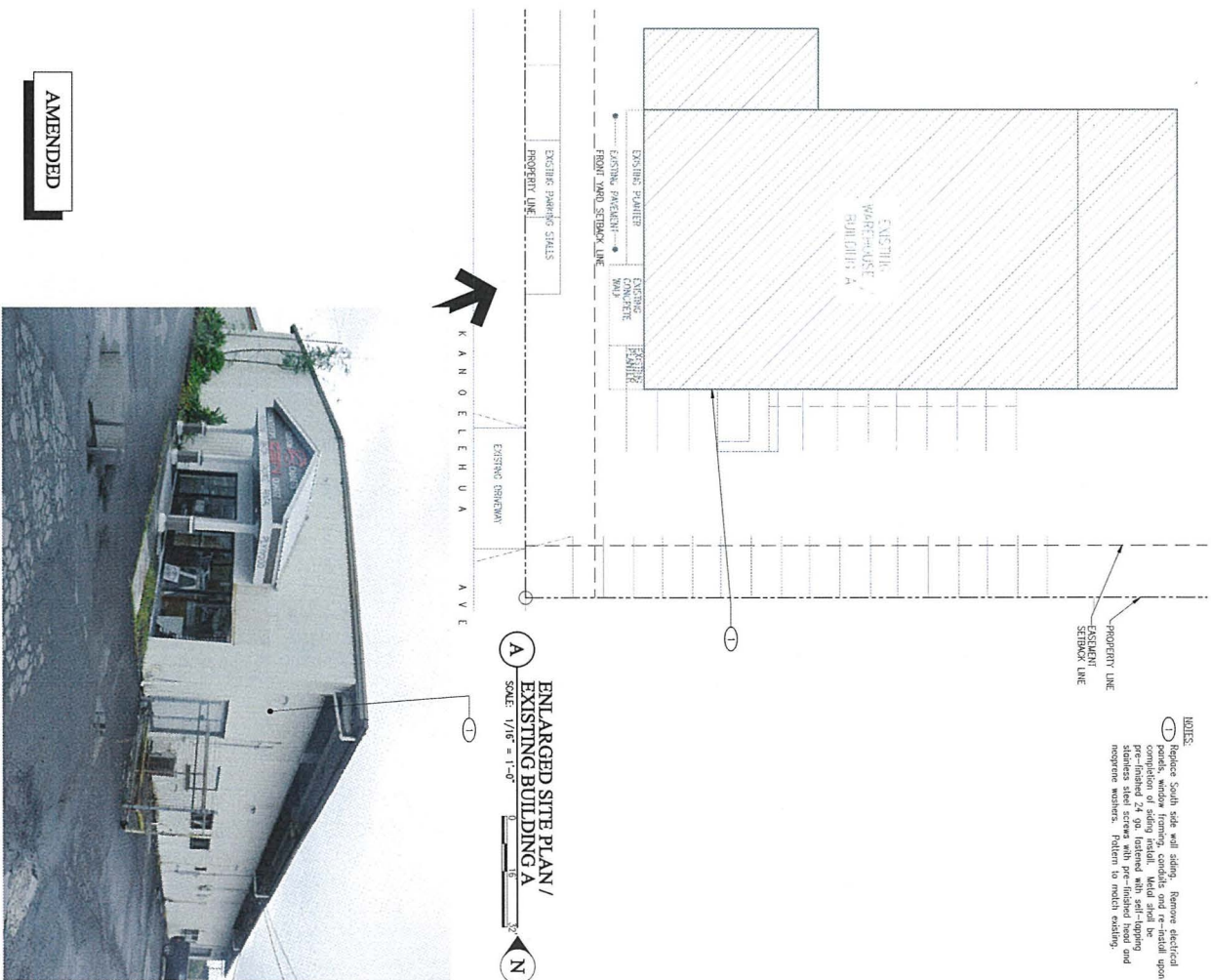
DATE: JULY, 2019 REV. ☐

REV. ☐ AUGUST, 2019 REV. ☐

REV. ☐ JANUARY, 2020 REV. ☐

RENOVATION FOR:  
STATE OF HAWAII Fee Owner  
JH MOKU OLA LLC Lessee  
845 KANOELEHUA AVENUE  
SOUTH HILO, HAWAII  
TMK: (3) 2-2-058: 014

JOB NO.  
15046-19-  
DWG. NO.



**NOTES**

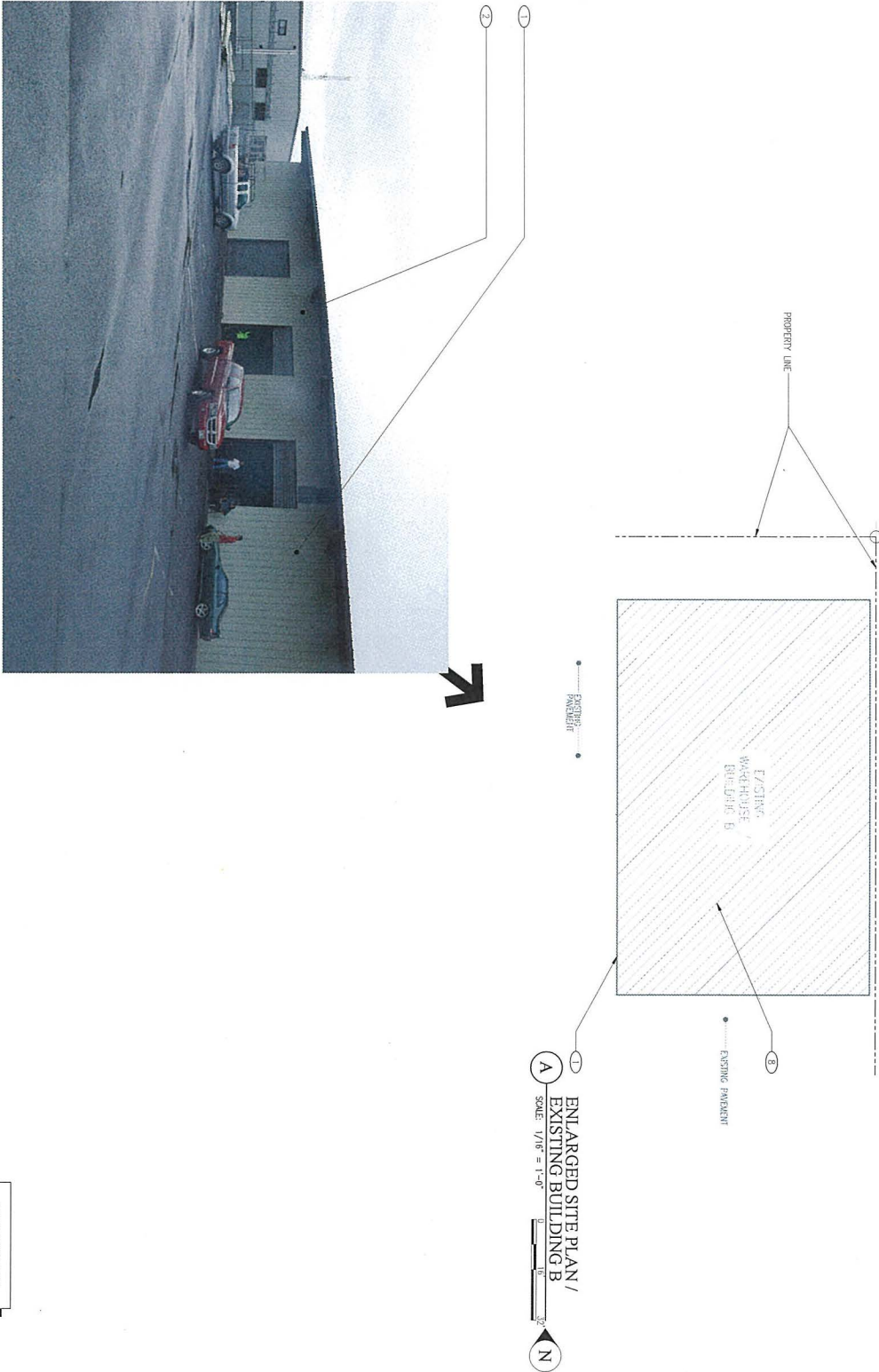
1. Replace South side wall siding. Remove attached porch. Install new framing, sheetrock and re-install upon completion of siding install. Metal and be pre-finished 24 ga. fastened with self-tapping stainless steel screws with pre-mixed bead and neoprene washers. Fasten to metal studs.

**ENGINEERING PARTNERS**

455 E. Louisiana St.  
 Honolulu, HI 96813  
 Phone: (808) 521-1111  
 Email: info@epartners.com










ENLARGED SITE PLAN BUILDING A			
DATE:	JULY, 2019	REV.	1
REV.	AUGUST, 2019	REV.	2
REV.	JANUARY, 2020	REV.	3

RENOVATION FOR: STATE OF HAWAII Fee Owner JH MOKU OLA LLC Lessee 845 KANOELEHUA AVENUE SOUTH HILO, HAWAII TMK: (3) 2-2-058: 014			
JOB NO.	15046-19-03	DWG. NO.	4
DATE	07/25/2019	SCALE	1/8" = 1'-0"
DESIGNED BY	W. J. HARRIS	CHECKED BY	W. J. HARRIS
DRAWN BY	W. J. HARRIS	IN CHARGE	W. J. HARRIS



- NOTES:
- (1) Supply and install (4) Tenba Corner 40/20 AC units in Building B, install R13 insulation on walls.
  - (2) Supply and install lighting on interior of building B. Lighting shall be 8' long, suspended from roof joists with threaded rod at approximately 14' above finish floor. Fixture type shall be Lithonia CLX L96 1800LM SFF WOL, MOLT 0210 40W 90 CRI (E10W/C7).

AMENDED

 <b>ENGINEERING PARTNERS</b>		445 E. Lihoula St. Hilo, Hawaii 96720 Main (808) 933-7906 Fax (808) 933-7906 Email: info@engineeringpartners.com	
<b>ENLARGED SITE PLAN BUILDING B</b>			
DATE: JULY, 2019		REV. 	
REV.  AUGUST, 2019		REV. 	
REV.  JANUARY, 2020		REV. 	
<b>RENOVATION FOR: STATE OF HAWAII Fee Owner JH MOKU OLA LLC Lessee 845 KANOELEHUA AVENUE SOUTH HILO, HAWAII TMK: (3) 2-2-058: 014</b>			
DESIGNED BY: 	CHECKED BY: 	DATE: 08/01/19	DATE: 08/01/19
BY: 	DATE: 08/01/19		
APP NO. 15046-19-03			
DWG. NO. 5			

**EXHIBIT C**  
**REVISED ANNUAL RENT FOR EXTENDED LEASE TERM**

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 961-9590  
FAX: (808) 961-9599

2020 JAN 23 A 10:59

RECEIVED  
LAND DIVISION  
HILO, HAWAII

January 17, 2020

Ref. No.: 19HD-029  
Author: LD-GH

JH Moku Ola, LLC  
P.O. Box 4517  
Hilo Hawaii 96720

Dear Lessee:

**Subject:** Notice of Appraisal for Proposed Extension of Lease Term Pursuant to Act 149, Session Laws of Hawaii 2018, General Lease No. S-3742, JH Moku Ola, LLC, Lessee; Lot 29, Waiakea Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:014.

With regard to the above referenced request, we have received an independent appraisal dated January 10, 2020 establishing the lease rent for the proposed 30-year extension period beginning November 12, 2028 and continuing through November 11, 2058. The appraisal review report has been approved by the Chairperson of the Board of Land and Natural Resources.

The following are the lease rent amounts for three 10-year reopening periods scheduled to begin November 12, 2028.

<u>Effective Date</u>	<u>Annual Lease Rent</u>
11/12/2028	\$104,750.00
11/12/2038	\$140,775.00
11/12/2048	\$189,190.00

Please indicate your acceptance or rejection by completing the following and returning a signed copy to this office. If you are rejecting our proposed rent determination, you must hire your own appraiser and give us his/her name with your rejection notification. Please note that you must hire an appraiser that is licensed in the State of Hawaii as a Certified General Appraiser (CGA).

**EXHIBIT C**

If you have any questions, please feel free to contact me at the Hawaii District Land Office at 961-9590. Thank you.

Sincerely,



Gordon C. Heit  
District Land Agent

cc: Land Board Member  
Central Files  
District Files  
Peter Kubota

The Undersigned:

☒

Accepts the proposed annual lease rent for General Lease No. S-3742 offered by the State of Hawaii Department of Land and Natural Resources.

☐


Rejects the proposed annual lease rent for General Lease No. S-3742 offered by the State of Hawaii Department of Land and Natural Resources and hereby appoints the following appraiser:

\_\_\_\_\_  
Appraiser Name

\_\_\_\_\_  
Phone no.

  
\_\_\_\_\_  
Lessee

1-23-2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Lessee

1/23/2020  
\_\_\_\_\_  
Date