

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

November 12, 2021

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

GL No. S-3961

Hawaii

Amendment of Extended, Amended, and Restated General Lease No. S-3961, Hilo Hawaiian Associates, Inc., Lessee; Government Lands Situate at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-003:005

The purpose of the amendment is to insert a standard provision that was inadvertently omitted from the lease detailing the kinds of receipts to which percentage rent applies and the maintenance of records therefor.

APPLICANT:

Department of Land and Natural Resources

LEGAL REFERENCE:

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

LOCATION:

Portion of Government Lands of Waiakea, situate at Waiakea, South Hilo, Hawaii identified by Tax Map Key: (3) 2-1-003:005, as shown on the attached maps labeled Exhibit A.

AREA:

5 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii:	V-.75

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by General Lease No. S-3961 to Hilo Hawaiian Associates, Inc.

CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

DCCA VERIFICATION:

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

REMARKS:

At its meeting of February 11, 1966, Item F-8, the Board of Land and Natural Resources (Board) authorized the sale of a lease of the subject land at public auction for resort and hotel purposes. The successful bidder for this sixty-five (65) year lease was Melsan Ltd. Due to difficulties in obtaining financing for construction of the hotel structure, the original principals of Melsan Ltd. entered into an agreement with International Management Corporation, whereby the latter assumed full corporate ownership of Melsan, Ltd. At its meeting on September 23, 1975, the Board consented to the extension of construction deadline and mortgage of General Lease No. S-3961.

Construction on the hotel was completed and it opened for business in October 1975. At its meeting of June 13, 1986, Item F-1-c, the Board consented to the assignment of the lease with assumption of mortgage from Melsan, Ltd. to Hilo Hawaiian Associates, a Hawaii limited partnership (Lessee).

Effective January 1, 2012, Hilo Hawaiian Associates, together with its general partner, HHA Inc., and limited partner, Hijoji Corporation, merged with and into the common parent of these companies, TN Group Hawaii, Inc., with the latter being the surviving entity. The merger did not result in any change in ownership interest in the lessee, Hilo Hawaiian Associates, but was intended to consolidate ownership in the parent company. Effective September 10, 2012, TN Group Hawaii, Inc. changed its name to Hilo Hawaiian Associates, Inc.

At its meeting of October 26, 2012, Item D-11, the Board agreed in concept to Lessee's request for a 37-year extension to its lease which was set to expire on April 14, 2031 for an

aggregate term of 55 years (18 years remaining on lease plus 37-year extension) in order to amortize the cost of the improvements necessary to upgrade the hotel.

Act 219, Session Laws of Hawaii 2011, authorized the Board to extend hotel or resort leases up to an additional fifty-five (55) years. As a condition to the extension, the Lessee was required to commit to substantial upgrades to the existing improvements. “Substantial improvements” means any renovation, rehabilitation, reconstruction or construction of the existing improvements, the cost of which equals or exceeds fifty per cent (50%) of the market value of the existing improvements that the Lessee or the Lessee and developer install, construct, and complete by the date of completion of the total development.

At its meeting of October 26, 2012, the Board approved Lessee’s proposed Development Agreement. Lessee submitted a Summary Appraisal Report dated August 2012 that indicated the value of the existing improvements was \$10,895,000. Lessee estimated improvement costs to be in excess of \$4,283,000. Additionally, Lessee proposed to set aside 3% of the total room revenue each year in a Furniture, Fixtures and Equipment (FF&E) account, the amount deposited to be no less than \$200,000 per year for the duration of the lease. Combined, these constituted greater than 50% of the value of the existing improvements as required under Act 219.

At its meeting of July 12, 2013, the Board approved the Development Agreement and proposed plans and specifications for improvements for GL S-3961. Consistent with prior Board action, the Negotiated Development Agreement required Lessee to make substantial improvements to the existing facilities on the lease premises worth at least \$5,447,500. Ultimately, Lessee’s proposed improvements amounted to \$5,831,442, exceeding the amount required under Act 219. This amount did not include the minimum \$200,000 to be deposited annually into the FF&E account.¹

At its meeting of August 22, 2014, the Board approved a rent determination for the first ten years of the lease term. Based on an appraisal prepared by John Child & Company Inc., the Board approved rent of \$185,400 per annum, or 2% of gross revenues, whichever is higher.

On December 29, 2015, the State and Lessee executed Extended, Amended, and Restated General Lease S-3961 (EAR Lease, Exhibit B). In addition to extending the lease through April 14, 2068, the EAR Lease updated the provisions of the original lease to the current lease form used by the Department of the Attorney General.

Lessee has paid percentage rent in every year except 2020. Decreased tourism resulting from the ongoing Covid-19 pandemic drastically reduced hotel occupancy statewide beginning in early 2020. Consequently, Hilo Hawaiian revenues did not meet the threshold for percentage rents for 2020. It is not clear at this time if Lessee will owe percentage rent for 2021. The

¹ In July 2020, at Lessee’s request, the Department agreed to a deferral of the funding of the FF&E account for the period March 1, 2020 to February 28, 2023 due to the impacts of COVID-19 on its operations.

following table provides an overview of percentage rent paid since 2013.

Period	Revenue Source	Subject to Percentage	Rent
7/13/13 – 12/31/17	Subleases	\$954,004.95	\$19,080.10
7/13/13 – 12/31/13	Room/FB/Other	\$5,382,050.00	\$178,538.00 ^{2,3}
1/1/14 – 12/31/14	Room/FB/Other	\$14,652,249.74	\$293,044.99 ³
1/1/15 – 12/31/15	Room/FB/Other	\$14,511,782.66	\$295,938.62 ³
1/1/16 – 12/31/16	Room/FB/Other	\$15,927,063.32	\$318,541.20 ³
1/1/17 – 12/31/17	Room/FB/Other	\$15,160,011.64	\$303,163.15 ³
1/1/18 – 12/31/18	Room/FB/Other	\$15,234,787.06	\$304,675.61 ³
1/1/18 – 12/31/18	Subleases	\$428,001.08	\$8,560.03
1/1/19 – 12/31/19	Room/FB/Other	\$13,604,536.47	\$272,090.73 ³
1/1/19 – 12/31/19	Subleases	\$304,194.28	\$6,083.89
Total	Subleases	\$1,686,200.28	\$33,724.02
Total	Room/FB/Other	\$94,472,480.89	\$1,965,992.30

Staff reviewed the file and can report that lease rent, liability insurance, and fire insurance are all current. A performance bond is in place in the amount of \$370,800 through April 14, 2031. Lessee operates a resort-hotel facility and accessory uses including a restaurant-bar and other services and amenities.

GL S-3961 is deficient in that it is missing a standard provision for percentage rent leases detailing the kinds of receipts to which percentage rent applies and the maintenance of records therefor. Accordingly, staff is recommending that the Board authorize the amendment of the lease to insert the following section on Page 3, Section 2.C and adjust subsequent paragraph lettering as necessary:

C. Percentage Rent.

1. Percentage rent shall be payable annually in arrears, without notice or demand, no later than one hundred (180) days after the close of each and every of Lessee's fiscal years. Each payment of percentage rent shall be accompanied by a written statement certified as correct by Lessee, or a person duly authorized by Lessee, showing in accurate detail the amount of gross receipts by category, for the payment period, and reviewed financial statements prepared according to generally accepted accounting principles.
2. The amount of percentage rent payable hereunder shall be equal to a percentage of the annual gross revenue from the leased premises to the extent such amount exceeds the annual base rent as may be established pursuant to

2 Annual base rent for 2013 was \$133,200 from January 1 through July 11 and \$185,400 from July 12 through December 31. Base rent for 2013 was calculated at \$157,941.37.

3 The percentage rents on "Room/FB/Other" revenues for years 2013 through 2019 are inclusive of the base rent due under the lease, which is \$185,400 annually except for 2013 as explained above.

paragraph 2.B of this lease.

3. The annual gross revenue shall include all revenues generated from, on, or within the leased premises, including but not limited to room revenues, food and beverage sales, retail sales, commissions and the gross revenues of any sublessee or concessionaire (but not including the revenues from licensees of space for radio, television, cellular or other similar transmission antennas), less adjustments for:
 - a. Discounts, refunds and allowances made on any sale;
 - b. Sales and use taxes, hotel room or tourist taxes, general excise tax or other similar taxes now or in the future imposed on the sales of rooms, food, beverages, merchandise or services, but only if such taxes are added to the selling price, separately stated, and collected separately from the sell price of merchandise or services, from customers;
 - c. Sales of fixtures, furnishings, trade fixtures or personal property that are not retail merchandise and are not sold in the ordinary course by the Lessee;
 - d. Charges made by credit card companies not directly or indirectly owned or controlled by the Lessee;
 - e. Receipts from sales of meals to employees of the Lessee consumed on the demised premises and sold to them at or below cost in the course of their employment, provided such sales are registered and recorded separately from other sales;
 - f. Gratuities or tips received by employees from patrons or service charges collected and turned over to employees in lieu of such employees receiving gratuities or tips from patrons;
 - g. Rent received from sublessees or concessionaires whose gross revenues are included in the calculation of the annual gross revenue.
4. Lessee shall at all times keep and maintain accurate records of all business transactions and sales made in and from the premises. Lessor shall have the right at all reasonable times during business hours, through Lessor's duly authorized agent, attorney, or accountant, to inspect and make copies of Lessee's records, accounts, and books in any way bearing on such sales (including copies of tax or information returns furnished any governmental authority), at the premises or at any other office of Lessee at which such books, records, and accounts may be kept, and to inspect the records, accounts, and books in any way bearing on sales of any other person or firm selling goods or services in or from any part of the premises. All such information shall be held by Lessor, its agents, attorneys, and accountants in the strictest confidence.
5. If an audit discloses that Lessee has underpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such deficiency and upon such notification the deficient shall be immediately due and payable by Lessee. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to

any other remedies available in this lease or otherwise, shall be entitled to reimbursement of all costs and expenses incurred in completing any such audit in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

6. If an audit discloses that Lessee has overpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such overpayment. Overpaid amounts shall be credited to and set off against rental amounts next due and payable following the date that such overpayment is discovered or revealed.

Act 219 sunset on December 31, 2015. However, staff believes the Board retains authority under Section 171-6, HRS, to correct errors in its lease documents. Although the original lease was issued pursuant to public auction as noted above, the lease was extended by direct negotiation pursuant to Act 219 SLH 2011. Accordingly, staff believes that the case of State v. Kahua Ranch, Ltd., 47 Haw. 28 (1963), which held that an auction lease could not be amended, does not preclude making the lease corrections needed here.

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

RECOMMENDATION: That the Board:

- A. Authorize the amendment of General Lease No. S-3961 as extended, amended, and restated to insert the aforementioned language into Page 3, Section 2.C, detailing what kind of receipts percentage rent applies to. The amendment of the lease shall further be subject to the following:
 1. The standard terms and conditions of the most current consent to change in character of use and amendment of lease document forms, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Luke Sarvis

Luke J. Sarvis
Project Development Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case

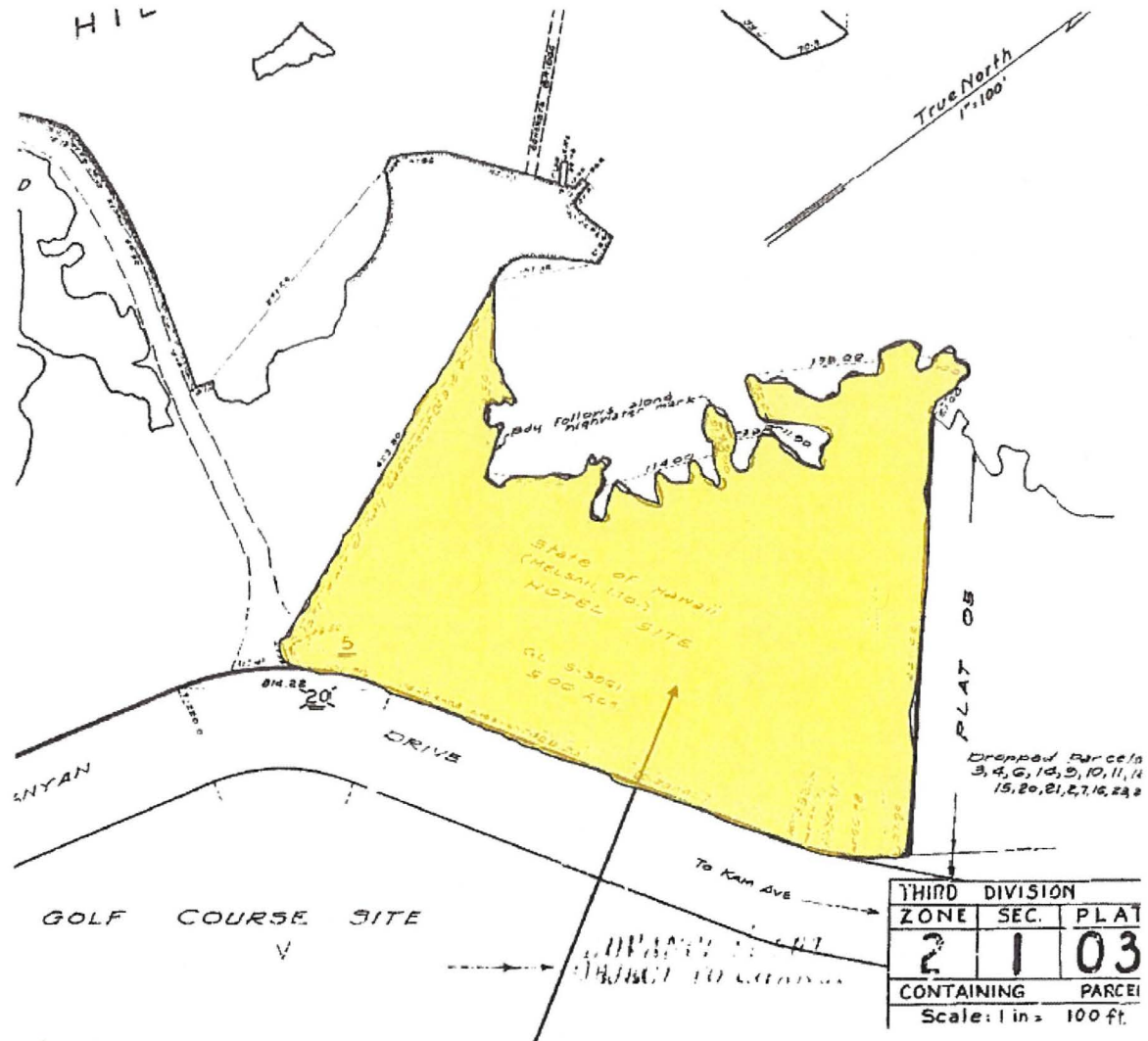
RT

Suzanne D. Case, Chairperson

EXHIBIT A

EXHIBIT A

TMK: (3) 2-1-03:05



HILO HAWAIIAN HOTEL

EXHIBIT B

[illegible]

Return by Mail () Pickup () To:

Tax Map Key No. (3) 2-1-003:005



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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

EXTENDED, AMENDED AND RESTATED GENERAL LEASE NO. S-3961

THIS LEASE, made this 29 day of December, 2015, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and HILO-HAWAIIAN ASSOCIATES, INC., a Hawaii corporation, whose address is c/o Castle Resorts & Hotels, Inc., 590 Paiea Street, Suite C, Honolulu, Hawaii 96819, hereinafter referred to as the "Lessee."

WITNESSETH:

WHEREAS, unrecorded General Lease No. S-3961 was issued to Melsan, Ltd., a Hawaii corporation, by Indenture made on April 15, 1966, and commencing on April 15, 1966, up to and including April 14, 2031, covering "Hotel Site," situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, containing an area of 5.00 acres, subject to the terms, covenants and conditions set forth in the lease; and

WHEREAS, unrecorded Consent to Transfer of 100% Stock Ownership Affecting General Lease No. S-3961, executed November 8, 2010, was given by the State of Hawaii, by its Board of Land and Natural Resources, to which Hilo-Hawaiian Associates, a Hawaii limited partnership is the Lessee; and

WHEREAS, pursuant to Act 219, Session Laws of Hawaii 2011, the Lessee has requested an extension of General Lease No. S-3961 for an additional thirty seven (37) years; and

WHEREAS, the Board of Land and Natural Resources at its meetings held on July 12, 2013 and August 22, 2014, agreed to the extension of General Lease No. S-3961 with the additional provisions as hereinafter contained; and

WHEREAS, at its meeting of July 12, 2013, the Board of Land and Natural Resources additionally approved the form of a Development Agreement for Hilo-Hawaiian Associates, Inc. (Development Agreement), which was subsequently executed by Lessor and Lessee effective as of August 8, 2013, and set forth the approved development plan for the lease premises.

NOW, THEREFORE, in consideration of the rents,

covenants and conditions contained herein and in General Lease No. S-3961, the Lessor, pursuant to Section 171-36(b), Hawaii Revised Statutes, and Act 219, Session Laws of Hawaii 2011, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, and identified as "(Revised-September 2013) Hotel Site," containing an area of 5.00 acres, more or less, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof. Schedules "A" and "B," of General Lease No. S-3961 are hereby deleted in their entirety and superseded by Exhibits "A" and "B."

General Lease No. S-3961, commencing on April 15, 1966, up to and including April 14, 2031, is hereby extended for an additional thirty-seven (37) years, from April 15, 2031, up to and including April 14, 2068, upon the following terms and conditions:

1. The terms, conditions, and covenants contained in General Lease No. S-3961 dated April 15, 1966, shall continue to remain in full force and effect until the termination date of this Extension of General Lease No. S-3961, and provided, further, that where any of the provisions of this Extension of General Lease No. S-3961 conflict with the provisions of the General Lease No. S-3961 dated April 15, 1966, this agreement shall govern and control; and provided, further, that where any of the provisions of this Extension of General Lease No. S-3961 conflict with the provisions of the Development Agreement, this agreement shall govern and control.

2. The Lessee shall pay to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided below, payable in advance, without notice or demand, of ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$185,400.00) per annum or two percent (2%) of gross revenues, whichever is higher, in equal semi-annual installments on July 12th and January 12th each and every year during the term, from July 12, 2013, up to and including July 11, 2023.

A. The annual rental reserved thereafter shall be reopened and redetermined on July 12, 2023, July 12, 2033, July 12, 2043, July 12, 2053, and July 12, 2063.

B. Determination of base rent and percentage rent upon



reopening. The base rent and percentage rent for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both base rent and percentage rent, shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board or the Board's appraiser. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Provided that if the Lessee does not agree upon the fair market rental as determined by the Board's appraiser, the Lessee must notify the Lessor in writing within thirty (30) days after receipt of the determination, and the Lessee shall appoint the Lessee's own appraiser whose name and address shall be stated in the notice. The Lessee shall provide the Board with the complete appraisal prepared by the Lessee's appraiser. Each party shall pay for its own appraiser. If the Board's and the Lessee's appraisers do not agree upon the lease rental, the Lessee and the Board shall, subject to section 171-17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter through nonbinding mediation or arbitrate the fair market rental. The costs of mediation and arbitration shall be borne equally by the Lessee and the Board.

In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

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

each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

3. Access to beach. A right-of-way, ten (10) feet wide, in favor of the general public over and across the premises, along and parallel to the west boundary thereof and extending from Banyan Drive to the sea.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains

found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

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

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

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

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

Other than for the hotel manager and hotel employees whose full-time presence on the premises may be necessary, no permanent on-site residency shall be permitted, except by special permit from the Board of Land and Natural Resources.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy. For the purpose of calculating the Premium Percentages under the Evaluation Policy, Lessee shall be credited for all years that have elapsed since the original commencement date of the lease on April 15, 1966.

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

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

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate

charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Insurance requirements.

a. In general.

(i) Lessee's cost. Prior to the commencement of the lease, the Lessee shall procure, at its sole cost and expense, and keep in effect at all times during the term of this lease, the types and minimum amounts of insurance coverage specified herein.

(ii) No limitation. The Lessee's procurement and maintenance of insurance, or the delivery of

certified copies of policies, or the delivery of certificates of insurance or other written evidence of insurance in form and substance acceptable to the Lessor shall not be construed as a limitation of any kind on the Lessee's obligation to indemnify, defend, insure, and hold harmless, as may be found in the lease.

(iii) Form of policies.

(a) Form and substance. All insurance required to be furnished by Lessee hereunder shall be pursuant to policies in form and substance satisfactory to the Lessor and issued by companies licensed and authorized to transact insurance business in the State of Hawaii on an admitted or non-admitted basis, in good standing with the Insurance Division of the Department of Commerce and Consumer Affairs, with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating. Unless otherwise specified, liability insurance policies shall be in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The Lessor may, upon reasonable notice and reasonable grounds, increase or change the insurance required hereunder, in which event Lessee shall comply with the increase or changes within thirty (30) days of written notice of said increases or changes.

(b) Required provision. All insurance policies shall include the following:

(i) Additional insured. Name the Lessor, as additionally insured, except with respect to worker's compensation and employer's liability.

(ii) Severability of interest. Apply separately to each insured against whom claim is made or lawsuit is brought, except with respect to the limits of insurance.

(iii) Waiver of subrogation. Contain a waiver of subrogation in favor of the Lessor.

(iv) Notification. Provide that the Lessor shall be notified, in writing, at least sixty (60) days prior to any cancellation, or material change or non-renewal of any such insurance policy.

(c) All insurance. All insurance shall:

(i) Primary. Be primary, not in excess of or pro rata, and non-contributing as to and with any other insurance held or maintained by the Lessor.



(ii) No premiums. Not require the Lessor to pay any premiums.

(iii) No partnership. The inclusion of the Lessor, as additionally insured, is not intended to, and shall not make them or any of them, a partner or joint venture with the Lessee in the conduct of the Lessee's activities.

(iv) Deductibles. The insurance required hereunder may provide for reasonable deductibles or self-insured retentions, which are reasonable and prudent in relation to the soundness of the Lessee's financial condition, subject to approval by the Lessor.

(v) Failure to obtain. Any lapse in, or failure by the Lessee to procure, maintain, and keep in full force and effect such insurance as is required under this lease, at any time during and throughout the term of this lease, shall be a material breach of this lease and shall give the Lessor the right to assess additional charges and/or terminate this lease. Should the Lessee or any of its insurers expend any such funds which would have been or should have been covered by insurance as is required under this lease, the Lessee agrees to reimburse for such funds and to indemnify, defend and hold harmless the Lessor and its insurers.

(vi) Proof of insurance. The Lessee shall provide proof of all specified insurance and related requirements to the Lessor either by delivering certified copies of policies or certificates of insurance in form and substance acceptable to the Lessor, or other written evidence of insurance acceptable to the Lessor. The documents evidencing all specified types in force and minimum amounts of insurance coverage shall be submitted to the Lessor, within fifteen (15) days from the effective date of this agreement. Each policy, certificate of insurance, or other written evidence of insurance shall contain the applicable policy number(s), the inclusive dates of policy coverage and the insurance carrier's name, an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material change, limitation in scope of coverage, or non-renewal except after written notice to the Lessor at least sixty (60) calendar days prior to the effective date thereof. The Lessee shall keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s).



The Lessor reserves the right at any time to review the coverage, form, and amount of the insurance required by this lease or to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance, including copies of the insurance policy(s) that are or were in effect during the lease period.

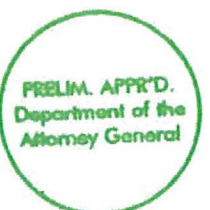
(vii) Interim review. The Lessee agrees that the types and minimum amounts of insurance coverage specified by the Lessor herein shall be reviewed for adequacy from time to time throughout the term of this lease by the Lessor according to what a reasonable and prudent owner thereof would typically procure and maintain. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

(viii) Total insured value. The property insurance on all risks basis shall be 100% of the total value of the improvements, on a replacement cost basis, naming the State of Hawaii as loss payee.

b. General requirements.

Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, or its equivalent, and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

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



the Lessee's negligence or neglect connected with this lease.

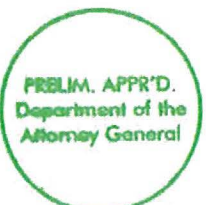
c. Construction. Before commencing with the construction of any initial or subsequent work on the Lessee's leasehold improvements or the construction or installation of other improvements, at, in, on, over, or under the Lessee's premises, the Lessee shall require all contractors and subcontractors to procure, at no cost or expense to the Lessor, and keep in effect at all times during the period of construction and installation the types and minimum amounts of insurance coverage specified, subject to the same general provisions contained in 17.a. In general above, to protect both the Lessor and the Lessee. The Lessee's contractors and subcontractors are subject to the same insurance requirements of the Lessee, unless otherwise specified herein. If the Lessee or the Lessee's contractors or subcontractors desire additional coverage, the Lessee and the Lessee's contractors and subcontractors are responsible for the procurement and cost of such additional coverage.

The types and minimum amounts of insurance for the Lessee's contractors and subcontractors are as follows:

(i) Commercial general liability ("Occurrence Form"). Minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 general aggregate coverage, covering bodily injury and death, property damage, and personal/advertising injury (subject to a personal/advertising injury aggregate of at least \$1,000,000.00) arising out of contractor's or subcontractor's premises, operations, products, and completed operations. The policy shall include contractual liability for bodily injury, and property damage obligations assumed in the contract or agreement between the Lessee and the Lessee's contractor and subcontractor, Board Form Property Damage, and fire damage legal liability (damage to rented premises) of not less than \$1,000,000 each occurrence, and a \$1,000,000 limit for products and completed operations.

(ii) Automobile liability insurance. Hawaii no-fault automobile liability insurance, covering any auto (all owned, hired, and non-owned autos), with a combined single limit not less than \$2,000,000.00 each accident (bodily injury and property damage combined); or a bodily injury limit of not less than \$1,000,000.00 per person and \$2,000,000.00 per accident, and property damage limits of not less than \$1,000,000.00 per accident.

(iii) Workers' compensation and employers'



liability. Workers' compensation coverage meeting the statutory requirements of the State of Hawaii and any other state in which employees are hired or work is performed, and including employers' liability coverage with minimum limits of \$1,000,000.00 each for bodily injury by accident (each accident), for bodily injury by disease (each employee), and for bodily injury by disease (policy limit), or as otherwise required by applicable federal and State of Hawaii laws.

(iv) Builder's risk. The Lessee or the Lessee's contractors shall procure property insurance written on a builder's risk, all risk, or equivalent policy form, including insurance against the perils of fire (with extended coverage) and risks of physical loss or damage including but not limited to theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and start up. Coverage shall also apply to temporary buildings and debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements. The amount of insurance shall be no less than the initial contract sum, plus the value of subsequent contract modifications and the cost of materials supplied or installed by others, comprising the total value for the entire project at the site on a replacement cost basis, including reasonable compensation for architect's, engineer's, and similar consultant's services and expenses. This property insurance shall include coverage for portions of the project when stored off site or in transit. Such property insurance shall be maintained until the project is completed or until no person or entity has an insurable interest in the property other than the Lessee and the Lessor, whichever is later. This insurance shall include the insurable interests of the Lessor, the Lessee and the Lessee's contractors, subcontractors, and sub-subcontractors in the project, as their interest may appear. If this property insurance includes deductible provisions, the Lessee shall pay all deductibles or costs not covered because of such deductible provisions.

(v) Professional liability. When any architect, engineers, construction managers, or other professional consultants are hired by the Lessee or the Lessee's contractors and subcontractors, professional liability insurance covering their errors and omissions shall be maintained with limits of at least \$1,000,000.00 claims-made policy, and including contractual liability. If or when such policies are renewed or replaced, any policy retroactive dated on the renewal or replacement policy must coincide with, or precede the date work started under the contract for professional services. Any claims-made policy which is not renewed or replaced must have an

extended reporting period of at least two (2) years.

(vi) Fire and extended coverage insurance for other hazards and perils (also known as "Commercial Property Insurance"). On all of the buildings, structures and other leasehold improvements, whether owned by the Lessor or the Lessee, and the Lessee's trade fixtures, equipment, furniture, furnishings and other personal property at, in, on, over, or under the premises, or any part(s) or portion(s) thereof, including business interruption coverage, as would be procured and maintained by a reasonable and prudent owner thereof, the necessary fire policy or policies and extended broad form coverage for other hazards and perils such as, but not limited to hail, windstorm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, damage by aircraft and glass, the minimum combined replacement value of which shall be not less than \$1,000,000.00 or the value of the leasehold improvements as submitted by the Lessee to the Lessor, whichever is greater, per occurrence arising from any one cause.

d. Operation. The Lessee shall, at its sole cost and expense, procure, maintain, and keep in full force and effect during and throughout the term of this Lease, the types and minimum amounts of insurance coverage specified, adequate to protect both the Lessor and the Lessee against the risks mentioned herein, subject to the same general provisions contained in 17.a. In general above. Any sublessees are subject to the same insurance requirements of the Lessee, unless otherwise specified herein. If the Lessee or any sublessee desire additional coverage, the Lessee and the sublessee(s) are responsible for the procurement and cost of such additional coverage.

(i) Commercial general liability ("Occurrence Form"). Minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 general aggregate coverage, covering bodily injury and death, property damage, and personal/advertising injury (subject to a personal/advertising injury aggregate of at least \$1,000,000.00) arising out of the Lessee's premises and operations. The policy shall include contractual liability for any general indemnification agreement in any contract including, without limitation, this lease. Such indemnification shall include bodily injury and property damage obligations assumed in the lease and fire damage legal liability (damage to rented premises) of not less than \$1,000,000.00 each occurrence.

(ii) Flood insurance. Minimum limits of

\$1,000,000.00 each occurrence and \$2,000,000.00 general aggregate coverage, covering all of the buildings, structures and other leasehold improvements, whether owned by the Lessor or the Lessee, and the Lessee's trade fixtures, equipment, furniture, furnishings and other personal property at, in, on, over, or under the premises, or any part(s) or portion(s) thereof.

(iii) Workers' compensation and employers' liability. Workers' compensation coverage meeting the statutory requirements of the State of Hawaii and any other state in which employees are hired or work is performed, and including employers' liability coverage with minimum limits of \$1,000,000.00 each for bodily injury by accident (each accident), for bodily injury by disease (each employee), and for bodily injury by disease (policy limit), or as otherwise required by applicable federal and State of Hawaii laws.

(iv) Fire and extended coverage insurance for other hazards and perils (also known as "Commercial Property Insurance"). On all of the buildings, structures and other leasehold improvements, whether owned by the Lessor or the Lessee, and the Lessee's trade fixtures, equipment, furniture, furnishings and other personal property at, in, on, over, or under the premises, or any part(s) or portion(s) thereof, including business interruption coverage, as would be procured and maintained by a reasonable and prudent owner thereof, the necessary fire policy or policies and extended broad form coverage for other hazards and perils such as, but not limited to hail, windstorm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, damage by aircraft and glass, the minimum combined replacement value of which shall be not less than \$1,000,000.00 or the value of the leasehold improvements as submitted by the Lessee to the Lessor, whichever is greater, per occurrence arising from any one cause.

(v) Liquor liability. If the Lessee or any sublessee (including any premises under sublease) intends to manufacture, distribute, sell, serve or furnish alcoholic beverages on or from the Premises: \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount

equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

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

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

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



21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt or insolvent, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall, in any manner, attempt to forge, falsify or fabricate any annual reconciliation statement submitted to Lessor for the Furniture, Fixture & Equipment (FF&E) required under the Development Agreement, or if any portion of the funds in the FF&E bank account shall be made subject to any lien, levy or encumbrance that prevents Lessee from expending such funds for the maintenance of the existing structures and improvements on the premises in the amount required by the Development Agreement, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease or in the Development Agreement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the

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

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor

for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

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

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

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good

cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

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

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

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in

the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

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

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is

in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

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

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

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

SPECIAL CONDITIONS

40. Substantial improvements. The Lessee shall, at its own cost and expense, within thirty-six (36) months from the effective date of the Development Agreement, complete "substantial improvements" to mean any renovation, rehabilitation, reconstruction or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the costs of which equals or exceeds fifty percent (50%) of the market value of the existing improvements that the Lessee install, construct, and complete by the date of completion of the total development, at a cost of not less than FIVE MILLION EIGHT HUNDRED THIRTY ONE THOUSAND FOUR HUNDRED FORTY TWO AND NO/100 DOLLARS (\$5,831,442.00) ("Building Requirement"), in accordance with the approved development plan set forth in the Development Agreement and in full compliance with all applicable laws, ordinances, rules and regulations.

41. Bond, improvement. The Lessee, upon full execution of the Development Agreement shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the proposed improvements, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the construction of the improvements free from all liens and claims, and that the Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to such construction. Lessee shall be permitted to reduce the amount of such bond by the value of any completed work as evidenced by a duly published notice of completion for the premises, together with any supporting documentation Lessor may request and the passing of the applicable forty-five day statute of limitations without any person or entity filing a lien action against the project or Lessee.

42. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

43. Room Revenue set aside. The Lessee shall set aside three percent (3%) of the total room revenue each year in a FF&E bank account. This amount will be no less than TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) per year for the length of the extended term of the lease, and will be spent in its entirety to maintain the hotel during the extended term of the

lease.

44. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

45. ADA compliance. The Lessee, at its sole costs and expense, shall complete any and all improvements to be in full compliance with the Americans with Disabilities Act ("ADA"). The Lessee shall survey the existing improvements and ensure that said existing improvements are ADA compliant.

46. Asbestos management program. The Lessee agrees to be in full compliance with any laws regarding asbestos, including the cost of removal and restoration of the premises thereafter is the sole responsibility of the Lessee.

47. Special management permit, etc. The Lessee is responsible for obtaining any federal, state, or county permits, including but not limited to special management permits that may be required.

48. Notices. All notices, requests or other communications required or permitted to be given or made under this lease by either party hereto shall be in writing and shall be deemed to have been duly given or served if delivered personally to or sent by United States mail, postage prepaid, addressed to the party intended to receive such notice, at the addresses set forth below, or at such other addresses as the parties may designate from time to time by notice given to the other party in the manner hereinafter set forth, to wit:

To GRANTEE: HILO-HAWAIIAN ASSOCIATES, INC., a Hawaii
corporation
c/o Castle Resorts & Hotels, Inc.



590 Paiea Street, Suite C
Honolulu, Hawaii 96819

To GRANTOR: STATE OF HAWAII
Board of Land and Natural Resources
1151 Punchbowl Street, Rm. 220
Honolulu, Hawaii 96813
Attn: Chairperson
Fax: (808) 587-0390

All mailed notices are deemed delivered 48 hours after deposit in a regularly maintained United States post office mailbox or upon personal delivery. Notices may also be sent via facsimile or email. All notices sent via facsimile or email will be deemed delivered upon transmission.

49. Coconut Drive realignment. Upon receipt of written notice to proceed from the Lessor, the Lessee shall, at its own cost and expense, in accordance with applicable ordinance and standards of the County of Hawaii and subject to approval of the Lessor and of the Planning and Traffic Commission of said county, realign Coconut Drive approximately as shown on the plan attached hereto as Exhibit "D" and made a part hereof, all in accordance with final plans and specifications to be prepared by the Lessee and approved by the Lessor; and that said realignment shall be completed within six (6) months following receipt of written notice to proceed.

50. Trees. The Lessee shall not cut, remove, replant or in any way alter the location or condition of the trees existing on the premises at the commencement of this lease without the prior written permission of the Board.

51. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his



successor.

(b) "Development Agreement" means the agreement relating to the improvement of the premises approved at the Board of Land and Natural Resources' meeting of July 12, 2013, which was subsequently executed by Lessor and Lessee effective as of August 8, 2013, and set forth the approved development plan for the premises

(c) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(d) "Hotel or resort" means a development that provides transient accommodations as defined in section 237D, Hawaii Revised Statutes and related services, which may include a front desk, housekeeping, food and beverage, room service, and other services customarily associated with transient accommodations, provided that no development shall qualify as a hotel or resort unless at least seventy-five per cent of the living or sleeping quarters in the development are used solely for transient accommodations for the term of any lease extension.

(e) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(f) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

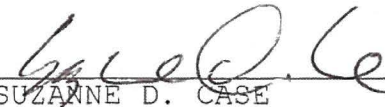
(g) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(h) "Days" shall mean calendar days, unless otherwise specified. _____

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.


STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on July 12, 2013 August 22, 2014, and December 11, 2015.

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

LESSOR

HILO-HAWAIIAN ASSOCIATES, INC., a
Hawaii corporation

By 
Its GARY ODA
PRESIDENT

And by _____
Its _____

LESSEE

APPROVED AS TO FORM:


JULIE H. CHINA
Deputy Attorney General

Dated: Dec. 23, 2015

STATE OF HAWAII

)

) SS.

COUNTY OF HONOLULU)

On this 23rd day of December, 2015,
before me appeared Gary Oda
and N/A, to me personally
known, who, being by me duly sworn, did say that ~~they~~ ^{he is} are the
president and N/A,
respectively of HILO-HAWAIIAN ASSOCIATES, INC., a Hawaii
corporation, and that said instrument was signed in behalf of
said corporation by authority of its Board of Directors, and the
said Gary Oda and N/A
acknowledged said instrument to be the free act and deed of said
corporation.



C. Hee

Notary Public, State of Hawaii

C. Hee

My commission expires: 12/2/2017

Doc. Date: Undated # Pages: 28
Notary Name: C. Hee First Circuit
Doc. Description: State of Hawaii
Department of Land and Natural Resources
Extended, Amended and Restated
General Lease No. S-3961
C. Hee 12/23/2015
Notary Signature: Date

NOTARY CERTIFICATION





STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,317

September 17, 2013

(REVISED-SEPTEMBER 2013)
HOTEL SITE

Waiakea, South Hilo, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Waiakea, including
Government Remnant H.

Beginning at the south corner of this parcel of land, the southeast corner of
Liliuokalani Gardens, Part 1 of Governor's Executive Order 3807 and on the northwest side of
Banyan Drive, the coordinates of said point of beginning referred to Government Survey
Triangulation Station "HALAI" being 3828.45 feet North and 10,105.25 feet East, thence running by
azimuths measured clockwise from True South:-

1. 107° 24' 30" 28.98 feet along Liliuokalani Gardens, Part 1 of Governor's
Executive Order 3807;
2. 156° 37' 30" 421.32 feet along Liliuokalani Gardens, Part 1 of Governor's
Executive Order 3807 to the seaward face of seawall;
3. Thence along seaward face of seawall, along highwater mark at seashore, the direct azimuth and
distance being:
308° 00' 190.00 feet;
4. Thence along highwater mark at seashore, the direct azimuth and distance being:
222° 00' 121.00 feet;

PRELIM. APPR'D.
Department of the
Attorney General

5. 199° 50' 114.00 feet to highwater mark at seashore;

Thence along highwater mark at seashore for the next two (2) courses, the direct azimuths and distances between points along said highwater mark at seashore being:

6. 112° 40' 51.00 feet;

7. 261° 00' 49.00 feet;

8. 202° 15' 23.00 feet to highwater mark at seashore;

9. 148° 37' 11.35 feet to highwater mark at seashore;

Thence along highwater mark at seashore for the next four (4) courses, the direct azimuths and distances between points along said highwater mark at seashore being:

10. 109° 15' 49.00 feet;

11. 209° 30' 175.00 feet;

12. 230° 00' 50.00 feet;

13. 346° 00' 61.00 feet;

14. 308° 28' 447.45 feet along the Government (Crown) Land of Waiakea and along Lot 2 of Ocean View Lots;

15. 34° 35' 27.90 feet along Lot C of Government Remnant;

16. Thence along Lot C of Government Remnant on a curve to the right with a radius of 269.71 feet, the chord azimuth and distance being:
41° 55' 07.5" 68.87 feet;

17. 319° 15' 15" 0.24 of a foot along Lot C-1 of Government Remnant;

18. 49° 15' 15" 0.56 of a foot along the northwest side of Banyan Drive;

19. Thence along the northwest side of Banyan Drive on a curve to the right with a radius of 250.00 feet, the chord azimuth and distance being:
53° 07' 37.5" 33.77 feet;

20. 57° 00' 428.33 feet along the northwest side of Banyan Drive;

21. Thence along the northwest side of Banyan Drive on a curve to the left with a radius of 290.00 feet, the chord azimuth and distance being: 47° 00' 16" 100.67 feet to the point of beginning and containing an AREA of 5.00 ACRES, MORE OR LESS.

SUBJECT, HOWEVER, Hilo Sewage System, Waiakea Peninsula, Sewage Easement covered by Grant of Easement: State of Hawaii to the County of Hawaii dated March 6, 1969 and recorded in Liber 6446, Page 2 (Land Office Deed S-24689) as shown on plan attached hereto and made a part hereof.

RESERVING to the State of Hawaii, its successors and assigns, an easement for right-of-way, ten (10.00) feet wide, over and across the above-described Hotel Site, as shown on plan attached hereto and made a part hereof and more particularly described as follows:

Beginning at the southeast corner of this easement, being the point of beginning of the above-described Hotel Site, thence running by azimuths measured clockwise from True South:-

1. 107° 24' 30" 28.98 feet along Liliuokalani Gardens, Part 1 of Governor's Executive Order 3807;
2. 156° 37' 30" 421.32 feet along Liliuokalani Gardens, Part 1 of Governor's Executive Order 3807 to the seaward face of seawall;
3. Thence along seaward face of seawall, along highwater mark at seashore, the direct azimuth and distance being:
308° 00' 20.87 feet;
4. 336° 37' 30" 398.42 feet;
5. 287° 24' 30" 28.17 feet;
6. Thence along the northwest side of Banyan Drive on a curve to the left with a radius of 290.00 feet, the chord azimuth and distance being:
38° 03' 53" 10.69 feet to the point of beginning and containing an AREA OF 4383 SQUARE FEET.



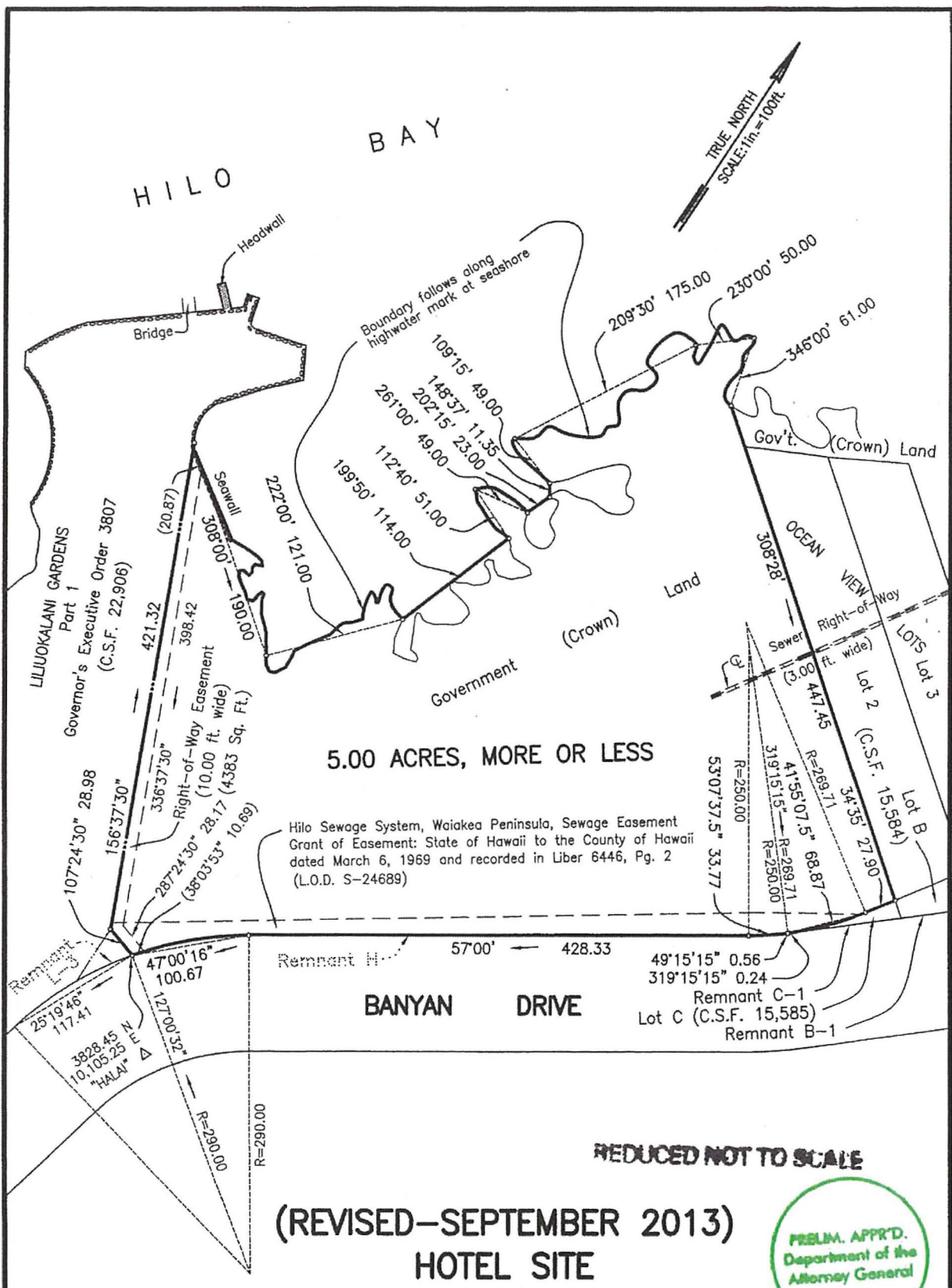
ALSO, RESERVING to the State of Hawaii, its successors and assigns, an easement for sewer right-of-way, three (3.00) feet wide affecting the above-described Hotel Site, as shown on plan attached hereto and made a part hereof, together with rights of ingress and egress to and from said sewer right-of-way for construction, maintenance and repairs of said sewer line.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor ry

Compiled from CSF 14763 and
other Govt. Survey Records.





Waiakea, South Hilo, Island of Hawaii, Hawaii

JOB H-160(13)
C. BK.

Scale: 1 inch = 100 feet

EXHIBIT "B"

TAX MAP 2-1-03:05

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 25,317

GJK September 17, 2013

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

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

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

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

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

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

4. Qualifications of Assignee.

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

EXHIBIT "C"



5. Consideration to be Paid.

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

6. Payment of Premium.

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

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

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

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same



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

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

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

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

7. Non-qualifying Deductions.

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

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.



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

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

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

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

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

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

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

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

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

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

2. Depreciation

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

3. Depreciated Cost of Improvements or Renovations

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

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

Example

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

1. Adjusted Cost of Improvements or Renovations

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

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

2. Depreciation

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

3. Adjusted Depreciated Cost of Improvements or Renovations



$$\$591,887 - \$82,690 = \$509,197$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

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

2. Depreciation.

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

3. Depreciated Cost of Trade Fixtures.

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

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

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

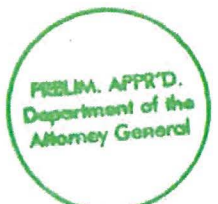
$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

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

2. Depreciation

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

3. Adjusted Depreciated Cost of Trade Fixture



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

SCHEDULE C. Premium Percentages

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

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

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

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

SCHEDULE D. Assignment of Lease Calculations

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

Example

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

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

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

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



SCHEDULE E. Subsequent Assignment of Lease Calculations

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

Example

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

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



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

1. Net Consideration Received: \$1,000,000
2. Consideration Paid: \$600,000
Premium: - 45,055
Net Consideration Paid: \$554,945
3. Adj Value Consideration (improvements):
$$\begin{array}{rcl} \$554,945 & \times & \frac{156.4}{121.1} \\ & & = \end{array}$$
$$\begin{array}{rcl} \$716,708 & & \end{array}$$

Depreciation:
$$\begin{array}{rcl} \$716,708 & \times & \frac{107 \text{ mos.}}{408 \text{ mos.}} \\ & & = \end{array}$$
$$\begin{array}{rcl} -187,960 & & \end{array}$$

Adj Dep Value Consideration: - 528,748
4. Excess: \$ 471,252
5. Premium: Percentage: 45% \$ 212,063



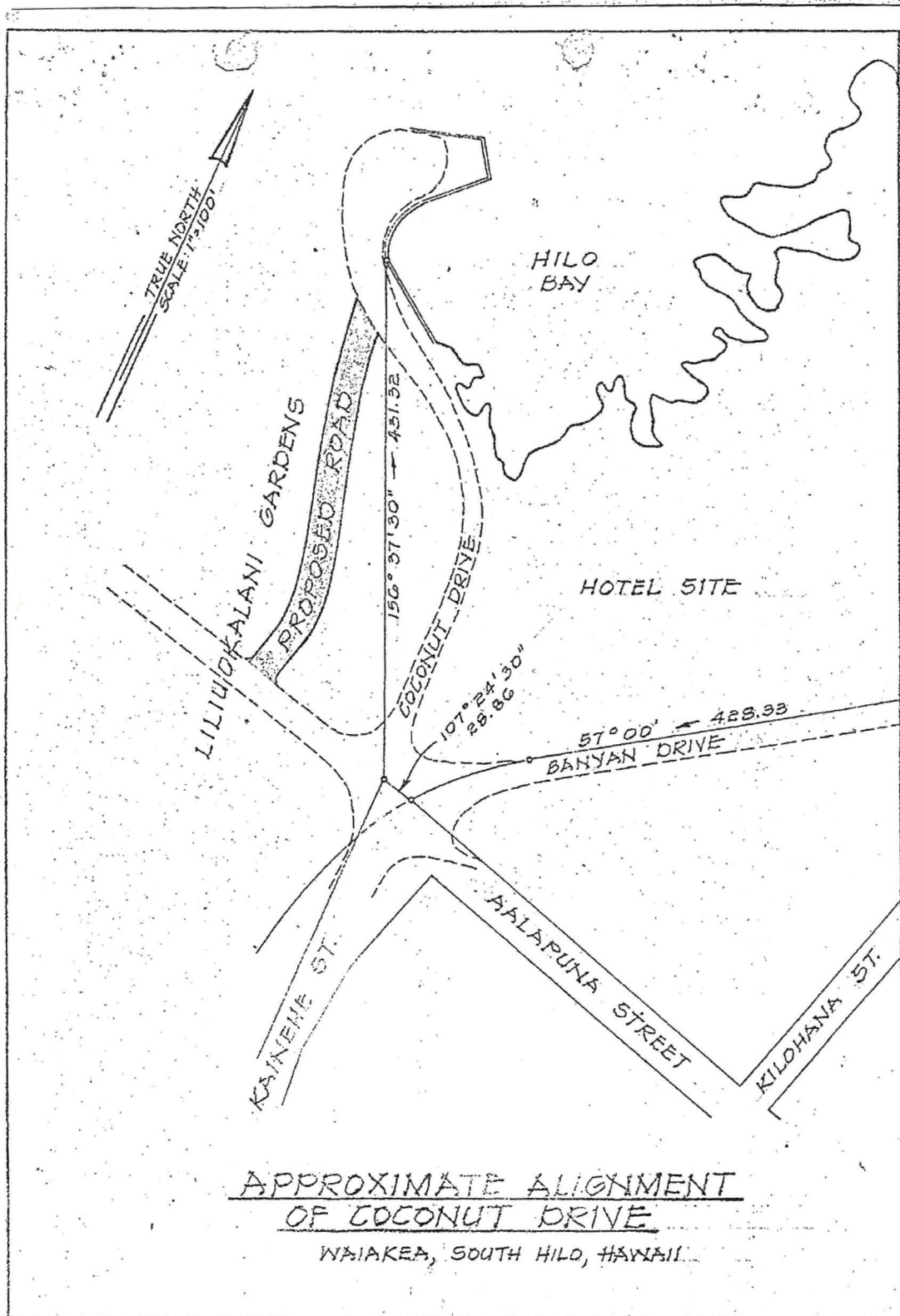


EXHIBIT D

PRELIM. APPR'D.
Department of the
Attorney General