

DAVID Y. IGE
GOVERNOR



KEITH T. HAYASHI
INTERIM SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804
OFFICE OF FACILITIES AND OPERATIONS

December 10, 2021

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

Oahu

Consent to lease of Lands under Governor's Executive order (EO) No. 3374 to the **Hawaii State Department of Education (Department), Kapaa, Kauai District, Kauai**, Tax Map Key: (4) 4-6-014:031.

CONTROLLING AGENCY (of subject executive order):

The **Department**, whose business address is 3633 Waialae Ave., Honolulu, HI, 96816.

APPLICANT (requesting lease):

The Boys and Girls Club of Hawaii (Applicant), whose business address is 1000 Bishop St., Suite 505, Honolulu, HI 96813.

LEGAL REFERENCE:

EO No. 3374 authorizes the Department's management of land for educational purposes at the Kapaa High and Elementary School campuses under Section 171-11, Hawaii Revised Statutes, as amended.

ZONING:

State Land Use District:	Urban
County of Kauai Comprehensive Zoning Ordinance:	Residential

TRUST LAND STATUS:

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

ITEM M-12

CURRENT USE STATUS:

Governor's EO No. 3374, dated November 9, 1987, to the **Department** for educational purposes.

CHARACTER OF USE:

Educational and educational supportive services. The Applicant's programs are more specifically detailed in the remarks section under background.

LEASE TERM:

Fifteen (15) years, commencing upon the execution of the lease.

ANNUAL RENT:

Gratis as referenced on the attached Exhibit B.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." And Part 1, Item 40, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existed." The proposed lease amendment is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR. See attached **Exhibit C**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

REMARKS:

A subsidiary to the Boys and Girls Club of America, the Applicant is an eleemosynary youth development organization that has been in operation since 1976. In response to the devastation caused by Hurricane Iniki, a partnership with Kapaa High School was conceived to provide after school programs in 1993. The Applicant is a nonprofit 501 (c)(3) organization that provides out of school time programs emphasizing character and leadership development. Educational achievement applied through career development, health, life skills, arts, culture, and fitness encompass its programs serving youth in the community ages seven (7) through seventeen (17). Its mission is to inspire young

people to become responsible citizens; while providing them a positive sense of identity through development of strong character, moral compass, respect, caring, and honesty¹.

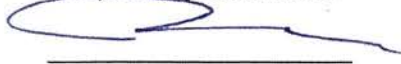
For Board review and consideration, attached as Exhibit B is a draft lease between the Department and Applicant. The lease is subject review and approval as to form by the State of Hawaii, Department of Education's Attorney General's office. Such other terms and conditions as may be prescribed by the Superintendent of the Department to serve the best interests of the State.

The Department's proposed lease abides by educational and educational supportive services consistent with the Governor's EO No. 3374; authorizing the Department's management of land for educational purposes. Both the Department and Applicant wish to continue their partnership through collective work in furthering youth education. Youth in the community benefit from the additional educational support and resources offered by the Applicant. As after school hours have become a critical time for youth; the Applicant provides a safe environment filled with hope and opportunities through its world class club-experiences throughout the year. Programs are also offered on holidays, waiver days, and during intercession periods.

RECOMMENDATION: That the Board:

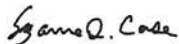
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Section 11-200.1-16, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity; and
2. Review and approval by the Department of Education's Attorney General; and
3. Such other terms and conditions as may be prescribed by the Department of Education's Superintendent to best serve the interests of the State.

Respectfully Submitted,



RANDALL M. TANAKA
Department of Education

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson

¹ See <https://bgch.com/who-we-are/>

EXHIBIT A

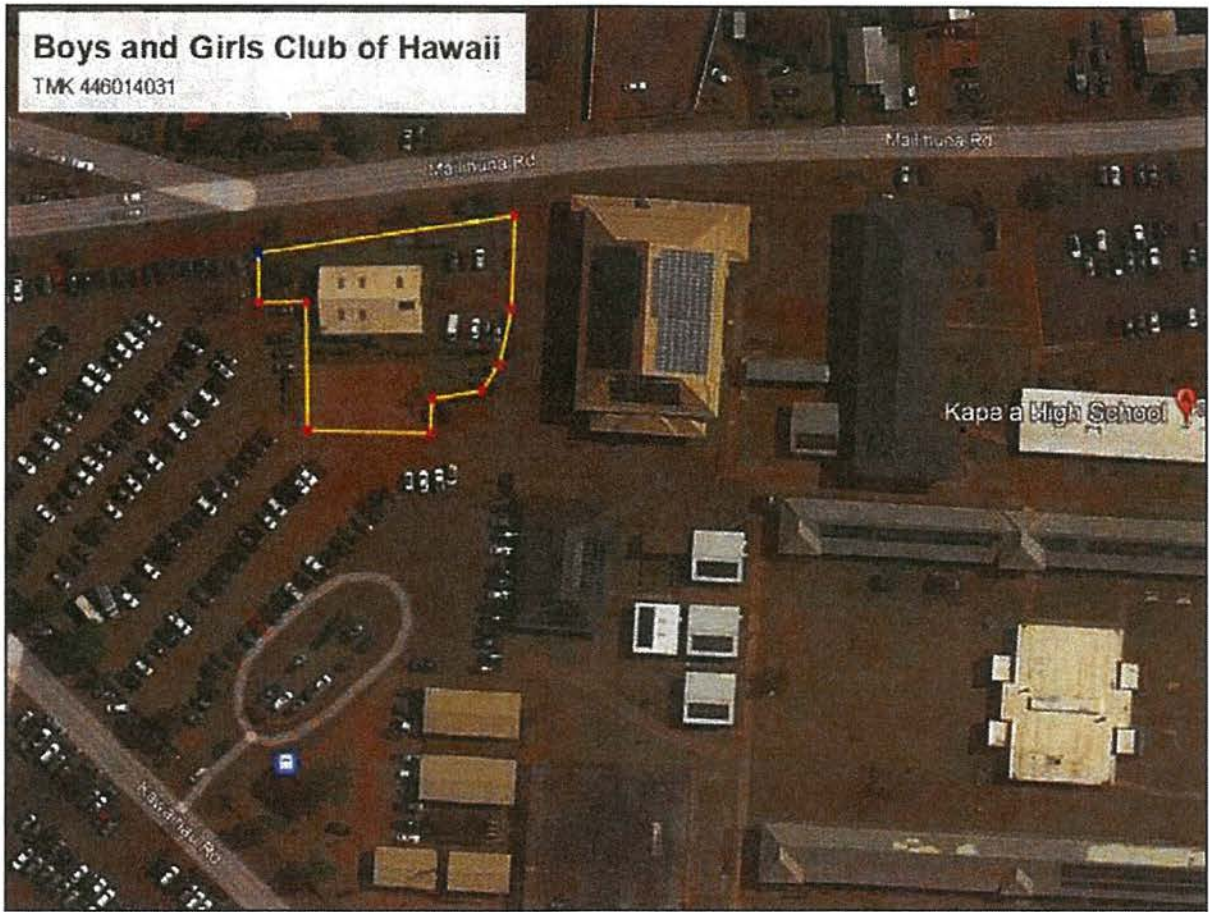


EXHIBIT B

**Please refer to the attached draft Lease between
The State of Hawaii, Department of Education
and
The Boys and Girls Club of Hawaii – Kauai Branch,
a Federal 501 (c)(3)
Nonprofit Corporation
For Community Youth Educational
and Recreational Purposes**

Lease to)
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Tax Map Key No. (4-6-14:31)

STATE OF HAWAII

LEASE NO. XXXXXXXXXX

between

THE STATE OF HAWAII, DEPARTMENT OF EDUCATION

and

THE BOYS & GIRLS CLUB OF HAWAII - Kauai Branch, a Federal
501(c)(3)
Nonprofit Corporation

For Community Youth Educational and Recreational Purposes

Situated at 4695 Mailihuna Road, Kapaa, Kauai
Containing an area of approximately 19,020 square feet situated
at Kapaa High School, County of Kauai, State of Hawaii

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. XXXXXXXXXX

THIS LEASE, made this ____ day of _____, 20____, by and between the STATE OF HAWAII, DEPARTMENT OF EDUCATION, hereinafter referred to as the "Lessor," and THE BOYS & GIRLS CLUB OF HAWAII - KAUAI BRANCH, whose address is 4695 MAILIHUNA ROAD, KAPAA, HAWAII 96746, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 302A-1551.1, Pilot Program for Lease of Public School Land, Hawaii Revised Statutes (HRS), and for and in consideration 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 4695 Mailihuna Road, Kapaa, Kauai, Hawaii 96746, identified as Kapaa High and Elementary School campuses, more particularly described in Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof.

1. TERM

TO HAVE AND TO HOLD the Leased premises unto the Lessee for the term of Fifteen(15) years, commencing on the execution of this Lease, unless sooner terminated as hereinafter provided.

2. SCOPE OF USE

The Lessee shall provide out of school time program needs within the community, emphasizing in character and leadership development of youth ages seven (7) to seventeen (17). These services shall be provided to the community at no cost to the Lessor. These services shall include, and not be limited to:

- a. Out of school time programs emphasizing character and

leadership development;

- b. Collaboration with existing agencies providing career development, social, and life skill building for the community its youth;
- c. Providing recreational health, fitness, and well-being opportunities for the community and its youth; and
- d. Providing child care services and programs.

3. EDUCATIONAL ACTIVITIES PROVIDED BY LESSEE ON SITE

The Lessee shall provide the following on and off site out of school time educational support for youth in the community:

- a. Education, career development, health, life skills, art, culture, fitness, and child care programs.

4. CONSTRUCTION OF FACILITIES, IMPROVEMENTS, AND CAPITAL ASSETS

The Lessee shall, at its own cost and expense, within one (1) year after the effective date of this Lease, substantially complete the construction of the meeting facilities, improvements, and capital assets, in accordance with the schematic drawings, attached hereto as Exhibits "C-1" and "C-2", and such plans and specifications submitted by Lessee to and approved by the appropriate City agencies and the Lessor and in full compliance with all laws, ordinances, rules and regulations applicable thereto. Such one (1) year period shall be automatically extended for any delays resulting from events of force majeure that are beyond eh reasonable control of the Lessee.

5. SHARED USE AND ACCESS TO SITE

The Lessee shall after public school hours on school days and during weekends and at other times when school is not in session, use or allow to be used the premises hereby demised solely for educational, sports, recreation, arts, health and wellness, workforce readiness, character building, and leadership activities. The right so granted the Lessee to the use of the premises hereunder shall not preclude the use, on

special occasions, by the students of Kapaa High and Elementary School School Campuses as part of its school program, during such time or times that Lessee is entitled to use the premises hereunder, so long as such use shall not interfere with the activities of the Lessee upon reasonable request by the Department of Education. The occupation and use of the premises by the Lessee hereunder shall not interfere with the normal and usual activities of Kapaa High and Elementary School Campuses and its students concerned. The Department of Education shall have the use of the premises for school and recreational purposes at times when school is in session.

6. UTILITY SERVICES

The Lessee shall, at its expense, contract and pay for all electricity, gas, water, sewer, telephone, and all other utility services, including the installation of separate electrical and water meters, and for the removal of trash from the premises, if applicable, and all other charges incurred by Lessee in connection with its use and enjoyment of the premises. The Lessee shall also pay all taxes, charges, and fees incurred or assessed against the premises.

7. QUIET ENJOYMENT

The Lessor covenants with the Lessee that upon the Lessee's faithful performance of its proposal for educational activities on a portion of the Kapaa High and Elementary School Site, the Lessee shall peaceably and quietly hold and enjoy the said premises for the term hereof without hindrance or interruption by the Lessor or any other person or persons lawfully or equitably claiming by, through, or under it.

8. SURRENDER UPON TERMINATION

Upon termination and/or expiration of this Lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.

9. ALTERATIONS AND IMPROVEMENTS

It is understood that the Lessee Leases the premises "as

is." The Lessee shall not construct or install any additional improvements or fixtures on the premises without the prior written consent of the Lessor, and upon such conditions the Lessor may reasonably impose.

10. 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 release, indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

11. 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.

12. ILLEGAL USES PROHIBITED

The Lessee shall not conduct or permit the premises to be used for any illegal, immoral, or indecent purposes nor shall it permit any disorderly activities on the premises.

13. SUBLETTING

The Lessee shall not rent or sublet the whole or any portion of the premises.

14. INSURANCE DURING CONSTRUCTION

- a. The Lessee shall procure and maintain during the period of construction, a Labor and Material Payment and Performance Bond in an amount equal to 100% of the construction cost. The Lessor shall be covered as an additional insureds.
- b. The Lessee shall procure and maintain or require its construction contractor (Contractor) to procure and maintain during the period of construction the following

types and amounts of Insurance coverage:

1. Builders' risk insurance covering, while in the course of construction and until final acceptance, all buildings, structures, appurtenances or alterations, repairs and other improvements, materials, equipment, and supplies. Such policy shall cover all risks of loss or damage, including vandalism and malicious mischief and excluding the peril of earthquake. The limit of liability shall be the replacement value based on the full value at risk at any one time. The policy shall name the Contractor and all subcontractors as named Insureds, and the Lessor as additional named insureds, as their respective interests may appear.
2. Insurance coverage for full insurable value of the insurable work to be done on other than buildings or structures such as site improvements, installation of sewer lines, traffic lights, street lights, roads and water works, playground and park developments, until final acceptance of the performance of the work, against loss by windstorm, hail, explosion, riot, riot attending strike, civil commotion, aircraft vehicles, smoke and vandalism and malicious mischief.
3. Automobile liability insurance in an amount not less than \$300,000.00 for bodily injury or death per person, and \$50,000.00 damages to property for each occurrence.
4. Comprehensive general and umbrella liability insurance with a limit of not less than \$1,000,000.00 each occurrence and general aggregate, and shall cover liability arising from premises, operations, and personal injury, and liability assured under an insured contract "(including the tort liability of another assumed in a business contract)." This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Lessor.
5. Workman's Compensation. The Contractor shall, in accordance with Sections 97-90, HRS, as amended, take out adequate workman's compensation insurance for all

of the employees who will be engaged in work at the site of the project, and in case any part of such Contractor's contract is sublet, the Contractor will require its subcontractor to maintain such insurance for all the subcontractor's employees who will be so engaged, unless the latter's employees are protected by the principal Contractor's insurance.

When a subcontractor is utilized, the Contractor shall either procure and maintain or require the subcontractor to procure and maintain during the period of the construction, insurance coverage with the same bodily injury and property damage liability limits specified above, covering accidents caused by actions of the subcontractor or its employees.

All of the insurance policy or policies herein prescribed shall be procured and maintained at no cost to the Lessor, and shall have the Lessor named as additionally insured. A copy of such policy or policies or certificate of the insurance policies shall be furnished to the Lessor. Such policy or policies shall contain an endorsement to the effect that the insuring company will notify the Lessor thirty (30) days prior to the effective date of any cancellation of such policy or policies or any change in their provisions.

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, sulfur, 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 stock water 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 by Lessee (which shall be owned by Lessee) unless provided otherwise.

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, HRS, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. 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.

2. 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.

3. SANITATION

The Lessee shall keep the premises and improvements in a strictly clean, sanitary, and orderly condition, reasonable wear and tear excepted.

4. 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.

5. INSPECTION OF PREMISES; IMPROVEMENTS

The Lessee shall permit the Lessor and its agents, at all reasonable times and upon reasonable prior notice during the Lease term, to enter the premises and examine the state of its repair and condition.

The Lessee shall not at any time during the term construct, place, maintain, and install on the premises any building, structure, or improvement of any kind and description except with the prior written approval of the Lessor and upon those reasonable conditions the Lessor may impose, unless otherwise provided in this Lease. The Lessee shall own these improvements until the expiration or other termination of 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.

6. MAINTENANCE AND REPAIR OF PREMISES

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.

7. CHARACTER OF USE

The Lessee shall use or allow the premises Leased to be used solely for Community Youth Educational and Recreational purposes.

8. 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, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Lessor the assignment and transfer of this Lease or any portion may be made only if it is to a non-profit corporate successor of the Lessee.

9. RELEASE AND INDEMNITY

The Lessee shall release, 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.

10. 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.

11. 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, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, 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 Lessor of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured. A copy of the policy or other required documentation shall be filed with Lessor. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this Lease, whichever is sooner, shall furnish the Lessor with a policy(s) or other documentation required by the Lessor showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the Lessor on deposit during the entire Lease term, and furnish a like policy(s) or other documentation required by the Lessor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days' written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide copies of the insurance policy(s) that are or were in effect during the Lease period or other documentation required by the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this

Lease. If, in the opinion of the Lessor, the insurance provisions in this Lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements, and Lessee shall deposit copies of acceptable insurance policy(s) or other documentation required by the Lessor thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

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

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

12. 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.

13. MORTGAGE

Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease.

14. BREACH

Should the Lessee shall become bankrupt, or shall abandon the premises, or if this Lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of 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, HRS, 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.

15. ABANDONMENT

Except during any period in which Lessee is doing construction on the premises, in the event the premises shall be abandoned or used for purposes other than activities in support of education for a period of one year, this Lease shall automatically terminate.

16. 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 Lessee shall be entitled to receive from the condemning authority 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.

17. 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.

18. SEXUAL HARASSMENT POLICY

The Lessee shall have and enforce a policy prohibiting sexual harassment. The Lessee's sexual harassment policy must set forth the same or greater protection than those contained or required by City Ordinance No. 93-84.

19. NOTICE

Any notice required or permitted by the provisions of this instrument to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party, stated below. No other method of notice shall be effective. If notice is given by mail, it shall be effective one business day following the date it is mailed.

Notice delivered personally shall be effective when received. When notice is to be given to the Lessor, it shall be mailed or

delivered to:

Name:
Title:
Address:

When notice is to be given to Lessee, it shall be mailed or delivered to:

Name: Tina Albao
Title: Kauai Director of Operations and Development
Address: Boys and Girls Club of Hawaii, P.O. Box 143,
Lihue, HI, 96766

Any change of address of either of the parties shall be effective upon receipt of written notice of such change by the other party.

20. 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.

21. 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.

22. NON-WARRANTY

The Lessor does not warrant the conditions of the premises, as the same are being Leased as is.

23. 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 release, 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.

24. HAWAII LAW

This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

25. EXHIBITS - INCORPORATION IN LEASE

All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

26. HEADINGS

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

27. PARTIAL INVALIDITY

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

SPECIAL CONDITIONS:

28. WITHDRAWAL

The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this Lease upon giving reasonable notice and without compensation, except as otherwise provided in the Lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally Leased to become unusable for the specific use or uses for which it was Leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed

or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the Lease.

29. FIRE AND EXTENDED COVERAGE INSURANCE

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

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

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

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

30. NON-USE AND ABANDONMENT

Except during any period in which Lessee is doing construction on the premises, if the Lessee shall, at any time for a continuous period of one (1) year, fail or cease to use said premises for the purposes stated in Paragraph (12) twelve herein, or abandon all or any portion of said premises, this Lease shall cease and terminate.

31. AUDIT AND EXAMINATION OF BOOKS, ETC.

Lessee shall at all times maintain full and accurate records relating to Lessee's operations and activities upon and in connection with said Leased premises. Lessor reserves the right to audit, examine, and to make copies of all Lessee's books, accounts, records, and receipts, during regular working hours upon reasonable notice given by Lessor.

32. TERMINATION BY EITHER PARTY

The Lessor and Lessee, by mutual agreement, may terminate this Lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision requiring that neither party be in default can be waived by the parties, provided such waiver is in writing and signed by both parties.

33. Clearances

The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

34. Certification of tax exemption

The Lessee shall be certified to be tax exempt under Sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The premises shall be used by the Lessee for the purposes for which its charter was issued and for which it was certified by the Internal Revenue Service.

35. TIME OF ESSENCE

Time is of the essence in all provisions of this Lease.

36. HISTORIC PRESERVATION

In the event any historic properties or burial sites, as defined in section 6E-2, HRS, 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, HRS.

37. REMOVAL OF TRASH

The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the Lease and shall so notify the Lessor in writing at the end of ninety (90) days.

38. PHASE I ENVIRONMENTAL SITE ASSESSMENT

Prior to the termination of this 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 and the Lessor. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this Lease.

39. Survey and boundary stakeout

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

40. INTERPRETATION OF CONTRACT DOCUMENT

- a. This Lease embodies the entire contract between the parties and shall not be altered or amended except in writing signed by both parties.
- b. If any term, condition, provision, covenant or agreement of this Lease or the application thereof to any person or circumstance is rendered or held invalid, illegal or unenforceable under the laws of the State of Hawaii or the United States of America, such part of this Lease as shall have been rendered or held to be invalid, illegal or

unenforceable shall not affect the validity of this Lease as a whole or the remainder of this Lease and the application of such part to other persons and circumstances, but shall be given effect and enforced without such part to the greatest extent permitted by applicable law.

- c. The provisions of this instrument shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
- d. The titles of headings of sections, subsections and paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.
- e. All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- f. If any question arises with respect to any provision of this Lease Agreement, the interpretation given and made by the Lessor, shall govern and control.

(Remainder of Page Intentionally Left Blank)

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
meeting held on

_____.

By _____
Suzanne D. Case
Chairperson
Board of Land and
Natural Resources

LESSOR

BOYS & GIRLS CLUB OF HAWAII

By _____
Its

And By _____

LESSEE

APPROVED AS TO CONTENTS:

Property Management Officer

Keith T. Hayashi
Interim Superintendent
Department of Education
State of Hawaii

APPROVED AS TO FORM:

Deputy Attorney General
Education Division

Dated: _____

STATE OF HAWAII)
) .SS.
COUNTY OF KAUAI)

On this _____ day of _____, 20_____,
before me appeared _____ and
to me personally known, who, being by me duly sworn, did say
that they are the _____ and _____,
respectively of _____, a _____
non-profit corporation, and that said instrument was signed in
behalf of said corporation by authority of its Board of
Directors, and the said _____ and _____
acknowledged said instrument to be the free act and deed of said
corporation.

Notary Public, State of Hawaii

My commission expires: _____

EXHIBIT A
Kapaa High and Elementary School Campuses



EXHIBIT B
Delineated

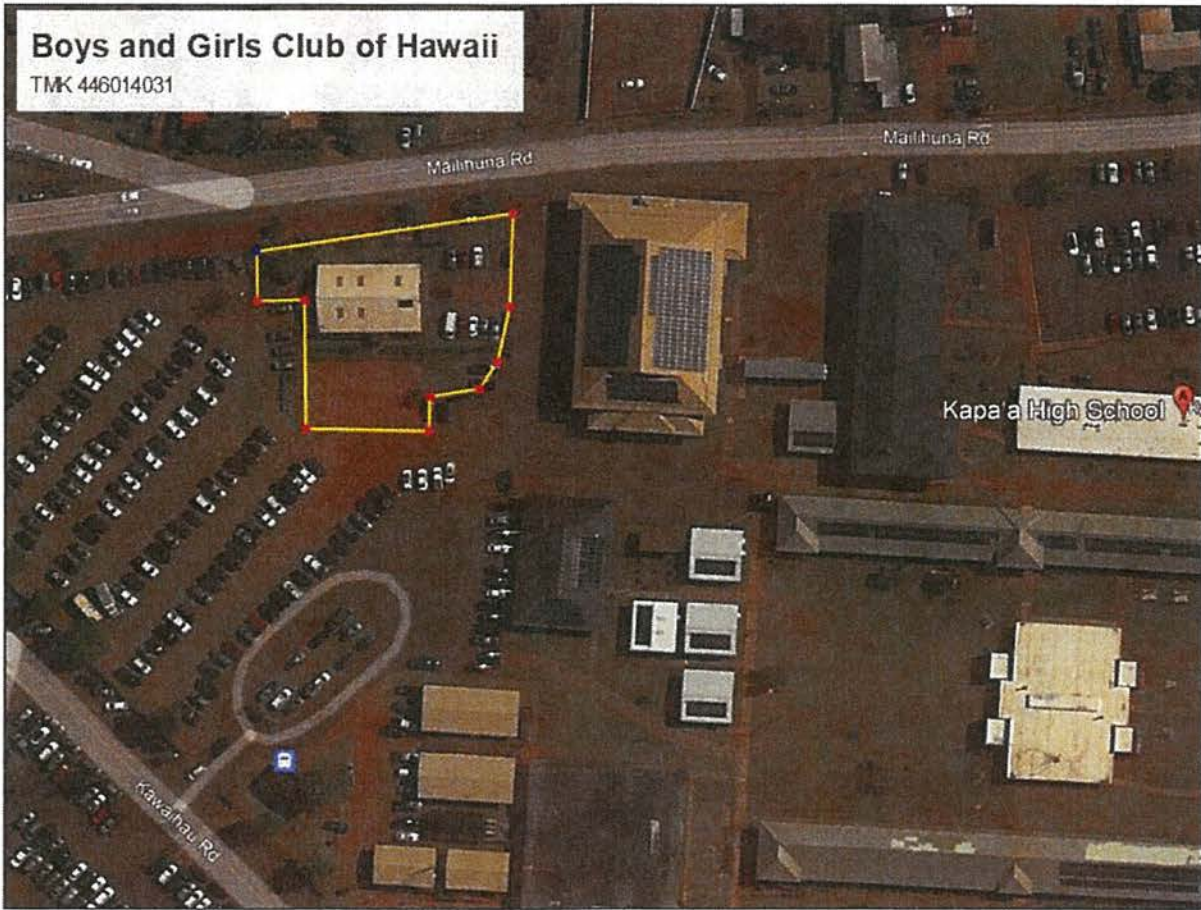


EXHIBIT C-1
Construction of Improvements
Phase I - Plumbing Connection

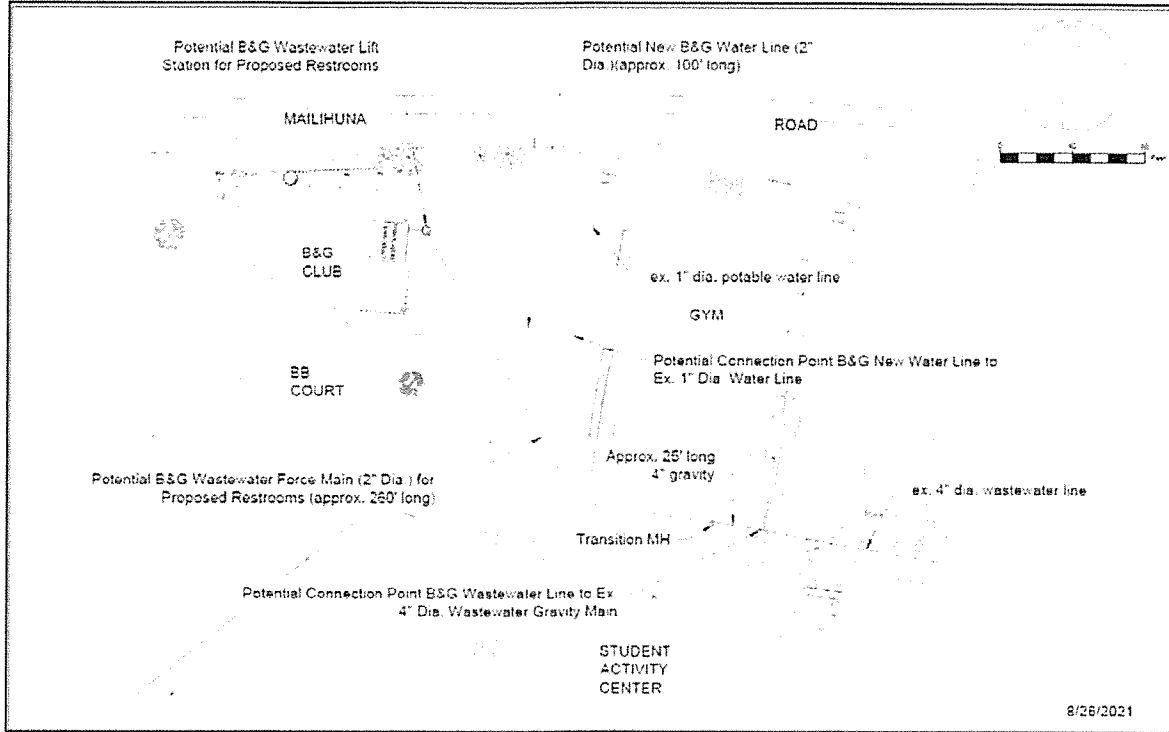



EXHIBIT C-2
Construction of Improvements
Phase II - Restroom Installation




End of Exhibits

EXHIBIT C

Please refer to the attached International Revenue Service tax-exempt status letter

 **IRS** Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0248162350
Oct. 28, 2015 LTR 4168C 0
[REDACTED] 000000 00
00015577
BODC: TE


BOYS AND GIRLS CLUB OF HAWAII
345 QUEEN STREET
HONOLULU HI 96813

26824

Employer Identification Number: [REDACTED]
Person to Contact: Mr Edwards
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your Oct. 19, 2015, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(03) of the Internal Revenue Code in a determination letter issued in May 1969.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website www.irs.gov/eo for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248162350
Oct. 28, 2015 LTR 4168C 0
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00015578

BOYS AND GIRLS CLUB OF HAWAII
345 QUEEN STREET
HONOLULU HI 96813

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

Susan M. O'Neill

Susan M. O'Neill, Department Mgr.
Accounts Management Operations

End of Exhibits