

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

April 9, 2021

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

Land Board Members:

Statewide

SUBJECT: Adoption of the Division of Boating and Ocean Recreation Sublease  
Rent Participation Policy.

PURPOSE:

To allow the Division of Boating and Ocean Recreation (“DOBOR”) to implement a Sublease Rent Participation Policy that is consistent with that directed and approved by the Board of Land and Natural Resources (“Board”) for determination of sublease rent participation in leases where participation is allowed, but no framework exists to determine the state’s level of participation.

LEGAL REFERENCE:

Chapter 171-36(a) (6):

“The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further 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 shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;”

ITEM J-1

BACKGROUND:

At its meeting on January 13, 2017, under agenda item J-4, the Board approved staff's request, as amended, to adopt a sublease rent participation policy based on the policy used by Land Division. Board minutes of the 2017 meeting explain the Board amendment, which involved deletion of section C(ii) of the existing Land Division policy. Section C(ii) allowed for sublease rent participation - in instances where the lessee owns the improvements - due to the age of the improvements (including the extent to which those improvements have been amortized), the relation between maintenance expenditures and sublease rental revenue and the extent to which the lessee occupies the lease premises for its own business (see Exhibit A). The Board questioned the appropriateness of this provision for DOBOR. The Board noted that Land Division did encounter leases in which the lessee owned the improvements, yet also had sufficient time to amortize the cost of those improvements and was subletting the leased premises for amounts that greatly exceed the rent paid to the State (leases for cell tower transmitters were used as an example). However, the Board was not aware that the same circumstances applied in the context of DOBOR leases, and the Board instructed staff to: (1) continue the discussion on this aspect of the rent participation policy; and (2) come up with better wording for that section as applied to DOBOR leases.

REMARKS:

Since the adoption of DOBOR's sublease rent participation policy, staff conducted additional research and identified DOBOR leases where rent participation is warranted for the same reasons that justified rent participation in Land Division leases. For example, a DOBOR lease to Honokohau Harbor tenant GKM features lessee-owned improvements that have been fully or substantially amortized, and the lessee (GKM) derives substantial revenue from numerous subleases that is greatly in excess of the ground lease rent. Accordingly, in connection with pending and future consents to these and similar DOBOR subleases, DOBOR seeks to update its rent participation policy. Specifically DOBOR seeks either to include section C(ii) of the current Land Division policy in DOBOR's rent participation policy, or adopt an alternative rent participation policy (discussed below) that would be applicable to sublease consent in situations where the lessee owns the improvements.

First, applicable law (Chapter 171-36(a)(6)) allows revisions to rent in connection with consent to proposed subleases. In addition, lease terms (like those in the GKM lease) typically allow the Board to revise the rent and/or the rent structure charged to the lessee as a condition of consent to a proposed sublease from the lessee.

To address the disparity between the sublease rents collected by the lessee and the lease rent it pays to the DOBOR, staff procured the services of Sidney K. Komatsu of Leshner Chee Stadlbauer ("Appraiser") to assist in the formulation of an alternative rent participation policy for DOBOR to apply statewide, based on pertinent industry standards.

After consulting with several market participants, including the State of Hawaii and private lessors, the appraiser concluded that there is a wide variability in the context of sublease rent participation, and participation rates varied from 1.5% to 50%.

The appraiser recommended a flat percentage to determine percentage rent participation as an alternative to the formula used in the Land Division policy, based on ease of application. His rationale being that the administrative and legal costs associated with administering lessor consents for projects with multiple sublessees would be lower using a flat percentage, not to mention the greater ease in determining the participation amount.

The appraiser recommended a participation rate of between 3% and 4%. Staff recommends that the range be slightly broader, with a standard participation rate of between 3% and 5%, to be applied in circumstances where the lessee's improvements are substantially or fully depreciated. Staff also requests discretion to deviate from the range in circumstances where there has been little or no time to amortize improvements, or where the revenue from the sublease rents is not substantially in excess of the rent paid by the lessee to the State.

Alternatively, if the Board is not inclined to take action that would result in one rent participation policy for Land Division and a different rent participation policy for DOBOR, staff requests that the Land Division policy be applicable to DOBOR in its entirety.

Staff believes that either alternative in this proposal is justified and a win-win for DOBOR and its lessees. Adopting an appropriate rent participation policy for these circumstances will enable DOBOR to recover some of the difference between what the lessee collects in sublease rents versus what it pays in ground rent, when it is appropriate to do so. The flexibility built into either approach also allows the lessee to achieve a reasonable return on its investment and avoid rent participation for sublease consents where the lessee has not had sufficient time to amortize improvements.

#### RECOMMENDATION:

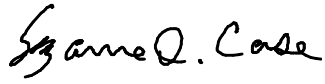
That the Board approve adoption of the new rent participation policy (as revised by staff and supported by the appraisal report), or alternatively that the Board adopt for DOBOR the same rent participation policy used by Land Division.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink that reads "Suzanne D. Case". The signature is written in a cursive, flowing style.

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SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachments:

- A. Board Action of January 13, 2017, Item J-4
- B. Leshner Chee Stadlbauer Consulting Report



# EXHIBIT A

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

January 13, 2017

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawai'i

Statewide

Request Approval of the Division of Boating and Ocean Recreation Sublease Rent Participation Policy

## PURPOSE:

Adoption of a Division of Boating and Ocean Recreation ("DOBOR") sublease rent participation policy allows DOBOR to provide clear and consistent guidance to lessors regarding subleases and provides for conformity in determination of sublease rent participation within the Department of Land and Natural Resources by being consistent with the sublease rent participation policy currently in use by the Land Division and approved by the Board of Land and Natural Resources ("Board").

## LEGAL REFERENCE:

Hawaii Revised Statutes Chapter 171-36(a)(6):

The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further 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 shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward

## REMARKS:

- I. Adoption of a DOBOR Sublease Rent Policy is consistent with the Department of Land and Natural Resources (DLNR's) Principle of providing uniform policy across the respective DLNR divisions.

On August 24, 2012, under item D-14, as amended, the Board approved the sublease rent participation policy that is currently in use for leases under the direct

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

JANUARY 13, 2017

Item J-4

AMENDED BY DELETION OF SECTION II., 1., c., ii.

management of the Land Division and is attached hereto as “**Exhibit A**”.<sup>1</sup>  
The rationale behind the establishment of a formal sublease rent participation policy was that the State should not allow excessive profiteering from commercialized use of State owned property while recognizing the lessee's right to receive a fair return on investment.

In anticipation of current and future development opportunities that will involve subleases, DOBOR wishes to formally establish a sublease participation policy that is clear and consistent. DOBOR's intent is to utilize the policy for every lease which will provide guidance for both lessees and staff on the determination of sublease participation rents. Current leases which allow for a rent adjustment in the event of subleasing will be informed by the policy with respect to calculating sublease rent participation and future leases will include the sublease participation policy and calculations as part of the lease.

The Board has already approved a sublease rent participation policy currently in use for leases under the direct management of the Land Division. DOBOR finds Land Division's policy instructive and to conform state practice regarding land dispositions, intends to follow the same policy.

## II. Policy:

This policy shall apply to leases under the direct management of the Department of Land and Natural Resources, Division of Boating and Ocean Recreation.

### I. For lessees paying fair market rent:

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Base Rent:	\$
LESS: General Excise Tax:	\$( )
Net annual Sublease Base Rent:	\$
LESS Annual Lease Ground Rent:	\$( )
Additional Annual Sublease Rent:	\$
MULTIPLIED by 50%:	x .50
Additional Annual Rent due DLNR:	\$

- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the

<sup>1</sup> On July 9, 1982, under agenda item F-9, the Board approved Land Division staff's recommendation to adopt a sublease evaluation policy which was first developed and utilized in 1968. Since then, the Board has approved the evolution of the policy in consideration of changes in the prevailing economic climate for the period. On May 26, 2000, under agenda item D-24, as amended, on January 26, 2001, under agenda item D-8, as amended, and on August 24, 2012, under item D-14, as amended, the Board approved staff recommendations for amending the sublease rent participation policy for Land Division until it reached its most recent iteration.

sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Base Rent:	\$
LESS: General Excise Tax:	\$( )
Net annual Sublease Base Rent:	\$
LESS total Allowances:	\$( )
<i>Allowances:</i>	
<i>Management &amp; Vacancy Loss</i>	
<i>(eff. inc. x%):</i>	\$
<i>Repair and Maintenance:</i>	\$
<i>Real Property Tax:</i>	\$
<i>Insurance:</i>	\$
<i>Total allowances:</i>	\$
LESS Annual Lease Ground Rent	\$( )
Additional Annual Sublease Rent:	\$
MULTIPLIED by 50%:	x .50
Additional Annual Rent due DLNR:	\$

- c. 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 following calculation shall be used:

Annual Sublease Base Rent:	\$
LESS: General Excise Tax:	\$( )
Net annual Sublease Base Rent:	\$
LESS total Allowances:	\$( )
<i>Allowances:</i>	
<i>Investment Return:</i>	\$
<i>Management &amp; Vacancy Loss</i>	
<i>(eff. inc. x%):</i>	\$
<i>Repair and Maintenance:</i>	\$
<i>Real Property Tax:</i>	\$
<i>Insurance:</i>	\$
<i>Total allowances:</i>	\$

<del>LESS Annual Lease Ground Rent</del>	<del>\$( )</del>
<del>Additional Annual Sublease Rent:</del>	<del>\$</del>
<del>MULTIPLIED by 50%:</del>	<del>x .50</del>
<del>Additional Annual Rent due DLNR:</del>	<del>\$</del>

2. For lessees paying any amount less than fair market rent:

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The calculation delineated in 1.a. above shall be used.
- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 100% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Base Rent:	\$
LESS: General Excise Tax:	\$( )
Net annual Sublease Base Rent:	\$
LESS total Allowances:	\$( )
<i>Allowances:</i>	
<i>Management &amp; Vacancy Loss</i>	
<i>(eff. inc. x%):</i>	\$
<i>Repair and Maintenance:</i>	\$
<i>Real Property Tax:</i>	\$
<i>Insurance:</i>	\$
<i>Total allowances:</i>	\$
LESS Annual Lease Ground Rent	\$( )
Additional Annual Sublease Rent:	\$
MULTIPLIED by 100%:	x 1
Additional Annual Rent due DLNR:	\$

- c. If the lessee subleases improvements not owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The calculation delineated in 1.b. above shall be used.
3. Furthermore, the foregoing calculations generally reflect the intent of the Board of Land and Natural Resources ("Board") regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board authorizes staff to use their discretion in representing the State's interest in applying these formulae to address the varying sublease arrangements that may not fit neatly into the formulae.
4. The following definitions shall be binding in the interpretation of terms used in the

calculations of sublease sandwich profits provided in part I of this policy:

**ANNUAL SUBLEASE BASE RENT:** The total gross yearly sublease ground rent amount collected by a general lessee without any deductions.

**GENERAL EXCISE TAX:** State of Hawaii G.E. Tax. This expense will be deducted only if not paid by a sublessee.

**NET ANNUAL SUBLEASE BASE RENT:** Annual sublease ground rent less G.E. Tax

**ANNUAL LEASE GROUND RENT:** The total gross yearly ground rent paid by general lessee for the proposed sublease area.

**ADDITIONAL ANNUAL SUBLEASE RENT:** Additional annual rent realized by general lessee from subleasing the proposed sublease area. Amount not less than zero.

**ALLOWANCES:** Allowances for costs incurred by a general lessee for management and maintenance of improvements.

**INVESTMENT RETURN:** Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate real property assessed valuations established within eighteen (18) months from completion of improvements. A reasonable return on investment that a prudent general lessee expects, return rate fluctuates with market and economic conditions. The rate may be adjusted to reflect the change in market and economic conditions

**MANAGEMENT AND VACANCY LOSS:** Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. This allowance is not to exceed a rate of ten percent (10%) of Net Annual Sublease Base Rent.

**REPAIR AND MAINTENANCE:** Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, repaving, utilities, landscaping, security, etc. Staff may use their discretion in granting this allowance based on evaluation of necessity or repairs and maintenance. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Net Annual Sublease Base Rent (Line 3) is used. This expense will be deducted only if not paid by a sublessee.

**REAL PROPERTY TAX:** Per current real property tax bill or notice sent by appropriate Real Property Tax Office. This expense will be deducted only if not paid by a sublessee.

**INSURANCE:** Premiums paid for fire and liability insurance policies. This expense will be deducted only if not paid by a sublessee.

**RECOMMENDATION:**

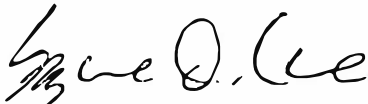
That the Board Approve the adoption of the DOBOR sublease rent participation policy as stated herein.

Respectfully Submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case  
Chairperson

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

August 24, 2012

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

Statewide

Modification of Staff Recommendation in Board Action of January 26, 2001, Item D-8, as Amended, Regarding Sublease Rent Participation Policy. The Purpose of the Modification is to Make the Staff Recommendation Consistent with the Board's Directives and Practice in Determining the State's Participation in Sublease Rents.

**BACKGROUND:**

On May 26, 2000, under agenda item D-24, as amended on January 26, 2001, under agenda item D-8, as amended, the Board of Land and Natural Resources was presented with staff recommendation for a sublease rent participation policy, which can be summarized as follows for lessees paying fair market rent:<sup>1</sup>

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- c. 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 that right and method of calculation are specifically stated in the lease.

The Board ultimately adopted a sublease rent participation policy, but specifically

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<sup>1</sup> The policy includes detailed formulas for calculating the amount of sublease rent participation as shown in Exhibit 1 attached hereto. The policy also covers rent participation in subleases where the lessee is paying less than fair market rent.

Exhibit A

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AT ITS  
August 24, 2012

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D-14

amended the staff recommendation by clearly articulating that it was approving general principles or guidelines for a rent participation policy and it desired and authorized staff to continue to use good land management practices in evaluating the varying factual scenarios that can arise in sublease arrangements and ultimately making a recommendation to the Board on whether the State should participate in the sublease rents, or not. Therefore, the Board amended the staff recommendation by adding the following statement into the record and minutes of the meeting (Board's amending language in bold):

**This policy shall apply to leases under the direct management of the Land Division. Furthermore, the following formulae generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The board authorizes staff to use their discretion in representing the State's interest in applying these formulae to address the varying sublease arrangements that may not fit neatly into the formulae.**

Staff has followed, and intends to continue to follow the Board's directive by continuing to use good land management practices in evaluating a sublease arrangement and recommending departure from the general formulas noted above when adherence to them seems contrary to the State's best interests. Recent Land Board actions involved consenting to a particular lessee's sublease arrangement and participation in the sublease rents. Although the staff submittals discussed the Board's sublease rent participation policy and explained how the recommendation to participate in the sublease rents was, in staff's view, consistent with the Board's sublease rent participation policy, as amended, the staff submittals did not formally seek to refine or elaborate upon the Board policy adopted, as amended, in 2001. This submittal formally and expressly seeks to do so.

**REMARKS:**

The situations where the formulas summarized above would normally not allow the State to participate in sublease rent when staff's assessment is that the State should receive some benefit from the sublease often arise where the improvements have been substantially depreciated or amortized, and in cell tower or telecommunication leases, or a combination thereof. Telecommunications companies often hold leases that were entered into by direct negotiation pursuant to statute. The lessee typically obtains the lease and constructs the required improvements, usually consisting of one or two equipment/office buildings and the cell tower or antenna itself. With the Board's consent, the lessee can sublease space on the antenna to other telecommunications companies and generate revenues that more than cover the expense of the lessee's ground rent to the State.

For example, at its meeting of October 28, 2011, Item D-27, the Board approved staff's



recommendation for the State to receive 50% of the sandwich profits generated in a sublease/license situation under General Lease No. S-4223, which was issued in 1969 for microwave station and other radio communication facilities purposes. In that case, the ground rent under General Lease No. S-4223 was \$31,400 per year, and the sublease rent collected by the lessee was \$33,153.57 per year. The staff submittal noted that the improvements constructed by the lessee had largely been depreciated over the course of approximately 40 years since the issuance of the lease. The Board approved the State's participation in sublease rents at the rate of 50% even though the right to participation and method of calculation were not specifically stated in the lease.<sup>2</sup>

Similarly, at its meeting of November 10, 2011, Item D-5, the Board approved the State's participation in sublease rents under another cell tower lease at the rate of 25% in General Lease No. S-5511. In that case, the lease was issued in 1997 and less time had passed for the depreciation of the cost of improvements. Additionally, the lessee submitted evidence of its ongoing maintenance costs for the tower. General Lease No. S-5511 allowed the Board to adjust the rent in the event of a sublease, but the right to participation and method of calculation were not specifically stated in the lease.

Another situation that sometimes arises is where a State lessee acts strictly as a sub-landlord in subleasing improved lands to various sublessees.<sup>3</sup> In such case, the State lessee may not actually occupy or operate a business (such as for industrial, commercial or agricultural use) at the premises but, instead, generates sublease income from multiple sublessees that exceeds the amount of rent the lessee pays to the State. Under the general formulas set forth above, the State would not ordinarily share in the sublease rents when the improvements constructed or owned by the lessee, unless the right to participate and method of calculation are specifically stated in the lease, regardless of whether the improvements have been substantially or fully amortized or depreciated (e.g., a 65-year lease in its 40<sup>th</sup> year noted above).

The cell tower and sub-landlord situations discussed above are two cases in which staff believe the State's participation in sublease rents is warranted depending on the age of the improvements (including 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 premises for its own business. Staff is including a recommendation below that the Board refine and elaborate upon its existing policy to cover circumstances that may warrant the State's participation in sublease rents even where the improvements are owned by the lessee and right to participate and method of calculation are not specifically stated in the lease.

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<sup>2</sup> By statute, the Board can adjust the rent under a lease as a condition to a consent to assignment or sublease, even if the lease is silent on rent adjustment in such cases. See HRS Section 171-36(a)(6).

<sup>3</sup> In other words, the lessee is acting as a pure landlord and is in a sandwich lease position

**RECOMMENDATION: That the Board:**

1. Refine its prior approval (as amended) of January 26, 2001, Item D-8, by modifying the staff's prior recommendation A.1.c on page 3 to read as follows:

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.

2. Except as amended hereby, the Board's prior action of January 26, 2001 shall remain the same.

Respectfully Submitted,



Kevin E. Moore  
Assistant Administrator

**APPROVED FOR SUBMITTAL:**

  
William J. Aila, Jr., Chairperson

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

January 26, 2001

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

Statewide

RESUBMITTAL: Amendment to the Sublease Rent Participation  
Policy

BACKGROUND:

On May 26, 2000, under agenda item D-24, the Board of Land and Natural Resources ("Board") approved the "Revision to Sublease Rent Participation Policy" (refer to Exhibit A). The policy was stated as follows:

"The following policy shall apply to leases under the direct management of the Land Division.

- 1) For unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- 2) For improved lands, the Board shall not receive any portion of sublease rents obtained from subleasing improved space unless that right and method of calculation are specifically stated in the lease."

Recently, staff has come across a situation which this sublease policy does not address. The non-profit Waimanalo Teen Project was issued general lease S-5468 under section 171-43.1, HRS, and received nominal rent (25% of fair market) at \$317 per year (see Exhibit B for calculation). Sometime in mid-1999, the Waimanalo Teen Project requested that they be able to sublet part of their building to Castle Medical Center.

On July 9, 1999, under agenda item D-16, the Board approved and amended staff's recommendation to amend General Lease S-5468 by allowing for subleasing under the lease. The Board amended staff's recommendation by deleting the consent to sublease with Castle Medical Center due to concerns regarding the calculation of the sublease sandwich amount and the issue of whether Castle Medical Center was a for-profit operation circumventing the public auction process.

Based on staff's addressing of these concerns, the Board

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

*January 26, 2001. [Signature]*

ITEM D-8

EXHIBIT 1

consented to the sublease between Waimanalo Teen Project and Castle Medical Center on November 19, 1999 under agenda item D-27. Item 4 of the recommendation was amended as follows:

"Increase of the annual rental by the amount of the annual sandwich rental profit as calculated by the staff appraiser, subject to adjustment upon renegotiation of the sublease or reopening of General Lease S-5468, or change in the policy."

Regarding the added language, Board meeting minutes reveal that there had been concern about a discrepancy in the sandwich rental calculations. The Administrator suggested deferring this item until a Board briefing to discuss a revision to the sublease policy could be conducted. The Waimanalo Teen Project accepted the rent as calculated and indicated a need to get Castle Medical Center onto the property. In response, the Board approved the consent to sublease and added that the consent would be subject to any future change in the sublease policy.

Based on this situation, staff is recommending changes to the Sublease Rent Participation Policy in this submittal. (This submittal was deferred by the Board on December 15, 2000 to allow the new Chairperson and Board Member McCrory the opportunity to comment on this matter.)

REMARKS:

When the Revision to Sublease Rent Participation Policy was drafted, staff did not account for the situation where a non-profit pays less than fair market rent. As such, staff did not address the public policy question of whether a non-profit, which is being subsidized by the State through nominal rent, should be subject to the same sublease policy provisions as lessees who are paying fair market rent.

Upon discussion among staff, including the staff appraiser, we believe that the sublease policy, as approved, should not apply to any lessee who is paying less than fair market rent. In this case, the lessee is receiving a State subsidy and should not be allowed to solely benefit from subleasing the State property without participation by the State, even where the improvements constructed by the lessee are being subleased rather than raw land.

Further, staff noticed that the approved sublease policy stated "for improved lands, the Board shall not receive any portion of sublease rents obtained from subleasing improved space unless that right and method of calculation are specifically stated in the lease."

This provision was based on the premise that the lessee constructed the improvements and assumed the risk and therefore should solely benefit from any subleasing arrangements. Staff would like to clarify where the State owns the improvements (i.e., the lessee assumed no risk), then the lease rent would be revised to include an additional rent, 50% of that portion of the sublease rent in excess of the original ground rent.

RECOMMENDATION:

That the Board amend the Revision to Sublease Rent Participation Policy approved by the Board on May 26, 2000, under agenda item D-24, by:

- A. Amending paragraph 2) of the Recommendation section by replacing the entire "Policy" statement to read as follows:

"Policy

This policy shall apply to leases under the direct management of the Land Division.

1. For lessees paying fair market rent:

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Ground Rent	\$
LESS: General Excise Tax	\$ ( )
Net Annual Sublease Ground Rent	\$
LESS: Annual Ground Rent	\$ ( )
Additional Annual Rent	\$
MULTIPLIED by 50%	x .50
Additional Annual Rent Due DLNR	\$

- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Income	\$
LESS: General Excise Tax	\$ ( )
Net Annual Sublease Income	\$
LESS: Allowances	\$ ( )
Management and vacancy loss (eff. inc. x %)	
Repair and maintenance	
Real property tax	
Insurance	
Ground lease rent	
Additional Annual Income	\$
MULTIPLIED by 50%	x .50
Additional Annual Rent Due DLNR	\$

- c. 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 that right and method of calculation are specifically state in the lease.

2. For lessees paying any amount less than fair market rent:

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The calculation delineated in 1.a. above shall be used.
- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, ~~50%~~ of that portion of the sublease rent in excess of the original ground rent paid to the State. The calculation delineated in 1.b. above shall be used. *changed to 100%*
- c. If the lessee subleases improvements not owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Income	\$
LESS: General Excise Tax	\$ ( )
Net Annual Sublease Income	\$
LESS: Allowances	\$ ( )
Management and vacancy loss (eff. inc. x %)	
Investment return (total invest. X %)	
Repair and maintenance	
Real property tax	
Insurance	
Ground lease rent	
Additional Annual Income	\$
MULTIPLIED by 50%	x .50
Additional Annual Rent Due DLNR	\$

- B. Deleting paragraph 4) of the Recommendation section in its entirety.
- C. The remaining approved recommendations of agenda item D-24 shall remain in effect.

Respectfully Submitted,

*Dierdre S. Namiya*

DIERDRE S. NAMIYA, Asst Administrator

APPROVED FOR SUBMITTAL:

*Gilbert S. Coloma-Agaran*

GILBERT S. COLOMA-AGARAN, Chairperson

8. **Approved as Amended.**---The staff recommendation was amended to read as follows:

***This policy shall apply to leases under the direct management of the Land Division. Furthermore, the following formulas generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board authorizes staff to use their discretion in representing the State's interest in applying these formulas to address the varying subleasing arrangements that may not fit neatly into the formulae.***

**Condition 2.b. was also amended by changing "... [50%] to 100% of that portion of the sublease rent ..."**

D-24

STATE OF HAWAII  
Department of Land and Natural Resources  
Land Division  
Honolulu, Hawaii 96813

May 26, 2000

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

STATEWIDE

Subject: RESUBMITTAL - REVISION TO SUBLEASE RENT PARTICIPATION  
POLICY

Background

Chapter 171-36(a) (6), 1998 Hawaii Revised Statutes states:

"The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further 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 shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward."

On July 9, 1982, under agenda item F-9, the Land Board approved staff's recommendation to adopt a sublease evaluation policy. As stated in this submittal, staff recommended the Board formally adopt the format and procedure used to determine the amount of sandwich profit which was first developed and utilized in 1968. The rationale behind the policy was that the State should not allow anyone to make sandwich profits from the use of State owned property. As stated, the purpose of this policy was "to prevent speculation and to prevent the sublessor from becoming the predominant landlord." The policy also recognized the lessee's right to receive a fair return on his investment. Presently, sandwich profits are estimated using the computation sheet identified as Exhibit A. On the computation sheet, the ground rent and that portion of the rent attributable to the lessee's investment are subtracted from the sublease income to determine what rent, if any, is due DLNR.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
ON THIS DATE: MAY 26, 2000

May 26, 2000

**EXHIBIT A**

ITEM D-24



### Problem Definition

In light of the changed economic environment in which we operate – in particular, the dramatic decline in property values since the Japanese bubble burst in or about 1990 – staff revisited the Sublease Evaluation Policy. In evaluating the appropriateness of current policies, staff examined appraisal-related policies, including the sublease rent participation policy. Staff identified the following concerns regarding this policy and accompanying worksheet:

**Fairness to Lessees:** The current sublease evaluation policy may be unfair to the lessee because it assigns 100% of the sandwich profit to DLNR even though it is the lessee who assumes the risk.

**Reduced Marketability:** DLNR ground leases may not be as marketable because of the sublease evaluation policy. This may be particularly true in today's depressed economy or when a business savvy lessee is involved.

**Lack of Clarity:** The current worksheet is open to considerable interpretation and difficult to support.

**Cost/Benefit of Implementation:** The additional income received may not justify the time spent calculating and applying sandwich profits. For example, one industrial lease may have several subleases with terms of one year or less. Each time these subleases are extended and/or the rents changed, staff must re-evaluate the rents for sandwich profits. Because the law requires that we revise the lessee's rent based on the sublease rent, staff ends up continually changing the lessee's rent based on the sandwich profits determined.

### Analysis

Staff's concern is the current worksheet may be too harsh on lessees who essentially act as entrepreneurs and assume much of the risk. This concern was addressed in a January 8, 1987 study done by Ming Chew Associates for the Department of Hawaiian Home Lands (DHHL). The study noted that "many lessees felt that having entered into the original lease in good faith at a set rental, it was unfair to change the rental terms of the lease during "mid-stream" with rental adjustments that were neither discussed nor agreed to during the initial signing of the lease."

The DHHL study also indicated the attempt to prevent speculation is based on the wrong circumstance (the sublease). If the intent is to have lease rents keep up with increases in land value, then the lease should be modified to consider step up rents, percentage rents, rent adjustments based on the CPI, and/or shorter reopening periods. The report stated that in the private sector, most lessors do not participate in sublease rents.

On December 9, 1999, staff conducted a briefing to provide background on the relevant issues of the sublease policy and to explore the Board's views and opinions on different alternatives for the policy.

At this Board briefing, the following issues were discussed:

- 1) The Board questioned whether other large land owners participated in sublease rents and requested that staff expand its survey of other large land owners.
- 2) The Board agreed that a 50% split was more reasonable but questioned the policy's cost/benefit.

Following this Board briefing, staff surveyed large Hawaii landowners and found the following:

**Campbell Estate:** The estate may take 50% of a sandwich when vacant land is concerned. Once the site is improved, Campbell does not directly participate in sandwich rents.

**Bishop Estate:** Bishop may also take 50% of a sandwich when vacant land is subleased; however, when a vacant parcel is leased Bishop typically knows what is planned and accounts for this via percentage rent, step-ups, etc. Finding that one of their lessees has created an unexpected sandwich position is rare. Bishop stated that either the lease prohibits such a sandwich or the lessee is being forced to sublease due to difficult economic conditions, hence a sandwich position is unlikely. Bishop would not rule out participating in sandwich rents should one ever exist.

**Kaneohe Ranch:** Kaneohe Ranch does not directly participate in sandwich rents. Like Bishop, Kaneohe Ranch typically knows what is planned at the start of a lease and does not expect to find unauthorized sandwich positions on its property.

April 14, 2000

**Department of Hawaiian Home Lands:** DHHL collects sandwich rents on both vacant and improved sites. The department revises the rent based on 50% of the amount by which the sublease rent exceeds the original rent for that portion of the property. DHHL estimates it receives less than \$5,000 per year in sandwich rents.

**Damon Estate:** The Damon Estate does not participate in sandwich rents and does not condemn a lessee when one is created. They have no unimproved lands.

**Robinson Estate:** The Robinson Estate also does not participate in sandwich rents nor does it discourage a lessee from creating a sandwich position. They stated that in fact, much of their lands got developed because sandwich positions on vacant land were permitted. The estate deals only with ground leases.

Based on these findings, staff recommends revisions to the Sublease Evaluation Policy presented at the December 9, 1999 Board briefing to ensure fairness in our dealings with lessees and increase the marketability of our leases.

Staff now believes that when a lessee improves a vacant site and subsequently subleases improved space, the State should not participate in sandwich profits obtained from subleasing that space. Staff recognizes that it is the lessee who has the vision and assumes the risk, and it is the lessee who should benefit.

Staff also believes sublease rent participation should apply when vacant land is leased and subsequently subleased. Staff suggests that when vacant land is subleased the rent paid to the State should be revised to include as additional rent, 50% of that portion of the sublease rent in excess of the rent paid to the State. This leaves the lessee with some economic incentive and allows the State to participate in sandwich profits. This should also help discourage lessees from overly speculating with State land. The Sublease Participation Worksheet, examples of rent due and rent loss are attached as Exhibits C and D. Note the only expense is G.E. tax (4%) on the sublease rent received, which the sublessor is required to pay.

Staff notes that we are requesting the Board delegate its authority to the Chairperson when sandwich profits do not exist due to: 1) application of the new, recommended policy or; 2) the absence of a sandwich provision in the lease. This request is made to streamline the consent to sublease process.

**Policy:**

**The following policy shall apply to leases under the direct management of the Land Division.**

- 1) For unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.**
- 2) For improved lands, the Board shall not receive any portion of sublease rents obtained from subleasing improved space unless that right and method of calculation are specifically stated in the lease.**

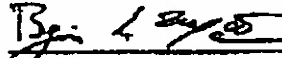
**The Revision to Sublease Rent Participation Policy dated April 28, 2000 was deferred due to concerns the Board had regarding the Sublease Participation Worksheet. The Board questioned the worksheet's clarity and was particularly concerned about deductions for property taxes and miscellaneous allowances. Upon review, staff determined these and all other deductions, with the exception of G.E. tax, should not be included. The revised Sublease Participation Worksheet identified as Exhibits B eliminated these deductions and simplified the line item descriptions.**

April 14, 2000

Recommendation: That the Board:

- 1) Rescind its prior Board action of July 9, 1982, under agenda item F-9, including the computation worksheet identified as Exhibit A.
- 2) Approve the above stated policy.
- 3) Authorize the Chairperson to consent to a sublease when no sandwich profit exists because: 1) the lease has no provision which allows for sandwich profits or 2) the sublease involves improved property and according to the above stated policy, the State is not entitled to a sandwich profit; subject to the review and approval of the Department of the Attorney General.
- 4) Approve the revised Sublease Participation Worksheet identified as Exhibit B.

Respectfully submitted,

  
Benjamin L. Marx III, Staff Appraiser

Approved for Submittal:


  
Timothy E. Johns, Chairperson

EXHIBIT A

Format

COMPUTATION SHEET

General Lease No. S-\_\_\_\_, \_\_\_\_\_, Sublessor, sublease to  
\_\_\_\_\_, Sublessee

Gross Annual Sublease Income  
Less 4% tax

\$

Effective Income

\$

Less Allowances:

Management, and vacancy loss  
(Eff. Inc. x %)

\$. \$

Investment return  
(Total Inv. x %)

Other operating expenses paid  
by sublessor such as real  
property tax, insurance premium,  
painting, repair and maintenance,  
etc.

Reserves for Replacements

General Lease No. S-\_\_\_\_ rental

Total Allowances:

SANDWICH PROFIT:

\$

Exhibit B

**SUBLEASE PARTICIPATION WORKSHEET**  
**LAND ONLY**

General Lease No.	XXXX	
Lessee:	XXXX	
Location:	XXXX	
Tax Map Key:	XXXX	
Land Area (sf):		0
Annual Ground Rent:		\$0

**CALCULATIONS:**

Annual Sublease Ground Rent	\$0
LESS: G.E. tax	0
Net Annual Sublease Ground Rent:	\$0
LESS: Annual Ground Rent	0
Additional Annual Rent	\$0
Additional Annual Rent Due DMR (50%)	\$0

Exhibit C

**SUBLEASE PARTICIPATION WORKSHEET**  
**LAND ONLY**

General Lease No.	S-xxxx
Lessee:	John Doe
Location:	Honolulu, Hawaii
Tax Map Key:	(1) X-X-XXXX
Land Area (sf):	20,000
Annual Ground Rent:	\$5,000

**CALCULATIONS:**

Annual Sublease Ground Rent	\$10,000
LESS: G.E. tax	400
Net Annual Sublease Ground Rent:	\$9,600
LESS: Annual Ground Rent	5,000
Additional Annual Rent	\$4,600
Additional Annual Rent Due DLNR (50%)	\$2,300



Exhibit D

**SUBLEASE PARTICIPATION WORKSHEET**  
**LAND ONLY**

General Lease No.	S-xxxx
Lessees:	John Doe
Location:	Honolulu, Hawaii
Tax Map Key:	(1) X-X-XXXX
Land Area (sf):	20,000
Annual Ground Rent:	\$10,000

**CALCULATIONS:**

Annual Sublease Ground Rent	\$10,000
LESS: G.E. tax	400
Net Annual Sublease Ground Rent:	\$9,600
LESS: Annual Ground Rent	10,000
Additional Annual Rent	(\$400)
Additional Annual Rent Due DLNR (50%)	\$0

## VALUE ESTIMATE

REVOCABLE PERMIT NO. G-5870 (LOT B of TRK: 4-1-09-01)

TOTAL LAND AREA: = 10.8930 Acres.  
Adjustment: Less: Open Stream Ditch = 0.0953 Acre  
Net Area = 10.7977 Acres

1. Total value of banana crop products for Oahu  
in 1990 = \$1,489,000 (10/12/90 Value Date)
2. Total acreage devoted to banana crop products  
for Oahu in 1990 = 485 acres

THUS: \$1,489,000 ÷ 485 = \$3,070.10 per acre per year  
\$3,070.10 x 3.5% = \$ 107.45 per acre per annum lease rental  
ROUNDED = \$ 107.00 per acre per annum

### VALUATION:

Total Net Land Acres 10.7977 acs. @ \$107.00 p/acre = \$1,155.35  
(FAIR MARKET ANNUAL RENTAL)

### Adjustment::

Permitted use of land for multi-  
community facility use +10% = 115.53  
TOTAL FAIR MARKET LEASE RENTAL PER ANNUM = \$1,270.88  
SPECIAL DISCOUNT (See Attached Board Approval)  
Minimum annual rent which is 20% of the market  
annual rental and 5% management fee which is  
5% of the annual market rental = .25  
ADJUSTED FAIR MARKET LEASE RENTAL PER ANNUM = \$ 317.72  
ROUNDED = \$ 317.00

### FINAL ESTIMATE

\$317.00

ANNUAL LEASE RENTAL

DATE OF VALUE: October 12, 1990

**EXHIBIT B**



December 10, 2020

Mr. Ed R. Underwood

Administrator

**DEPARTMENT OF LAND AND NATURAL RESOURCES**

**DIVISION OF BOATING AND OCEAN RECREATION**

4 Sand Island Access Road

Honolulu, Hawaii 96819

**CONSULTING REPORT CONCERNING:**

**Department of Land and Natural Resources**

**Division of Boating and Ocean Recreation**

**Sublease Rent Participation**

Dear Mr. Underwood:

At your request, we have prepared the following Consulting Report to assist in establishing a standard for ground lessor participation in sublease rents (herein referred to as "**Percentage Rent**") for Department of Land and Natural Resources Division of Boating and Ocean Recreation (DOBOR) leases using the Honokohau Small Boat Harbor as an example.

The Honokohau Small Boat Harbor is situated within Kailua-Kona, approximately 4.5 miles to the south of the Kona International Airport. The Harbor was originally developed in the late-1960s and currently contains over 260 moorings, three boat ramps, and boat storage yards. Land uses also include a mix of industrial, retail, office, and restaurant uses primarily related to marine activities. Fast lands and submerged lands within the Harbor are owned by the State of Hawaii and ground leased to various lessees.

Real Estate Valuation

Arbitration

Consulting

Going Concern Valuation

Market Research

Several leasehold owners within the Honokohau Small Boat Harbor sublease their property. Chapter 171-36(a)(6) of the Hawaii Revised Statutes states, "the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee, including the percentage rent, if applicable, and provided that the rent may not be revised downward...." While the HRS appears to allow the State to revise the rent upward when lessees sublease property, the precise method of determining the upward rent adjustment is not explicitly stated.

Lease provisions regarding ground lessor participation in sublease rents vary among Harbor Leases (examples are provided herein). The inconsistencies among the Harbor Leases relative to Percentage Rent coupled with the absence of a precise method of determining the upward rent adjustment within Chapter 171-36(a)(6) of the Hawaii Revised Statutes has led to uncertainty and disagreement among parties to respective leases. The recommended Percentage Rent standard presented herein is intended to offer an equitable and precise method for determining additional rent due when ground lessees sublease their property.

#### **HARBOR LEASE NO. H-82-4**

GKM, Inc. (GKM) owns the leasehold interest in a 4.083-acre parcel within the Honokohau Small Boat Harbor (Tax Map Key: (3) 7-4-008: 042). The property contains retail and industrial buildings and operates as a multi-tenant project with approximately 17 marine related tenants.

Harbor Lease No. H-82-4 between the State of Hawaii (Lessor) and GKM, Inc. (Lessee) commenced April 1, 1984 and originally involved a 35-year term through March 31, 2019. In May 2006, a 20-year lease extension was agreed upon for the period commencing on April 1, 2019 and ending on March 31, 2039.

A mediated settlement involving annual ground lease rent of \$200,000, for the period commencing April 1, 2019 and ending on March 31, 2024, was approved by the Board of Land and Natural Resources on June 12, 2020. Based on a rent roll dated October 1, 2020, the current Lessee (GKM, Inc.) generates over \$600,000 in annual base rent from subtenants. Item 13 ("Subletting") within Harbor Lease No. H-82-4 states:

That the LESSEE shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Director and the Board pursuant to Section 171-11 and 171-36(a)(6). The Director shall have the right to deny uses contrary to the primary purpose of the lease. 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 and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the proposed sublessee by the LESSEE; provided, further, that the rent may not be revised downward.

The Lease appears to allow the Board to not only revise the rent as a result of subletting (consistent with Chapter 171-36(a)(6) of the HRS) but to revise the *rent structure* in light of the rental rate charged to sublessees. The State of Hawaii desires to establish a Percentage Rent standard that can be used not only for Harbor Lease No. H-82-4, but for all future Harbor leases and extensions.

### **PURPOSE, INTENDED USE, & INTENDED USER**

The **purpose** of this consulting report is to:

- 1) Assist in establishing a standard for ground lessor participation in sublease rents (herein referred to as "**Percentage Rent**") for Department of Land and Natural Resources Division of Boating and Ocean Recreation (DOBOR) leases using the Honokohau Small Boat Harbor as an example for purposes of demonstrating the analysis.
- 2) Determine the degree to which GKM, Inc.'s leasehold improvements have been amortized.

The **intended use** of this consulting report is to provide the client independent and objective research, analyses, and conclusions to assist in establishing a Percentage Rent policy. The **intended user** is the Client, the Department of Land and Natural Resources Division of Boating and Ocean Recreation. We are not responsible for unauthorized distribution or reliance on this consulting report.

### **REPORT FORMAT**

This consulting report is intended to comply with the Ethics Rule and Competency Rule of the Uniform Standards of Professional Appraisal Practice (USPAP – 2020/2021 edition).

The consulting report will be presented as follows:

- Scope of Work
- Primary Assumptions & Limiting Conditions
- Overview of the Honokohau Small Boat Harbor
- Summary of Market Research Concerning Sublease Rent Participation
- Recommended Percentage Rent Standard
- Effective Age and Remaining Economic Life of GKM Inc.'s Leasehold Improvements
- Summary of Conclusions

### **SCOPE OF WORK**

The scope of work is the type and extent of research and analysis in an assignment. The scope of work includes the extent to which the property is identified; the extent to which the tangible property is inspected; the type and extent of data researched; and the type and extent of analysis applied to arrive at opinions or conclusions.

*Specifically, the following are primary considerations of the Scope of Work:*

1. During the process of completing this consulting report, we relied upon information obtained from various State of Hawaii and County of Hawaii governmental agencies and information provided by the Client inclusive of:
  - Board of Land and Natural Resources submittals concerning GKM, Inc. (Lease H-82-4).
  - Ground leases involving the State of Hawaii as ground lessor (the provided information was supplemented by our independent research of State of Hawaii ground leases).
  - A rent roll exhibiting GKM, Inc.'s subtenants and their respective rental rates.
  - A State of Hawaii Department of Land and Natural Resources Division of Boating and Ocean Recreation transmittal to the Board of Land and Natural Resources dated January 13, 2017. The transmittal, titled "Request Approval of the Division of Boating and Ocean Recreation Sublease Rent Participation Policy", exhibits the Department of Land and Natural Resources (DLNR's) sublease rent policy.
2. Sidney Komatsu visited the subject property on October 6, 2020.
3. For purposes of deciphering an appropriate Percentage Rent standard, market research included but was not limited to:
  - a review of State of Hawaii ground leases;
  - a review of private ground leases; and
  - interviews with investors, developers, ground lessors, and ground lessees experienced with leasehold properties.
4. Our findings and conclusions had benefit of past interviews and our familiarity with leasehold properties throughout the State of Hawaii.
5. Prepared the consulting report.

### **PRIMARY ASSUMPTIONS & LIMITING CONDITIONS**

1. It is our understanding that this consulting report may be utilized to assist in developing a rent participation policy for future and possibly existing ground leases. However, the ability to implement a sublease rent participation policy for existing ground leases “mid-stream” is a legal matter and beyond the scope of this report.
2. Our analysis and conclusion concerning a recommended Percentage Rent standard presumes a ground lease with conventional terms, conditions, and provisions such as:
  - lease rent is reflective of fair market rent for the demised premises as vacant;
  - standard total lease term;
  - standard initial known rent period;
  - standard rent reopening intervals whereby lease rent during reopening periods is reflective of fair market rent for the demised premises as vacant and shall not be less than prior period rent;
  - standard ground rent escalations; and
  - standard expense obligations.
3. At expiration of a ground lease, a lessor will often inherit site and building improvements. In scenarios where the improvements contribute to overall property value (i.e., the market value of the property as improved exceeds fee simple land value as vacant), our market research determined that new ground leases generally account for the improvements via (a) a lease premium paid by the ground lessee to the ground lessor at lease inception or (b) percentage rent/additional rental income.

Our analysis and conclusion concerning a recommended Percentage Rent standard presumes that any potential improvement value at lease inception would be accounted for via a lease premium. By extension, the recommended Percentage Rent would not include any recapture of said improvement value.

Similarly, State ground leases occasionally include a provision where additional rent due is based on a formula that deducts the amortized cost of lessee improvements from sublease rental income. However, the percentage rent calculation commonly found in State of Hawaii ground leases, where the amortized cost of lessee improvements is one of several allowances deducted from gross receipts, is not recommended for reasons discussed in further detail herein.



Our analysis and conclusion concerning a recommended Percentage Rent standard precludes the need to factor capital improvements made by the lessee and is consistent with general market practice in this regard. Additionally, Harbor Lease No. H-82-4 between the State of Hawaii (Lessor) and GKM, Inc. (Lessee) does not detail the precise method for determining additional rent due as a result of subletting. The recommended Percentage Rent standard presented herein is intended to offer an equitable method for determining additional rent due as a result of subletting in instances like Harbor Lease No. H-82-4.

4. Chapter 171-36(a)(6) of the Hawaii Revised Statutes states, "the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee, including the percentage rent, if applicable, and provided that the rent may not be revised downward..." The Percentage Rent recommendation reported herein presumes the ground lessor would not have any further rights to additional income (associated with subleases) over and above the Percentage Rent recommendation.
5. Our recommended Percentage Rent standard references the term "**Gross Rents**". Gross Rents shall include all minimum, basic, percentage, and operating expense reimbursements collected from subtenants.
6. As part of the scope of this report, an estimate as to the degree to which GKM Inc.'s improvements have been amortized was made. For purposes of this analysis, County of Hawaii tax records were relied upon relative to the reported year built and building areas. However, we were not provided with architectural plans, detail regarding capital improvements made to property and their respective costs, a building conditions report, a capital needs assessment report, or other similar materials. We reserve the right to reconsider our findings and conclusions should additional information be provided subsequent to delivery of this report.

## **OVERVIEW OF THE HONOKOHAU SMALL BOAT HARBOR**

The Honokohau Small Boat Harbor is situated within Kailua-Kona, approximately 4.5 miles to the south of the Kona International Airport. Vehicular access to the Harbor is available off of Queen Kaahumanu Highway via Kealakehe Parkway. The Harbor's fast lands are identified by Tax Map Key: Division 3, Zone 7, Section 4, Plat 08, Multiple Parcels.



The Harbor was originally developed in the late-1960s and currently contains over 260 moorings, three boat ramps, and boat storage yards. Land uses also include a mix of industrial, retail, office, and restaurant uses primarily related to marine activities. Fast lands and submerged lands within the Harbor are owned by the State of Hawaii and ground leased to various lessees. Chapter 171-36(a)(6) of the Hawaii Revised Statutes states the following:

The lessee shall not sublet the whole or any part of the demised premises, except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further 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 shall be included as part of the lessee's gross receipts; **provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee, including the percentage rent, if applicable, and provided that the rent may not be revised downward** [emphasis added];

We have been engaged by the Client to assist in establishing a sublease rent participation policy (Percentage Rent) for Department of Land and Natural Resources Division of Boating and Ocean Recreation (DOBOR) leases using the Honokohau Small Boat Harbor as an example for purposes of demonstrating the analysis.

**SUMMARY OF MARKET RESEARCH**  
**CONCERNING SUBLEASE RENT PARTICIPATION**

**STATE OF HAWAII GROUND LEASES**

Various ground leases involving the State of Hawaii as lessor are summarized on **Table 1** within the Addenda. Numerous State ground leases were reviewed which include the following subletting provision:

The Lessee shall not sublet the whole or any part of the demised premises except with the approval of the Board... provided further that the Board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward.

However, the above provision is inconclusive as to the precise method of calculating percentage rent. Thus, Table 1 only includes State ground leases where the percentage rent calculation is explicitly stated. The State ground leases exhibited on Table 1 are organized by land use (harbor, industrial, retail, hotel, and residential).

**State of Hawaii - Harbor Leases**

▪ **Range of Percentage Rent: 5% to 50%**

The State harbor leases vary significantly as to percentage rent. For example, Leases 1-3 are similar in that lease rent is the higher of minimum rent or 5% of gross receipts (Leases 1 and 2 also include 10% of mooring receipts). According to the lessor, the lessees for Leases 1 and 2 have historically paid minimum rent only.

Lease 4 is similar to Leases 1-3 but sets forth the percentage rent at 10% of gross monthly receipts. For illustration purposes, if a sublessor is hypothetically generating \$1.0 million in net operating income and minimum ground rent is \$100,000, no Percentage Rent would be due:

$$\$1,000,000 \times 10\% = \$100,000 \text{ (the equivalent of minimum rent due)}$$

Lease 5 sets forth percentage rent at 5.25% of annual gross receipts in excess of minimum rent. Utilizing the same hypothetical illustration, the annual percentage rent due in this instance would be \$47,250 as exhibited following:

$$(\$1,000,000 - \$100,000 \text{ minimum rent}) \times 5.25\% = \$47,250$$

In terms of the exhibited State harbor leases, Lease 6 is the anomaly in that monthly rent shall be base rent or an amount based on 50% of gross receipts. According to the State, the Lessee (Pacific Marine Partners LLC) has historically paid base rent only. Additionally, our interviews with market participants indicated that a percentage rental amount based on 50% of gross receipts is not financially sustainable in situations where the property is acquired/developed for investment purposes (i.e., primarily leased to subtenants for income generating purposes).

### **State of Hawaii – Industrial Leases**

- **Range of Percentage Rent: 10% to 50%**

Similar to the State harbor leases, State of Hawaii industrial leases vary significantly in terms of percentage rent. Leases 7 and 8 are similar in that both require “sandwich profit” to be paid to the lessor. The sandwich profit is calculated by subtracting operating expenses (inclusive of ground lease rent, a stipulated management/vacancy allowance, and certain allowances such as investment return and reserves for replacement) from annual sublease rental income.

Lease 9 involves the Department of Hawaiian Home Lands as lessor and an industrial site within the Kawaihae industrial area on Hawaii Island. A ground lease provision allows the lessor to “revise the rent of the demised premises based upon 10% of the gross rental rate charged to said sublessee for the subleasing of building space....”

Lease 10 involves the State of Hawaii Department of Transportation Harbors Division as lessor and an industrial site within Kalaeloa Barbers Point Harbor on Oahu. The ground lease allows the lessor to receive 30% of the “sandwich profit” from the sublessor.

Lease 11 represents the high-end of the range relative to the State industrial leases whereby additional annual rent payable to the Department of Hawaiian Homelands when subleasing of building space is effective annual sublease rent, less allowances, less annual base lease rent multiplied by 50%.

### **State of Hawaii – Retail & Other Leases**

- **Range of Percentage Rent: 2% to 50%**

Lease examples 12-14 include examples of retail leases while Leases 15-18 involve hotel, residential, and communication leases. Lease 12 involves a sandwich profit calculation whereby the additional rent due is calculated based on sublease rental income less a vacancy factor of 25% less amortization of original investment less amortization of improvements made less performance bond less leasing commissions

less amortization of necessary repairs over the "next few years" = net adjusted sublease income.

Lease examples 13 and 14 include a percentage rent breakpoint. Lease 13 requires additional rent based on 10% of gross profit before taxes of the Hawaiian Home Lands portion of City Square above \$500,000 in gross profit. Lease 14 involves the Aloha Tower Marketplace whereby ground rent is the greater of 10% of gross receipts or \$1,000,000.

Leases 15 and 16 involve ground leases involving hotel projects. Lease 15's additional rent is 2% of the annual gross revenue payable in excess of the annual base rent. Lease 16's additional rent due is 5% of room revenue and 15% of rental income from restaurant when the sum of such participation is in excess of base rent.

Lease 17, which involves the Department of Hawaiian Home Lands as lessor, is consistent with Lease 11 (also a DHHL lease) and establishes percentage rent of 50% of the net sandwich profit.

Lease 18 involves a State lease where rent participation was established at 40% to 50% of revenue from subleases. However, a 2016 rent reopening established via mediation eliminated the percentage rent provision. During the mediation, it was indicated that the sublease rent was far less than the expenses incurred to maintain the subject site.

#### SUMMARY OF STATE OF HAWAII GROUND LEASES

The State of Hawaii ground leases exhibited on Table 1 vary significantly in terms of percentage rent. Even the most recent leases and extensions (Leases 3-6) are not consistent and range from 5% to 50%. Furthermore, there does not appear to be consistency among locations. For example, percentage rent within the Honokohau Small Boat Harbor ranges from 5% to 50%, while percentage rent within Department of Hawaiian Home Lands' Kawaihae industrial area ranges from 10% to 50%. There does appear to be consistency within the Ala Wai Boat Harbor where the two leases exhibited set forth annual lease rent at the higher of minimum rent or 5% of annual gross receipts and 10% of annual mooring receipts.

### PRIVATE GROUND LEASES

Ground leases involving private lessors are summarized on **Table 2** within the Addenda. Private ground leases that do not include percentage rental income were excluded. The ground leases summarized on Table 2 involve the following private lessors:

- Kamehameha Schools
- Queen Liliuokalani Trust
- Queen Emma Foundation
- Grove Farm Land Corp.
- Lanihau Properties, LLC
- Eric Knudsen Trust
- Castle Family LLC
- Alexander & Baldwin

Due to confidentiality concerns, the identities of the specific property and parties to the lease were excluded from Table 2.

Reminiscent of the State ground leases, the private ground leases also reflect a wide range of percentage rent spanning from 1.5% to 20%. However, the majority of the ground leases exhibited reflect a relatively narrow percentage rent window of 3% to 10%.

Leases 1-11 all involve retail centers. Leases 1 and 2 involve retail centers on Oahu where percentage rent is only due when vacant land is subleased. However, in both instances, the ground lessee subleased improved space and no percentage rent was due.

Leases 3, 7, 9, 10, and 11 involve percentage rent at established breakpoints. Lease 3 is unique in that it calls for percentage rent against gross sales generated by sublessees as opposed to the rental income generated from sublease rent.

Leases 4 and 5 involve retail centers where the ground lessee is required to pay 3% and 4% respectively of gross rents from tenants (includes base rent and percentage rent but excludes operating expense recoveries). The percentage rent due is in addition to minimum ground rent and is not only to the extent that it exceeds minimum ground rent.

Leases 12-15 involve an auto dealership, hotel, apartment, and office project. Perhaps one of the most recent ground leases to include percentage rental income is Lease 14. Percentage rent during Years 6-65 is 7.4% of gross revenue in excess of base rent. No percentage rent is due during Years 1-5 of the ground lease. Additionally, the ground lease does not include any base rent escalations during Years 6-30 of the ground lease.



### **RECOMMENDED PERCENTAGE RENT STANDARD**

As previously described and reiterated during discussions with market participants, there is no market convention as to sublease rent participation. In fact, the majority (roughly 50% to 60%) of private ground leases reviewed do not require any additional payment related to sublease rent. Additionally, market participants interviewed generally believe that if the ground lessee is paying fair market rent on the demised land and if the value of lessor improvements are accounted for via a lease premium, percentage rent should be nominal.

However, State ground leases, under HRS 171-36(a)(6), would appear to allow the State to revise the rent upward when the demised premises is subleased. The obvious issue, however, is that the precise method of determining the upward rent adjustment is not explicitly stated.

Based on our research and analysis and considering HRS 171-36(a)(6), the following Percentage Rent standard is recommended:

**Annual Percentage Rent = Range of 3.0% to 4.0% of Gross Rents from Subtenants**

"Gross Rents" shall include all minimum, basic, percentage, and operating expense reimbursements collected from subtenants.

For example, if a hypothetical sublessor generates \$500,000 in Gross Rents, additional annual rent due to the ground lessor from the ground lessee (sublessor) would range between \$15,000 to \$20,000 per year as exhibited following:

<b>Recommended Sublease Rent Participation Illustration</b>			
Annual Gross Rent [1]	\$500,000		\$500,000
Percentage	x 3.0%	x	4.0%
Additional Annual Rent Due to Ground Lessor	\$15,000		\$20,000

[1] "Gross Rent" shall include all minimum (base) rent, percentage, and operating expense reimbursements collected from subtenants.

The concluded Percentage Rent recommendation is subject to the primary assumptions and limiting conditions set forth beginning on page 6.

ADDITIONAL CONSULTING / CONTEXT OF THE RECOMMENDATION

• **Alternative to Land Division's Current Percentage Rent Policy**

The State of Hawaii Department of Land and Natural Resources' current sublease rent participation policy references the following:

Annual Sublease Base Rent:		\$
LESS: General Excise Tax:		\$ (      )
Net annual Sublease Base Rent:		\$
LESS total Allowances:		\$ (      )
<i>Allowances:</i>		
<i>Management &amp; Vacancy Loss</i>		
<i>(eff. inc. x%):</i>	\$	
<i>Repair and Maintenance:</i>	\$	
<i>Real Property Tax:</i>	\$	
<i>Insurance:</i>	\$	
<i>Total allowances:</i>	\$	
LESS Annual Lease Ground Rent		\$ (      )
Additional Annual Sublease Rent:		\$
MULTIPLIED by 50%:		x .50
Additional Annual Rent due DLNR:		\$

Several State leases reference a similar percentage rent calculation with various nuances (see Table 1, Leases 7, 8, 10, 12, and 17).

Land Division's percentage rent calculation is not recommended for the following reasons:

- a. When a ground lessee is already paying fair market rent on the demised premises (land), market participants interviewed (not only lessees, but lessors, developers, and investors) indicated that a percentage rent of 50% of net profit is excessive and unreasonable. A ground lessor's risk is largely limited to tenant (ground lessee) default risk. Conversely, a ground lessee is subject to greater risk such as development risk, construction risk, financing/interest rate risk, sub-tenant default risk, uncertainty as to ground rent resets (whereas ground leases typically include a "no less than prior period" provision), etc. Thus, percentage rent of 50% is overly punitive and unrealistic – again, particularly when ground lease rent is based on fair market rent on the demised land.



- b. The above-cited DLNR calculation would present administrative challenges. For example, some State leases allow for a variety of allowances (deductions) such as a vacancy factor, amortization of original investment, amortization of lessee improvements, performance bond, leasing commissions, and amortization of future capital repairs. Adhering to this rather complex percentage rent calculation results in higher operating expenses (management, accounting, etc.) for both lessor and lessee.

The concluded recommended Percentage Rent standard simplifies the calculation and would likely reduce administrative costs.

- c. The above-cited calculation is subject to conjecture. For example, State Lease 12 (see Table 1) includes a vacancy of 25%. Vacancy rates are fluid and ebb and flow over time depending on a variety of factors (economic, lease rollover, property characteristics, etc.). As readily observed, the inclusion of this type of allowances results in additional ambiguity and most likely additional administrative and legal costs.

- **Reasoning for the Inclusion of Percentage Rent**

As previously cited, the majority (roughly 50% to 60%) of private ground leases reviewed do not require any additional payment related to sublease rent. Additionally, the inclusion of percentage rent is commonly a result of lease rent concessions (particularly during initial years of a ground lease) or in recognition of the need to recapture any potential improvement value that might exist at the beginning of a ground lease.

However, the recommended Percentage Rent standard was considered appropriate in this instance given HRS 171-36(a)(6). Furthermore, a project with a significant number of subtenants (or sublease income) would increase the ground lessor's administrative and legal costs associated with administering lessor consent for the subleases. Moreover, infrastructure maintenance costs generally rise in concert with an increase in the number of subtenants. The recommended Percentage Rent would assist in offsetting some of these costs.

- **Sensitivity Matrix**

<b>Sensitivity Matrix (Hypothetical Scenario)</b>						
<b>Percentage Rent</b>	<b>0.0%</b>	<b>1.0%</b>	<b>2.0%</b>	<b>3.0%</b>	<b>4.0%</b>	<b>5.0%</b>
Sublessor's Annual Gross Rent [1]	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Operating Expenses (20% of Gross Rent)	(\$100,000)	(\$100,000)	(\$100,000)	(\$100,000)	(\$100,000)	(\$100,000)
Annual Percentage Rent Due	\$0	(\$5,000)	(\$10,000)	<b>(\$15,000)</b>	<b>(\$20,000)</b>	(\$25,000)
Sublessor's NOI	\$400,000	\$395,000	\$390,000	\$385,000	\$380,000	\$375,000
Hypothetical Sales Price of \$10,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Going-In Capitalization Rate	8.00%	7.90%	7.80%	7.70%	7.60%	7.50%

[1] As defined within this consulting report.

The table above exhibits a hypothetical scenario where the sublessor's annual Gross Rent is \$500,000 and annual operating expenses prior to additional Percentage Rent due is \$100,000. The highlighted columns illustrate the recommended Percentage Rent range of 3.0% to 4.0% of Gross Rents from subtenants.

The matrix also includes Percentage Rents of 0%, 1%, 2%, and 5% to demonstrate additional rent due at the various percentage intervals. At 0% and a hypothetical sales price of \$5,000,000, the resulting capitalization rate is 8.0%. At the concluded Percentage Rent range of 3% to 4%, the capitalization rate decreases by 30 to 40 basis points (7.70% to 7.60%) compared to the scenario with no percentage rent. The capitalization rate decreases by 10 basis points with each Percentage Rent basis point increase. From an investor/developer's perspective and considering factors such as interest rate risk and return requirements, a Percentage Rent that is higher than the concluded range of 3% to 4% would likely jeopardize the financial feasibility of most projects.

**EFFECTIVE AGE & REMAINING ECONOMIC  
LIFE OF GKM INC.'S LEASEHOLD IMPROVEMENTS**

In addition to assisting in developing a rent participation policy, the scope of this consulting report includes providing an estimate of the remaining economic life of GKM, Inc.'s leasehold improvements and the extent to which the improvements have been amortized. A summary of GKM, Inc.'s building improvements is exhibited on the following table and was based on County of Hawaii tax records. Architectural plans were not available during the course of completing this consulting report.

<b>Building Area Summary [1]  74-5072-D Queen Kaahumanu Highway  Lease No. H-82-4  (3) 7-4-08: 42</b>		
<b>Description</b>	<b>Building Area (Sq. Ft.)</b>	<b>Year Built</b>
<b>Building 1</b>		
Retail Store	21,600	1984
Mezz Encl. Office	576	1984
Mezz Display Sales	4,680	1984
Restaurant	1,132	1984
Subtotal - Building 1	27,988	
<b>Building 2</b>		
Retail Store	576	1985
Offices	576	1985
Subtotal - Building 2	1,152	
<b>Building 3</b>		
Manufacturing	1,800	1984
Mezz Encl. Office	1,200	1984
Subtotal - Building 3	3,000	
<b>Building 4</b>		
Offices	2,160	1984
Warehouse	9,750	1984
Offices	2,160	1984
Subtotal - Building 4	14,070	
<b>Building 5</b>		
Hangar	2,400	1999
Subtotal - Building 5	2,400	
<b>Total Building Area</b>	48,610	

[1] Source: hawaiiinformation.com

Photos of GKM, Inc.'s building improvements are provided following.



View of the retail building situation within the eastern portion of the GKM property, camera facing a westerly direction.



Additional view of the retail building, camera facing a northwesterly direction.



View of building containing office space, boat storage, and boat repair area, camera facing a southerly direction.



View of the building situated within the western boundary of the GKM Inc. parcel, camera facing an easterly direction.



View of the building situated within the southwestern corner of the GKM Inc. parcel, camera facing an easterly direction.

### ECONOMIC LIFE OF GKM'S BUILDING IMPROVEMENTS

Economic life is "the period over which improvements to real estate contribute to property value".<sup>1</sup> GKM's improvements include industrial and retail buildings. Based upon a review of national trends as published by Marshall & Swift, the economic life for the subject's improvements would be in the range of 40 to 50 years. In Hawaii, standard industrial and retail buildings are often retained and utilized well in excess of 40 to 50 years as a result of density benefits accruing to older facilities relative to current zoning ordinances coupled with Hawaii's relatively high cost of construction compared to other areas across the U.S. The total economic life of the subject's existing improvements was estimated to be 50 years.

<sup>1</sup> Source: The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition by the Appraisal Institute, an Illinois not-for-profit corporation.



#### CHRONOLOGICAL AGE (ACTUAL AGE)

According to County tax records, the subject improvements were constructed between 1984 and 1999 and reflect chronological ages ranging from 21 to 36 years. Approximately 93% of the building area was built in 1984. Thus, the majority of the improvements reflect a chronological age of 36 years.

#### EFFECTIVE AGE & REMAINING ECONOMIC LIFE

Although the majority of the buildings were originally constructed circa 1984, the improvements benefit from renovations that have been made during their physical lives. Although actual construction renovation costs were not provided, County records include eight building permits since 2002 with a total permit value of \$345,000. We also note that a transmittal from the State of Hawaii Department of Land and Natural Resources<sup>2</sup> which indicated that loan proceeds would be used to renovate the existing steel building and add additional square footage. A breakdown of the \$1,000,000 in loan proceeds suggests capital improvements were made for foundation, steel frame, rough frame, exterior shell, siding, windows, doors, electric, plumbing, and painting.

Based on our observations of the existing building improvements and the renovations made to the property, the effective age was estimated to be approximately 20 years. As previously established, the total economic life of the subject's building improvements was estimated to be 50 years. Thus, the remaining economic life would be approximately 30 years.

#### CONCLUSION - AMORTIZATION OF GKM'S BUILDING IMPROVEMENTS

Based on the concluded effective age of the existing improvements of 20 years and the estimated economic life of 50 years, total depreciation of GKM's improvements is estimated at approximately **40%**. The estimated remaining economic life of the improvements is estimated at 30 years.

Notwithstanding, as a result of the ground lease (H-82-4), the remaining economic life of the subject improvements to the leasehold owner is synonymous with the remaining ground lease term of approximately 20 years. Thus, from the perspective of GKM Inc., total depreciation is estimated at approximately **50%** (effective age of 20 years ÷ total economic life of 40 years).

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<sup>2</sup> Consent to Mortgage and Amendment for Extension of Lease Term, General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 7-4-008-042.

## **SUMMARY OF CONCLUSIONS**

Based on our research and analysis, the following Percentage Rent standard is recommended:

### **Annual Percentage Rent = Range of 3.0% to 4.0% of Gross Rents from Subtenants**

"Gross Rents" shall include all minimum, basic, percentage, and operating expense reimbursements collected from subtenants.

The concluded Percentage Rent recommendation is subject to the primary assumptions and limiting conditions set forth beginning on page 6.

Additionally, based on my observations, the concluded effective age of GKM Inc.'s building improvements is estimated at 20 years, while the estimated economic life of the improvements is 50 years. Thus, the estimated remaining economic life is 30 years and total depreciation of GKM's improvements is estimated at approximately **40%**.

Notwithstanding, given the remaining ground lease term of only 20 years, the remaining economic life of the improvements from the perspective of GKM is 20 years. Thus, from the perspective of GKM Inc., total depreciation is estimated at approximately **50%** (effective age of 20 years ÷ total economic life of 40 years).

Thank you for the privilege of assisting you in this consulting assignment. Should you have any questions or concerns regarding any aspect of this report, please do not hesitate to contact us.

**DRAFT**

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Sidney K. Komatsu, MAI, CCIM  
Principal

**ADDENDA**



**EXHIBIT A**

**Table 1: State of Hawaii Ground Leases**

Table 1							
STATE OF HAWAII GROUND LEASES							
No.	Project / Tax Map Key	Land Size (Acres)	Location	Lessee	Lease Start Date	Lease Type	Leased Vacant or Improved
Percentage Rent Detail							
Percentage Rent							
STATE GROUND LEASES - HARBOR							
1	Hawaii Yacht Club (1) 2-3-37: 13	0.928	Ala Wai Boat Harbor Honolulu, Oahu	Hawaii Yacht Club	Dec-99	Lease	Improved
					5% / 10%	Annual lease rent shall be the higher of minimum rent or 5% of the annual gross receipts and 10% of annual mooring receipts.	
2	Waikiki Yacht Club (1) 2-3-37: 06 & 12 (por.)	1.234	Ala Wai Boat Harbor Honolulu, Oahu	Waikiki Yacht Club	Dec-99	Lease	Improved
					5% / 10%	Annual lease rent shall be the higher of minimum rent or 5% of the annual gross receipts and 10% of annual mooring receipts.	
3	Kona Marine (3) 7-4-08: 40	0.305	Honokohau Harbor Kailua-Kona, Hawaii	Kona Marine Hldgs.	Nov-19	Extension	Improved
					5%	Minimum fixed rent or 5% of annual gross receipts, whichever is greater.	
4	Dolphin Excursions (1) 8-5-02: 44 (por.)	0.910	Waianae Harbor	Dolphin Excursions Hawaii, Inc.	Aug-16	Revocable Permit	Vacant
					10%	Month-to-Month revocable permit. Minimum rent or 10% of gross monthly receipts, whichever is greater.	
5	Marine Fueling Facility (2) 4-6-01: 17 (por.)	0.031	Lahaina Boat Harbor Lahaina, Maui	Pac.-West Fuels, Inc.	Nov-19	Extension	Improved
					5.25%	Minimum base rent plus 5.25% of the annual gross receipts in excess of the minimum annual rent. Extension approved by lessor.	
6	Pacific Marine Partners (3) 7-4-08: 03 (por.)	9.000	Honokohau Harbor Kailua-Kona, Hawaii	Pac. Marine Partners	Nov-18	Lease (10-Year)	Improved
					50%	Monthly rent shall be base rent or an amount based on 50% of gross receipts, whichever is greater. To the extent percentage rent exceeds base rent, the excess shall be payable of the following month.	

Table 1									
STATE OF HAWAII GROUND LEASES									
No.	Project / Tax Map Key	Land Size (Acres)	Location	Lessee	Lease Start Date	Lease Type	Leased Vacant or Improved	Percentage Rent	Percentage Rent Detail
STATE GROUND LEASES - INDUSTRIAL									
7	Aloha Petroleum (4) 3-2-04: 17 et al.	1.243	Nawiliwili Harbor Lihue, Kauai	Equilon Ent., LLC	Jan-02	Lease	Vacant	<b>Sandwich Profit</b>	"Sandwich profit" paid to Lessor. Sandwich profit = Gross annual sublease income (including G.E. tax and CAM charges) - G.E. Tax - management/vacancy loss (10% of Eff. Inc.) - investment return - fixed expenses - variable expenses - reserves for replacement - Lease rental income. See last page of Exhibit D for detail.
8	900 Leilani (3) 2-2-37: 144	1.060	Hilo, Hawaii	James McCully et al.	Apr-71	Lease	Vacant	<b>Sandwich Profit</b>	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. Formula: Effective Income less allowances = sandwich profit. Sandwich profit reflects Board recommended rent increase.
9	Harborside Investors (3) 6-1-06: 15	12.860	Kawaihae, Hawaii	Kawaihae Industrial Dev. Corp.	Jun-84	Lease	Vacant	<b>10% / 20%</b>	Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Lessor.... The Lessor 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 <b>10%</b> of the gross rental rate charged to said sublessee for the subleasing of building space and <b>20%</b> of the gross rental rate charged to the sublessee for subleasing of raw land only....

Table 1

## STATE OF HAWAII GROUND LEASES

No.	Project / Tax Map Key	Land Size (Acres)	Location	Lessee	Lease Start Date	Lease Type	Leased Vacant or Improved	Percentage Rent	Percentage Rent Detail
10	Asphalt Hawaii (1) 9-1-14: 43	4.313	Kalaeloa Harbor Kalaeloa, Oahu	GLP Asphalt LLC	Jan-09	Lease	Vacant	30%	See Appendix "B" of Lease which references Chapter 171-36(a)6 of HRS and further notes "The basic rationale or philosophy behind the sublease evaluation policy is that the State, as mandated by statutes, should not allow anyone to make excessive "sandwich profits from the use of State-owned land.... The State does recognize the sublessor's right to earn a fair return for its investment."
11	Kona Carbon (3) 6-1-06: 07	12.961	Kawaihae, Hawaii	Kona Carbon, LLC	Mar-09	Lease	Vacant	50%	When the State determines that "sandwich profits" are being realized, the State may take such action as it deems necessary, including, without limitation: (1) limiting the amount of rent charged to the sublessee; or (2) receiving thirty percent (30%) of the "sandwich profit" from the sublessor while permitting the sub lessor to retain the remaining seventy percent (70%). Sandwich profits are net of allowances as detailed in Appendix "B". The State may reevaluate the "sandwich profit" on an annual basis.  See Exhibit "E" of Lease. Additional Annual rent payable to DHHL when subleasing of <b>building space</b> : Effective annual sublease rent less allowances less annual base lease rent multiplied by <b>50%</b> . Additional Annual rent payable to DHHL when subleasing of <b>vacant "raw" land</b> only: Effective annual sublease rent less annual base lease rent multiplied by <b>50%</b> .

Table 1							
STATE OF HAWAII GROUND LEASES							
No.	Project / Tax Map Key	Land Size (Acres)	Location	Lessee	Lease Start Date	Lease Type	Leased Vacant or Improved
Percentage Rent Detail							
Percentage Rent							
Sandwich Profit							
STATE GROUND LEASES - RETAIL							
12	1-3529 Kaumuali'i (4) 1-8-08: 64	0.976	Hanapepe, Kauai	Hanapepe Comm. Properties LLC	Nov-77	Lease	Vacant
Lease states, "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. A 2015 transmittal calculated additional rent due as follows: Proportionate monthly sublease rent less vacancy factor of 25% less amortization of original investment less amortization of improvements made less performance bond less leasing commissions less amortization of necessary repairs over "next few years" = net adjusted sublease income.							
13	City Square (1) 1-5-20: 01 et al.	2.750	Kalihi, Oahu	RCK Partners LP	Aug-80	Lease	Vacant
Beginning January 2003, additional rental based on 10% of gross profit before taxes of the Hawaiian Home Lands portion of City Square above \$500,000 in gross profit.							
14	Aloha Tower Mkt. (1) 2-1-01: 63 et al.	9.060	Honolulu, Oahu	Hawaii Lifestyle Retail Properties	Dec-11	Lease	Improved
Ground rent is greater of 10% of gross receipts or \$1,000,000.							

Table 1									
STATE OF HAWAII GROUND LEASES									
No.	Project / Tax Map Key	Land Size (Acres)	Location	Lessee	Lease Start Date	Lease Type	Leased Vacant or Improved	Percentage Rent	Percentage Rent Detail
STATE GROUND LEASES - OTHER									
15	Hotel Coral Reef (4) 4-5-11: 46 et al.	0.593	Kapaa, Kauai	PIXAR Dev., LLC	Nov-15	Extension	Improved	2%	2% of the annual gross revenue (room revenue, F&B, retail sales, etc.) payable in excess of the annual base rent.
16	Maui Oceanfront Inn (2) 3-9-04: 29	1.119	Kihei, Maui	Ruby & Sons Hosp.	Dec-15	Extension	Improved	5% / 15%	5% of room revenue and 15% of rental income from restaurant when the sum of such participation is in excess of base rent.
17	Nanakuli Homestead Community (1) 8-9-02: 01	11.960	Nanakuli, Oahu	Nanakului Hmstd. Comm. Assoc.	Oct-08	Lease	Vacant	50%	See Exhibit "E" of Lease. Additional Annual rent payable to DHHL when subleasing of <b>building space</b> : Effective annual sublease rent less allowances less annual base lease rent multiplied by <b>50%</b> . Additional Annual rent payable to DHHL when subleasing of <b>vacant "raw" land</b> only: Effective annual sublease rent less annual base lease rent multiplied by <b>50%</b> .
18	Mt. Kaala (1) 6-7-03: Portions	0.211	Waialua, Oahu	InSite Towers Dev.	Mar-16	Reopening	Vacant	See Notes	Lease amendment provided for 50% of revenue for the first sublease/license, 40% for the second, and 50% for the third and subsequent subleases/licenses. However, a mediated settlement for the period beginning March 1, 2016, stated "all percentage rent/revenue share provisions and references in the Lease.... are null and void and of no further force or effect." During mediation it was indicated that the sublease rent was far less than the expenses incurred to maintain the subject site.

**EXHIBIT B**

**Table 2: Private Ground Leases  
with Percentage Rent Provisions**

Table 2

## PRIVATE GROUND LEASES WITH PERCENTAGE RENT PROVISIONS [1]

No.	Property Type	Approx. Land Size (Acres)	Island	Lease Start Date	Lease Type	Leased Vacant or Improved	Percentage Rent	Percentage Rent Detail
PROPERTY TYPE - RETAIL								
1	Retail	1	Oahu	Jul-13	Extension	Improved	None / 50% if Land Sublease	Lessee shall not, without the prior written consent of Lessors, rent, sublet, or part with possession of the <b>Land</b> . Lessor shall have the right to revise Minimum Annual Rent and Additional Rent [RPT, G.E. Tax, utilities] on the basis of the proposed subrent. The increase shall not be less than 50% of the amount by which such subrent for Land exceeds that portion of the Minimum Annual Rent and Additional Rent. Lessee may, without the consent of Lessors, sublet space in any building or buildings on the Land to Tenants under Tenant Leases (no % rent due to Lessor).
2	Retail	1	Oahu	2018	Lease	Vacant	None / 50% if Land Sublease	Lessee shall not, without the prior written consent of Lessors, rent, sublet, or part with possession of the <b>Land</b> . Lessor shall have the right to revise Minimum Annual Rent and Additional Rent [RPT, G.E. Tax, utilities] on the basis of the proposed subrent. The increase shall not be less than 50% of the amount by which such subrent for Land exceeds that portion of the Minimum Annual Rent and Additional Rent. Lessee may, without the consent of Lessors, sublet space in any building or buildings on the Land to Tenants under Tenant Leases (no % rent due to Lessor).
3	Retail	6	Oahu	Jul-81	Lease	Improved	1.5% / 2.5%	Lessee shall pay the amount in excess of annual minimum rent, equal to the sum of <b>1.5%</b> multiplied by Gross Sales up to a maximum of \$14,000,000 per year, and <b>2.5%</b> multiplied by the amount of Gross Sales in excess of the Maximum Gross Sales Amount. Prior to amendment, original ground lease required percentage rent of 2.5% applied to all sales in excess of \$800,000.
4	Retail	11	Hawaii	Jan-08	Lease	Vacant	3%	Percentage Rent: Three percent ( <b>3%</b> ) of Gross Rents from Tenants (excludes expense recoveries). Percentage Rent is in addition to Monthly Minimum Rent and is not only to the extent that it exceeds Monthly Minimum Rent.
5	Retail	2	Hawaii	Jul-10	Lease	Vacant	4%	Percentage Rent: Three percent ( <b>4%</b> ) of Gross Rents from Tenants (excludes expense recoveries). Percentage Rent is in addition to Monthly Minimum Rent and is not only to the extent that it exceeds Monthly Minimum Rent.
6	Retail	17	Oahu	Aug-89	Lease	Improved	8%	<b>8.0%</b> of Adjusted Gross Income.



Table 2							PRIVATE GROUND LEASES WITH PERCENTAGE RENT PROVISIONS [1]		
No.	Property Type	Approx. Land Size (Acres)	Island	Lease Start Date	Lease Type	Leased Vacant or Improved	Percentage Rent	Percentage Rent Detail	
7	Retail	15	Oahu	Aug-10	Extension	Improved	10%	Lessee shall pay the amount of money, if any, equal to the product of (a) <b>10%</b> and (b) all net tenant rentals received by Lessee in excess of \$10,000,000.	
8	Retail	8	Kauai	Oct-05	Lease	Vacant	10%	Greater of Annual Minimum Rent or <b>10.0%</b> of net lease rental.	
9	Retail	7	Oahu	Jan-80	Lease	Vacant	10.50%	<b>10.5%</b> multiplied by gross income above \$125,000 per quarter.	
10	Retail	12	Oahu	Jul-80	Lease	Vacant	8% to 14%	Percentage rent agreed upon in 1998 amendment: <b>8%</b> of adjusted gross income in excess of \$1.15 million but less than \$1.4 million; <b>11%</b> of adjusted gross income in excess of \$1.4 million but less than \$1.75 million; <b>14%</b> of adjusted gross income in excess of \$1.75 million.	
11	Retail	4	Oahu	Apr-57	Lease	Vacant	20%	Beginning January 2000, Lessee shall pay percentage rent equal to <b>20%</b> of the Lessee's Annual Adjusted Income. Annual Adjusted Income shall be equal to the total rents, fees, and other income derived by Lessee from subleasing (excludes operating expenses), less \$2 million.	
PROPERTY TYPE - MISCELLANEOUS									
12	Auto	7	Hawaii	Jan-18	Extension	Improved	TBD (See Detail)	Landlord may, as a condition of granting its consent to any new use of the demised premises, require the payment of percentage rent as may be mutually agreeable to Landlord and Tenant.	
13	Hotel	1	Oahu	Apr-77	Lease	Vacant	1% to 10%	Percentage rent on hotel rooms: <b>3%</b> to <b>6%</b> at set breakpoints. Percentage rent on food: <b>1%</b> to <b>5%</b> at set breakpoints. Percentage rent on concessions: <b>10%</b> .	
14	Apartment	3	Oahu	Jul-19	Lease	Vacant	7.4%	Years 6-65, <b>7.4%</b> of Gross Revenue in excess of Base Rent.	
15	Office	1	Kauai	Jul-85	Lease	Vacant	10%	<b>10%</b> of rent which Lessee receives from subtenants, concessionaires, and licensees.	

[1] Due to confidentiality concerns, the properties are not identified.

**EXHIBIT C**

**Company Profile and Professional Qualifications**

## LESHER • CHEE • STADLBAUER, Inc.

*Continuing a tradition of providing real estate valuation and consulting services  
to Hawaii and the Pacific for over 45-years.*

**Leshner Chee Stadlbauer, Inc. (LCS)** is a full service real estate valuation and consulting practice headquartered in Honolulu, Hawaii and serving the Pacific Basin (Hawaii, Micronesia and the South Pacific) since 1970. The LCS Valuation Practice concentrates principally in commercial, industrial, hospitality, residential development (on an entire project basis), and specialty property types. We are also experienced with complex engagements involving partial real estate interests, life estates, leased fee interests and real estate tax credits. Analyses employing modeling software (Argus) are regularly performed with copies via compact disk available at the client's request. The LCS Consulting Practice includes market studies, feasibility analysis, highest and best use studies, location analysis, rent studies, appraisal review, arbitration, tax appeal, and litigation support services.

Members of our firm include highly recognized and qualified real estate professionals with extensive experience in assisting land owners, real estate managers, developers, lenders, investors, trusts, attorneys and governmental agencies in the solution of real estate problems requiring objective valuation and evaluation analyses.

**Raymond A. Leshner, MAI, CRE** (1928 – 2000), our founder, was recognized both in the Pacific and nationally as a practicing appraiser, educator and author during a distinguished 50-year career in the appraisal profession. Following the relocation of his practice to Hawaii from Connecticut in 1970, the focus of Mr. Leshner's practice was in the Hawaiian Islands and Pacific.

The current principals of LCS are **Steven D. Chee, MAI, Stephen E. Stadlbauer, MAI, and Sidney K. Komatsu, MAI, CCIM.**

- ❖ Mr. Chee specializes in valuation and consulting assignments involving residential development, development land, complex income properties, resort and hospitality properties, and leased fee interests. Mr. Chee is a recognized industry leader in the valuation and analysis of large residential developments in the State of Hawaii and has been involved in over 50 engagements involving proposed residential development within the past five years. He is also available for arbitration assignments or engagements involving testimony as a qualified expert in real estate valuation.
- ❖ Mr. Stadlbauer's diverse income property background includes valuation and consulting involving existing and proposed self storage facilities, large industrial and retail projects, specialized elderly housing (inclusive of assisted living facilities and nursing homes) and multi-family housing inclusive of low-income housing tax credit (LIHTC) projects. Mr. Stadlbauer is one of a limited number of appraisers in Hawaii approved by the U. S. Department of Housing and Urban Development (*HUD*) to provide appraisals under Section 223(f); Mark-to-Market assignments for the MAP program. He is also available for arbitration assignments or engagements involving testimony as a qualified expert in real estate valuation.
- ❖ Mr. Komatsu primarily focuses on retail and office properties. Other practice areas include litigation support, real property tax appeals, industrial, multifamily, ground leased fee interests, and ground rent matters. Mr. Komatsu is a graduate of the University of Colorado and holds an M.B.A. from the Shidler College of Business. He is also available for arbitration assignments or engagements involving testimony as a qualified expert in real estate valuation.

**Clients are assured that all engagements performed by our practice are led by one of our principals.** Under this structure we maintain a consistent level of quality and detail. The principals are assisted by a qualified staff of professionals including:

- ❖ **Lianne K. S. Poppinga, CRA** (Real Property Analyst) is a Certified Residential Appraiser (CRA) licensed in the State of Hawaii. Ms. Poppinga, a graduate of the University of Hawaii, practiced as an independent fee appraiser for ten years prior to joining LCS.
- ❖ **Matthew Balkin, CGA** (Senior Real Property Analyst) is a Certified General Appraiser (CGA) licensed in the State of Hawaii with expertise in various practice areas inclusive of affordable rental housing projects involving LIHTC. Mr. Balkin is a graduate of the University of Washington and previously worked as a legislative aide and research analyst in the Hawaii State Senate.
- ❖ **Desiree L. Manuel, Esq.** (Real Property Analyst) is a graduate of Pepperdine University and received her Juris Doctorate from the University of Hawaii - William S. Richardson School of Law and was admitted to the Hawaii State Bar Association in 2015. Ms. Manuel also holds a Masters of Business Administration from the University of Hawaii at Manoa and is an Associate Member of the Urban Land Institute (ULI Hawaii) - Young Leaders Group.

We would be delighted to meet with you at your convenience to further discuss our services and how we can be of assistance to you. Following, we have included a sampling of major clients for whom this practice and its principals have completed assignments as well as certain reference sources.

### ESTATE AND LAND COMPANIES

Alexander & Baldwin, Inc.  
Bernice Pauahi Bishop Estate  
C. Brewer & Company  
Estate of James Campbell  
Grove Farm Land Corporation  
Iolani Schools  
Knudsen Farms (Kauai)  
McCandless Properties  
Oceanic Properties  
Parker Ranch  
Theo H. Davies, Co., Inc.  
Victoria Ward, Limited

Amfac, Inc.  
Chrysler Realty Corporation  
Estate of Samuel M. Damon  
First Hawaiian Trust  
Grove Farm Properties  
Kaneohe Ranch  
Liliuokalani Trust  
The Nature Conservancy  
Bank of Hawaii Trust  
The Queen Emma Foundation  
Trust for Public Lands  
W.H. Shipman, Limited

### FINANCIAL INSTITUTIONS

American Savings Bank  
Bank of Hawaii  
Bank of Tokyo  
Citicorp  
Chase Manhattan Bank  
Finance Factors, Ltd.  
First Federal Savings (Arkansas) United  
First National Bank of Chicago  
Fremont Investment and Loan  
GMACCM  
Homestreet Financial  
Metropolitan Mortgage and Securities  
Nippon Credit Bank  
Pacific Capital Funding  
Sanwa Bank  
TRI Capital Corporation  
Shinsei Bank

Bank of America  
Bank of the West  
Bank of the Midwest  
Central Pacific Bank  
Duetsche Bank  
First Federal Savings  
First Hawaiian Bank  
Fleet Bank  
Hawaii National Bank  
HSBC  
La Jolla Bank  
Mitsui Trust & Banking Co., Ltd.  
Pacific Guardian Life  
Royal Bank of Canada  
Transpacific Mortgage  
Western Farm Credit Bank  
Wells Fargo

### BUILDERS AND DEVELOPERS

A & B Properties  
Bill Mills  
Castle & Cooke Properties, Inc.  
Dole Food Company, Inc.  
Finance Realty  
Gentry Pacific, Ltd.  
Graham Murata Russell  
Hawaii States Properties  
Hawaiian Electric Industries, Inc.  
Herbert K. Horita Realty

Andre Tatibouet  
BIGI Corp.  
CMI Corp.  
Coastal Rim Properties  
Front Street Properties  
Grosvenor International Ltd.  
Halekua Development  
Hawaiian Dredging  
Hawaiian Investment Co., Inc.  
Houma Investment

**BUILDERS AND DEVELOPERS  
(Continued)**

The MacNaughton Group  
The Maryl Group  
Pan-Pacific Development  
Pili Hale Associates  
Public Storage, Inc.  
Rick Rainalter  
Stanford Carr Development  
West Beach Estates  
Waikamilo Properties

Mike Klein  
Pacific Construction, Ltd.  
Pankow Development Inc.  
Princeville Development Corp.  
Reynolds + Shidler  
Stark Development Co., Ltd.  
Toya Real Estate Company  
Waitec Development Inc.  
WCC Partners

**INDUSTRIAL AND COMMERCIAL**

AT & T Global Solutions  
Better Brands, Ltd.  
C. Itoh & Company (America)  
Castle & Cooke Terminals, Ltd.  
Communications Satellite Corp.  
Fisher Hawaii  
GTE Hawaiian Telephone  
Hawaii Meat Company  
Heftel Broadcasting Corp.  
Kaiser Permanente  
Lockheed Martin  
Mitsui Mutual Life Ins. Co.  
Pacific Resources, Inc.  
Sony Corporation (Hawaii)  
Theo H. Davies & Co., Ltd.  
Wilcox Memorial Hospital

Barnwell Industries  
C. Brewer & Company  
California & Hawaiian Sugar Co.  
Chevron U.S.A., Inc.  
Daiichiya – Love's Bakery  
GASPRO  
Halekulani Corporation  
Hawaiian Electric Co., Inc.  
I & F Company (Japan)  
Kodak Corporation  
Lone Star Hawaii Properties  
Northwestern Mutual Life  
Shell Oil Company  
Texaco, Inc.  
Times Supermarkets

**FEDERAL GOVERNMENT**

Department of the Air Force  
Department of the Navy  
Federal Aviation Administration (FAA)  
Federal Savings & Loan Ins. Corp. (FDLIC)  
National Weather Service  
U.S. Department of the Interior  
U.S. General Services Administration (GSA)  
United States Postal Service

Department of the Army  
Department of Transportation  
FDIC  
Internal Revenue Service  
U.S. Army Corps of Engineers  
U.S. Department of Justice  
U.S. Fish & Wildlife

**CITY AND COUNTY OF HONOLULU**

Department of Budget and Finance  
Department of Public Works

HFCD  
Dept. of Corporation Counsel

## STATE OF HAWAII

Department of the Attorney General  
Department of Land and Natural  
Resources (DLNR)  
Housing and Community Development  
Corporation of Hawaii (HCDC)  
University of Hawaii

Dept. of Hawaiian Home Lands (DHHL)  
Aloha Tower Development Corp (ATDC)  
Hawaii Housing Authority (HHA)  
  
Office of State Planning  
HCDA

## OFF-SHORE

Republic of the Marshall Islands

Marshall Islands Nuclear Claims  
Tribunal

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Reinwald O'Connor & Playdon  
Bays Deaver Lung Rose & Holma

Ashford & Wriston  
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Kemper and Watts  
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Tam O'Connor Henderson Taira &  
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## SOURCES FOR REFERENCE PURPOSES

A sampling of selected references acknowledging the professional real estate appraisal or consulting services provided by Mr. Stadlbauer, MAI and Mr. Chee, MAI, MRICS as the Principals of **Leshar Chee Stadlbauer, Inc.**, are shown following:

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**SOURCES FOR REFERENCE PURPOSES**  
**(Continued)**

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May 24, 2019

DRAFT



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**PROFESSIONAL QUALIFICATIONS OF  
SIDNEY K. KOMATSU, MAI, CCIM**

**PROFESSIONAL EXPERIENCE**

- **LESHER CHEE STADLBAUER, Inc.**, Real Estate Appraisal, Arbitration & Consulting, Honolulu, Hawaii (2004 to present)
  - Principal
- **TITLE GUARANTY OF HAWAII**, Escrow & Title Services, Honolulu, Hawaii (2003 to 2004)
  - Escrow Associate
- **JP MORGAN CHASE**, Boston, Massachusetts (2001 to 2003)
  - Mutual Fund Accountant

**QUALIFIED EXPERT WITNESS**

Mr. Komatsu has been accepted as an expert witness in real estate valuation in court and arbitration proceedings.

**PROFESSIONAL ORGANIZATIONS AND LICENSES**

- Appraisal Institute
  - Designated Member (MAI), Member No. 489627
- CCIM Institute
  - Designated Member (CCIM), Certificate No. 14226
- State of Hawaii Certified General Appraiser
  - License No. CGA-800, Expiration Date: December 31, 2021
- Urban Land Institute
  - General Member, 2006 to present
- Urban Land Institute
  - Young Leader Executive Committee Member, 2008-2011
- Hawaii Chapter of the Appraisal Institute
  - Director, 2015

**EDUCATION**

- Master of Business Administration, University of Hawaii – Manoa, Honolulu, Hawaii
- Bachelor of Science, Finance, University of Colorado – Boulder, Colorado
- Punahou School - Honolulu, Hawaii