

DAVID Y. IGE
GOVERNOR



JADE T. BUTAY
DIRECTOR

Deputy Directors
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:
HWY-RM 3.97023

November 2, 2021

Ms. Suzanne D. Case
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

REQUEST:

Authorization to Approve the Assignment of Lease HWY-96-1 from Honolulu Warehouse Company Limited (HW) to Home Depot and waive the 50% Premium Payment.

LEGAL REFERENCE:

Section 171-35, 36, 36(a)(5) and other applicable sections of Chapter 171, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

The area is located on the Island of Oahu.

AREA:

Puuloa Interchange, U-078-1(1), Tax Map Key (TMK) (1) 1-1-007:045, approximately 46,435 square feet.

ZONING:

TMK: (1) 1-1-007:045 (Oahu) is zoned as "Commercial".

LAND TITLE STATUS:

Ceded, Department of Hawaiian Home Lands 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO X

ITEM M-8

CURRENT USE STATUS:

The area is currently under a 47-year lease (1997 to 2044) to HW and is being used as a paved parking lot for the abutting Moanalua 99 Market. Home Depot, if approved as the assignee, shall continue to use the area for parking purposes for a forthcoming Home Depot store which will replace Moanalua 99 Market.

COMMENCEMENT DATE:

Upon receipt of all approvals from the Board of Land and Natural Resources, our Attorney General's office and execution of a formal agreement to assign Lease HWY-96-1.

COMPENSATION:

Rent is determined by appraisal per the terms of the lease. Rent is currently \$69,670.00 per year.

LIENS AND/OR ENCUMBRANCES:

None.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 11-200-8(a), Hawaii Administrative Rules, the use under Lease HWY-96-1 is exempt from the preparation of an Environmental Assessment based on the Comprehensive Exemption List for the State Department of Transportation (DOT) dated November 15, 2000. More specifically, Exemption Class 1-B-1 for "Resurfacing, sealing, and/or repairing of roadways, roadway, shoulders, parking areas, taxiways, runways, walkways, bikeways and harbor storage and container areas."

REMARKS:

In accordance with Section 171-36(a)(5) HW has requested to assign Lease HWY-96-1 to Home Depot and has asked to waive the 50% premium payment. Per the attached letter request dated July 26, 2021, HW has stated economic hardship due to the corona virus disease and cannot continue their Moanalua 99 Market business. Therefore, HW will be selling their interests in the Moanalua 99 Market to Home Depot. Accordingly, Home Depot will require the use of the parking lot which is under Lease HWY-96-1.

Pursuant to HRS 171-36(a)(5), "No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board, the assignment and transfer of a lease or unit thereof 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 to be paid by the assignee and may condition its consent to the assignment of 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...". DOT is recommending waiving the premium for the following reasons:

- 1) Exhibit C of Lease HWY-96-1, Page 2, 2nd Paragraph under "Payment of DOT" states: "To encourage long term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be fifty percent (50%) of the excess payment determined under Schedule A hereto, unless otherwise specifically provided in the lease." Therefore, the intent of the premium appeared to be to prevent tenants from leaving after a short period of time and to discourage tenants from leasing DOT property with the intent to "flip" or develop a business on DOT property for a low price and sell the business for a profit. These two conditions do not appear to apply because the tenant has leased the space since 1997 and the use of the parking lot was an ancillary part of the main business (the Moanalua 99 Market) and was not in itself a business to be developed for speculation.
- 2) The premium being paid by Home Depot is mainly for the use of the Moanalua 99 Market building, not for the DOT parking area. While the use of the parking lot is essential to HW's business, it does not appear to be essential enough to warrant 50% of the consideration. Per the attached City and County of Honolulu Geographical Information System map, HW already has a substantial amount of parking on their property without the leased parking.

RECOMMENDATION:

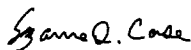
Authorize the assignment of Lease HWY-96-1 to Home Depot, and waive the 50% premium payment, subject to approval from our Attorney General's office and execution of any assignment documents as recommended by our Attorney General's office.

Sincerely,



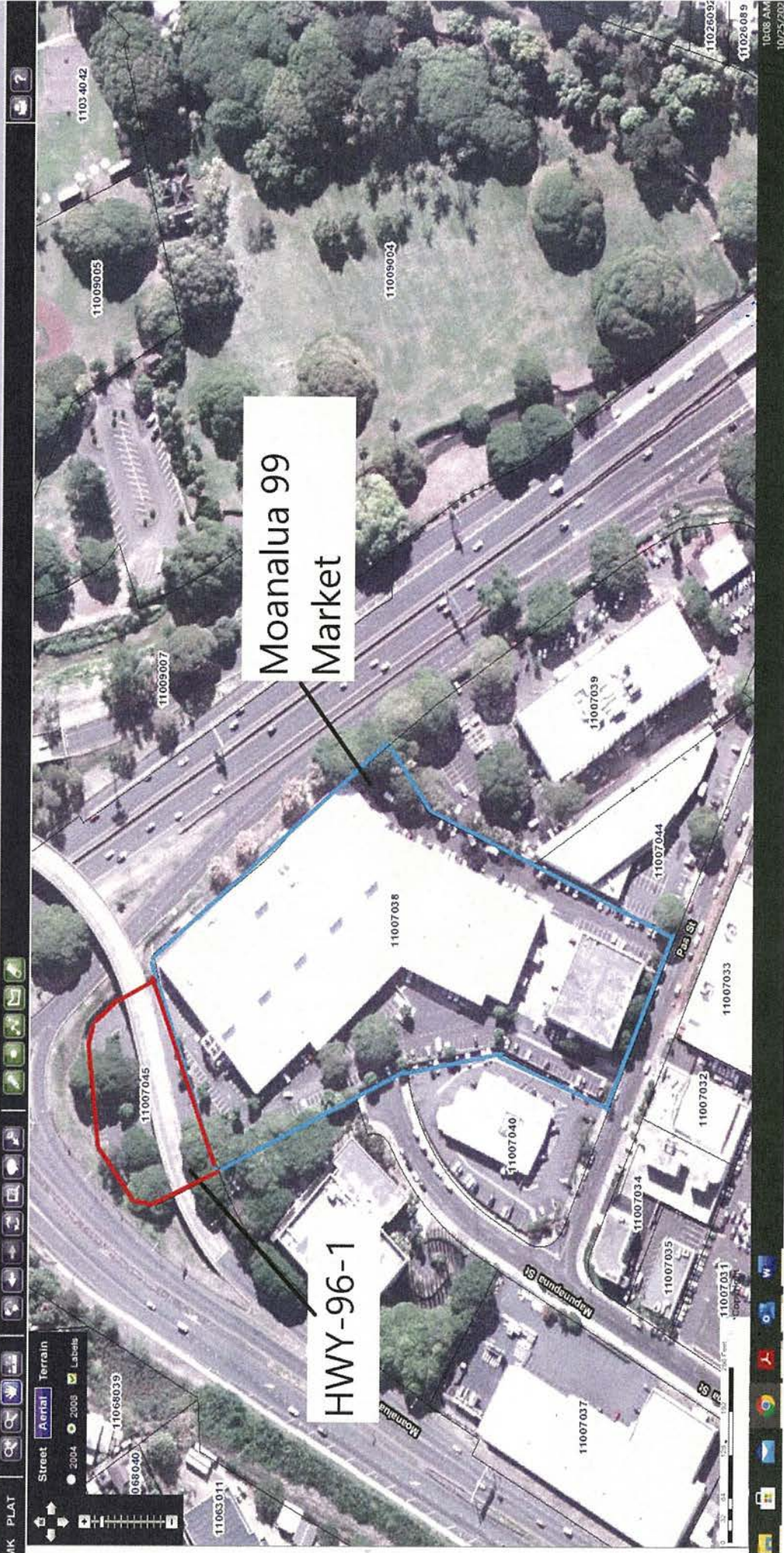
JADE T. BUTAY
Director of Transportation

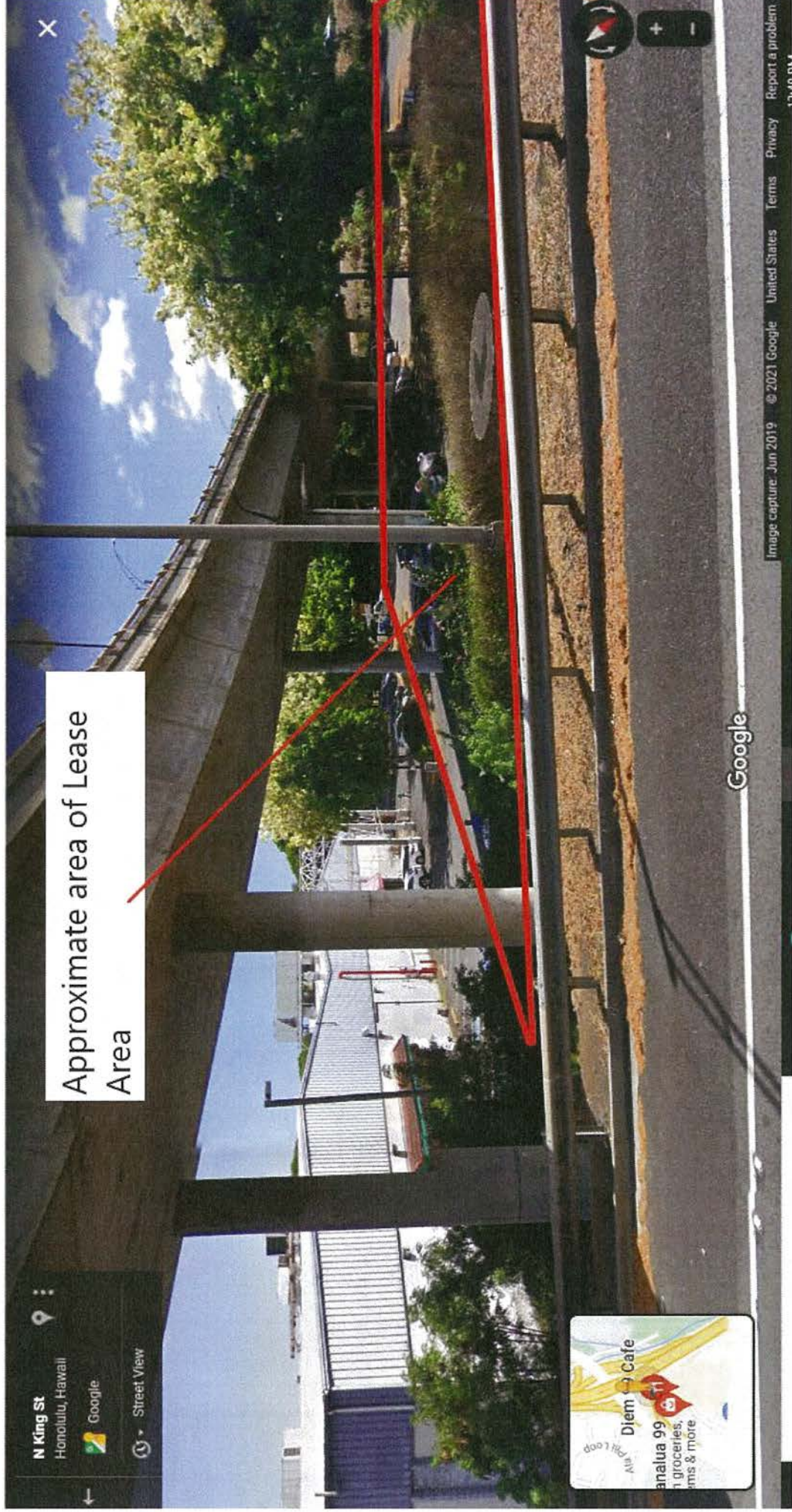
APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson

Enclosures





Approximate area of Lease Area

Diem Cafe
Manalua 99
groceries,
ams & more

Google

July 26, 2021

VIA E-MAIL (travis.k.tomono@hawaii.gov)

State of Hawaii
Department of Transportation – Highways Division
Right of Way Branch
601 Kamokila Boulevard, #691
Kapolei, Hawaii 96707
Attn: Travis Tomono, Right-of-Way Agent

Lease No. HWY-96-1 – Request for Consent to Assignment

Dear Mr. Tomono:

This firm represents Honolulu Warehouse Co., LTD, the “**Lessee**” under that certain Lease No. HWY-96-1 made by and between Lessee and the State of Hawaii as lessor (the “**State**”) dated April 2, 1997 (the “**Lease**”) for the property described in the Lease (the “**State Property**”). Section numbers are made in reference to the Lease.

As we discussed in our meeting on May 20, 2021, Lessee is seeking an assignment of the Lease to Home Depot because Lessee has suffered and currently is undergoing a severe economic hardship because of the COVID pandemic. Many of Lessee’s subtenants in the property located adjacent to the State Property (the “**Honolulu Warehouse Property**”) are delinquent several months in rent as a result of not being able to open for business during the pandemic. Many tenants have also defaulted on their leases and vacated the premises, causing Lessee additional losses and legal costs associated with recovering possession and pursuing deficiencies. With the decreased revenue, Lessee is projected to lose over \$150,000 per month for each month that it continues to operate the Honolulu Warehouse Property. Demand for leased space in the area is also extremely low due to poor retail visibility and lack of foot traffic. The ongoing pandemic has also decreased the dining crowd, which was a major component of the retail revenues keeping tenants in the Honolulu Warehouse Property afloat.¹ Instead of terminating the tenants in default, Lessee has, at its own financial expense, decided to help keep the local businesses afloat by working out payment

¹ As an example, a long-standing restaurant tenant has had extreme difficulty keeping up with its rent and is a few hundred thousand dollars in arrears.

July 26, 2021

Page 2

plans and deferral agreements. However, the cumulative impact has been too much to support and this financial hardship has caused Lessee to reach out to Home Depot for a lifeline.

The request to assign the Lease to Home Depot is part of a transaction that involves the rest of the Honolulu Warehouse Property that would allow Home Depot to develop a home improvement store that spans both the State Property and Honolulu Warehouse Property. The opening of a new Home Depot will create substantially higher tax revenue for the State than the current use on the Honolulu Warehouse Property. Home Depot plans to use the State Property as parking to serve the home improvement store on the Honolulu Warehouse Property. Home Depot has informed us that Home Depot will be making significant upgrades and modifications to the buildings on the Honolulu Warehouse Property.

Home Depot intends to continue to use the State Property for parking. We understand that Home Depot may request a slight reconfiguration of the parking area on the State Property from their current locations and would like the right to make the slight configurations to the parking areas without the State's approval from time to time. Also, Home Depot may request the State for the right for delivery trucks to use the State Property to access the Home Depot store on the Honolulu Warehouse Property, but Home Depot will work with the State to clearly define the areas that the trucks may access on the State Property. We have enclosed a proposed site plan from Home Depot that shows the areas the trucks may access and the height of the freeway overpass at the access points, with the hopes that the State can review and approve of these clarifications as part of the request for consent to the assignment.

Thank you in advance for your consideration and cooperation with the requested consent to assignment and please let me know if the State has questions or requires additional information.

Very truly yours,

STARN O'TOOLE MARCUS & FISHER
A law corporation



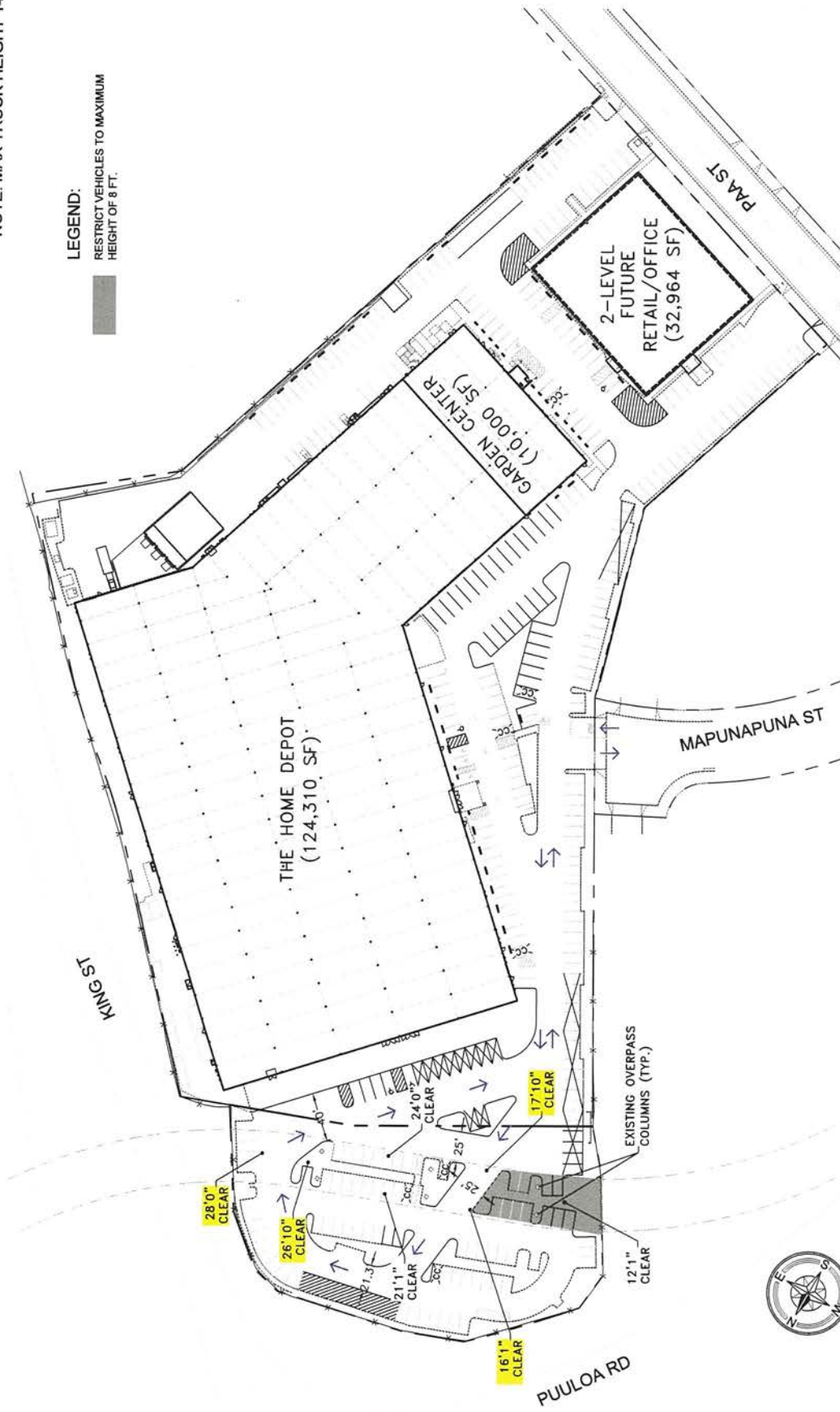
Norman H.Y. Cheng

C: Wayne Iwamasa (wayne.y.iwamasa@hawaii.gov)
Ivan Lui-Kwan (iluikwan@starnlaw.com)

Attachments (1)

NOTE: MAX TRUCK HEIGHT 14'-6"

LEGEND:
RESTRICT VEHICLES TO MAXIMUM
HEIGHT OF 8 FT.



TRUCK ROUTE EXHIBIT

07/22/2021



0' 80' 160'
SCALE 1"=80'

L-283

STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

APR 04, 1997 01:10 PM

Doc No(s) 2374148

on Cert(s) 488,684

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

CONVEYANCE TAX: \$1122.40

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup (✓) To:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
ABSTRACTING SECTION

ACCOM

Tax Map Key: (1) 1-1-07-Road (portion)

LEASE NO. HWY-96-1

LESSOR: STATE OF HAWAII
By its Director of Transportation

LESSEE: HONOLULU WAREHOUSE CO., LTD.
2850 Paa Street, Suite 219
Honolulu, Hawaii 96819

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

LEASE NO. HWY-96-1

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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

LEASE NO. HWY-96-1

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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

LEASE NO. HWY-96-1

THIS INDENTURE OF LEASE, made and effective this 2nd day of April, 1977, by and between the STATE OF HAWAII, hereinafter called the "LESSOR", by its Director of Transportation, and HONOLULU WAREHOUSE CO., LTD., a Hawaii corporation whose business and mailing address is 2850 Paa Street, Suite 219, Honolulu, Hawaii, 96819, hereinafter called the "LESSEE,"

WITNESSETH:

1. AREA LEASED. THAT THE LESSOR, 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 hereby demise and lease unto the LESSEE, and the LESSEE does hereby lease and hire from the LESSOR, the premises being a part of Moanalua Road, Federal Aid Urban Project No. U-078-1(1), Puuloa Interchange, and further identified as Lot 3886, containing an area of approximately 46,435 square feet or 1.066 acres, as shown on Map 701, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1074 of the Trustees under the Will and of the Estate of Samuel Mills Damon, being also portion of the premises described and covered by owner's Transfer Certificate of Title Number 488,684; with the upper boundary limit following a surface seven (7) to eight (8) feet above and parallel to the surface of the parking lot as determined by the LESSOR in its sole discretion, and the lower boundary limit parallel to the existing ground, hereinafter called the "Premises," and more particularly described in Exhibit "A", and as shown on the map designated as Exhibit "B", both of which are attached hereto and made parts hereof.

The leased area demised is land-locked. Access to a public road is available only through the adjacent owner's property.

2. USE OF PREMISES. The Premises shall be used for customer and employee automobile parking only and shall be limited to standard passenger vehicles and light non-commercial trucks.

3. DEFINITIONS. As used herein, unless specifically indicated otherwise or clearly repugnant to the context;

(1) "Director" shall mean the Director of Transportation of the State of Hawaii or his representative;

(2) "LESSEE" shall mean and include the LESSEE herein, its successors or permitted assigns, according to the context hereof;

(3) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Transportation and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(4) "Premises" shall be deemed to include the parcel of land described in Exhibit "A" and delineated in Exhibit "B", both of which are attached hereto with the existing improvements and other improvements now or hereinafter constructed and installed thereon;

(5) The use of any gender shall include all genders, and if there be more than one LESSEE, then all words used in the singular shall extend to and include the plural;

(6) The marginal headings throughout this Lease are for the convenience of the LESSOR and the LESSEE only and are not intended to construe the intent or meaning of any of the provisions thereof.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

4. LEASE TERM. The term of this Lease shall commence and be effective the date the lease is executed by the LESSOR and shall terminate on January 31, 2044, unless sooner terminated as hereinafter provided.

5. RENTALS AND RENTAL REOPENINGS.

(1) Land Rental. During the first five (5) years of this Lease term, commencing on the effective date of this Lease the annual rental shall be the sum of SEVENTY-TWO THOUSAND AND NO/100 DOLLARS (\$72,000.00); PROVIDED, HOWEVER, that the rental shall be waived for the first six (6) months or until the construction of the parking lot is completed, whichever occurs first.

(2) Rental Reopening Periods. The annual rental herein above reserved shall be reopened and redetermined prior to the expiration of the fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th), twenty-fifth (25th), thirtieth (30), thirty-fifth (35th), and fortieth (40th) years of the term of this Lease.

6. DETERMINATION OF RENTAL UPON REOPENING OF THE ANNUAL RENTAL. The rental for any ensuing period shall be fair market rental based upon all legal uses and not necessarily limited to the uses at the time of reopening. Except as provided herein, the provisions of chapter 658, Hawaii Revised Statutes, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the LESSOR, and the LESSEE shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by LESSOR's appraiser; provided, that should the LESSEE fail to notify LESSOR in writing within thirty (30) days after receipt thereof that LESSEE disagrees with the fair market rental as determined by LESSOR's appraiser and that LESSEE has appointed its own appraiser

to prepare an independent appraisal report, then the fair market rental as determined by LESSOR's appraiser shall be deemed to have been accepted by LESSEE and shall be the fair market rental as of the date of reopening. If LESSEE has notified LESSOR in writing and appointed his own appraiser as stated hereinabove, LESSEE's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of LESSEE's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both LESSOR and LESSEE, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. The LESSEE shall pay for its own appraiser and the cost the services of the third appraiser shall be borne equally by the LESSOR and LESSEE. All appraisal reports shall become part of the public record of the LESSOR.

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

The value of improvements constructed, installed and owned by the LESSEE within the Premises shall not be considered in determining the fair market rental.

7. TIME AND METHOD OF PAYMENT. The LESSEE shall pay monthly in advance one-twelfth (1/12th) of the annual rent without notice or demand to the LESSOR at the Highways Division Fiscal Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, on the first day of each month of each and every year during the life of this Lease, in legal tender of the United States of America. The rental for the first and last months shall be prorated in relation to the days within the month. The initial payment shall be made on the date this Lease is executed.

8. INTEREST; SERVICE CHARGE. Without prejudice to any other remedy available to the LESSOR, LESSEE agrees without further notice or demand, as follows:

(1) To pay interest at the rate of one percent (1%) per month, compounded monthly, on all delinquent payments or such other rate as may be adopted by the LESSOR.

(2) To pay a service charge of \$25.00 a month for all delinquent payments or such other charge as may be prescribed by rules adopted by the LESSOR provided that in no event shall a service charge rate in excess of \$50.00 be levied under this agreement.

(3) That the term "delinquent payments" as used herein means any payment of rent, fees, service charges, or other charges payable by LESSEE to LESSOR, which are not paid when due.

The termination of this Lease by the lapse of time or otherwise shall not relieve the LESSEE of its obligation to pay any rentals, interest, fees, service charges and other charges accrued during the period in which this Lease is in effect but which are unpaid at the time of such termination.

9. MINERALS AND WATERS. The LESSOR reserves the right to:

(1) 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 such 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 such 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, in, on or under the land; provided; that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the LESSEE's required or permitted activities on the Premises and not for sale to others; and

(2) 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 as may be required in the exercise of this right reserved; provided 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 the LESSEE's improvements taken.

10. PREHISTORIC AND HISTORIC REMAINS. All prehistoric and historic remains found on the Premises shall be and remain the property of the LESSOR and shall not be disturbed or removed by the LESSEE, its employees, agents or contractors, without the express approval of the Director.

11. WITHDRAWAL. With reasonable notice and without compensation to the LESSEE, the LESSOR shall have the right to withdraw all or any portion of the demised land, at any time during the term of this Lease, except as provided herein, for public purposes, including but not limited to residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing road, for rights of way and easements of all kinds, and shall be subject to the right of the LESSOR to remove soil, rock, gravel, or sand as may be needed for road construction and rights of way or for any other public purpose within or without the Premises, provided, that if such withdrawal, or such taking causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed or erected on the land by the LESSEE after the effective date of this Lease agreement is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value of the cost of materials only shall be paid based upon the unexpired term of this Lease.

12. CONSTRUCTION OF IMPROVEMENTS; ENVIRONMENTAL REQUIREMENTS. The LESSEE shall, prior to constructing or installing any improvements within the premises, submit an Environmental Assessment to the LESSOR. Based on said Assessment, the LESSOR shall determine whether the Assessment may be considered as a Finding of No Significant Impact (FONSI) of Environmental Impact or whether an Environmental Impact Statement (EIS) is required to comply with Chapter 343, Hawaii Revised Statutes, as amended, and the Regulations of the State of Hawaii's Office of Environmental Quality Control. Within thirty (30) days after the approval of the EIS or FONSI, whichever is required, the LESSEE shall submit its plans and specifications for the construction and installation to the LESSOR.

Prior to construction, the LESSEE shall obtain the Department of Health's approval for a building permit from the City and County of Honolulu. The LESSOR does not warrant or guarantee that the City and County of Honolulu will permit the construction of any additional improvements that may be required hereunder. All costs associated with meeting the requirements to obtaining the building permit or any other governmental approval or permits will be borne by the LESSEE. All site improvement costs and any additional expenses necessary to bring utilities to the site shall be borne by the LESSEE. The responsibility of bringing utilities

to the site, including the obtaining of easements therefor, shall be borne by the LESSEE. The LESSEE must also file for and receive any applicable governmental approvals.

Within one (1) year of the commencement of this Lease, the LESSEE will at its own cost and expense commence the construction and installation of improvements and install additional equipment and fixtures related to the purpose of this Lease, in whichever order as may be convenient to the LESSEE, and shall have substantially completed said improvements within two (2) years from the commencement date of construction, all of which shall represent a total cost of not less than THREE HUNDRED THOUSAND DOLLARS AND NO/100 (\$300,000.00). The LESSEE shall submit monthly a progress report reflecting the status of its compliance with the requirements of this paragraph.

During the term of this Lease, no improvements, alterations or additions will be constructed on or under the Premises unless the LESSEE first submits its plans and specifications to the LESSOR for approval and approval is granted by the LESSOR in writing. The plans and specifications must be in full compliance with all laws, statutes, ordinances, rules, and regulations applicable thereto. Except as otherwise provided herein, the LESSEE shall retain title to any and all leasehold improvements, trade fixtures, furnishings, equipment, and other personal property constructed, placed or installed by the LESSEE, at its own cost and expense, during the term of this Lease.

13. IMPROVEMENT BOND. Upon receipt of the appropriate building permit, the LESSEE shall, within thirty (30) days after the date of this Lease but prior to the commencement of construction, procure and deposit with the LESSOR a surety bond in the amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) which bond shall (1) name the State of Hawaii as obligee, (2) be conditioned upon the faithful observance and performance of the building requirements contained in paragraphs 12 and 25 of this lease, and (3) save and hold the LESSOR harmless from all liens, suits, actions or damages arising out of, caused by, or attributable to such work performed pursuant to said building requirements.

14. CONTRACTOR'S INSURANCE. Before commencing the construction, or installation of any leasehold improvements, equipment, or fixtures on the Premises, the LESSEE shall require that all contractors and subcontractors, employed on the Premises by the LESSEE or the LESSEE'S contractor, procure and maintain in full force and effect during the course of construction and installation the following insurance:

- (1) Worker's Compensation as required by law.

(2) Contractor's Comprehensive General Liability and Property Damage with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.

(3) Contractor's Automobile General Liability and Protective Property with a combined minimum single limit of \$300,000.00 for bodily injury and property damage per occurrence.

The aforesaid insurance policies shall name the State of Hawaii as additional insured and the LESSEE shall furnish the LESSOR with the Certificate of Insurance evidencing that said insurance policies are in effect.

15. SIGNS. All exterior signs, installed or painted, advertising the business or activity conducted on the Premises, shall be restricted to the appurtenant improvements constructed by the LESSEE. All signs installed or painted shall be done in good aesthetic taste and shall strictly conform to the sign ordinance of the City and County of Honolulu and shall have LESSOR's prior written approval prior to installation.

16. SANITATION: MAINTENANCE OF PREMISES. The LESSEE at all times during the life of this Lease shall: (1) keep and maintain all portions of the Premises and improvements thereon in good repair and in a strictly clean, neat, orderly, and sanitary condition, free of waste, rubbish and debris and other refuse from the Premises; (2) keep and maintain all fixtures, equipment, and personal property of the LESSEE upon the Premises in good condition and repair; and (3) in general, take the same care that would be taken by a reasonably prudent owner who desires to keep and maintain the Premises so that at the expiration or sooner termination of this Lease, the Premises will be in as good a condition as that which existed at the commencement thereof, ordinary wear and tear excepted.

17. UTILITIES. The LESSEE, at its own expense, is responsible for providing its own source for utility services at the site, including but not limited to electricity and water.

THE LESSOR COVENANTS AND AGREES WITH THE LESSEE that upon the payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall have, hold, and enjoy the Premises for the term hereby granted.

THE LESSEE FURTHER COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

18. PAYMENT OF RENT. The LESSEE shall pay said rent to the LESSOR at the time, in the manner and form aforesaid and at the place specified above, or at such other place as the LESSOR may

from time to time designate, in legal tender of the United States of America.

19. TAXES, ASSESSMENTS, ETC. The LESSEE shall pay in full when due, the amount of any and all taxes, rates, and assessments of every description levied or assessed against the Premises or any part thereof, or any improvements thereon, 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, the LESSEE shall be required to pay only such installments, together with interest, as shall become due and payable during the term of this Lease.

20. UTILITY SERVICES, The LESSEE shall pay when due all charges, duties, and rates of every description, including but not limited to, water, sewer, gas, refuse collection, or any other charges related to the Premises, or any part thereof, or any improvements thereon, whether assessed against the LESSOR or LESSEE.

21. COVENANT AGAINST DISCRIMINATION. In the use, construction and enjoyment of the Premises there shall be no support of any policy which discriminates against anyone based upon race, sex, color, religion, ancestry, national origin, age, or marital status, or disability as defined in the Americans With Disabilities Act of 1990. The LESSEE shall use the Premises in compliance with Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights act of 1964, and as said Regulations may be amended. That in the event of breach of this covenant of non-discrimination, the LESSOR shall have the right to terminate this Lease, re-enter and re-possess said Premises and facilities thereon, and hold the same as if said lease had never been made or issued.

22. 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 thereof.

23. COMPLIANCE WITH LAWS. The LESSEE shall comply with all requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal laws, pertaining to the Premises, now in force or which may hereinafter be in force.

24. INSPECTION OF PREMISES. The LESSEE will permit the LESSOR and its agents, at all reasonable times during the term of this Lease, to enter the Premises and examine the state of repair and condition of the flyover ramp by access through adjacent

property within the control of the LESSEE, which the LESSEE hereby grants to the LESSOR.

25. IMPROVEMENTS. The LESSEE shall not at any time during the term of this Lease, construct, place, maintain, and install on the Premises any building, structure, or improvement of any kind and description whatsoever except with the prior approval of the LESSOR, and upon such condition as it may impose, including any adjustment of rent, unless otherwise provided herein.

All buildings, structures, and other improvements shall be fire resistant in accordance with the provisions of the Building Code of the City and County of Honolulu. Such buildings, structures, and improvements shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the LESSOR or the Federal Highway Administration to be hazardous to highway or non-highway users.

26. REPAIRS TO IMPROVEMENTS. The LESSEE shall, at its own expense, keep, repair, and maintain all buildings and improvements and utility lines now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted. This shall include, but not be limited to, the protection of the highway/roadway support columns in the Premises. LESSEE shall also be responsible for any damage to improvements and personal property on the Premises, resulting from, but not limited to, the following: 1) runoff, 2) falling or thrown objects, 3) bird droppings, etc. from the viaduct, ramps, and adjacent roads. Furthermore, LESSEE shall complete all repairs within ninety (90) days from receipt of written notice from the LESSOR that certain repairs are required.

27. LIENS. The LESSEE shall not commit or suffer any act or neglect whereby the Premises or any improvement thereon or the estate of the LESSEE in the same shall become subject to any attachment, lien, charge, or encumbrance whatsoever, except as hereinafter provided, and shall indemnify, defend and hold harmless the LESSOR from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

28. ASSIGNMENTS, ETC. The LESSEE shall not transfer, assign, or permit any other person to occupy the Premises or any portion thereof, or transfer or assign this Lease or any interest herein, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be void; provided that with the prior written approval of the LESSOR the assignment and transfer of this Lease or any portion hereof may be made pursuant to Section 171-36, Hawaii Revised Statutes, and more particularly if (1) in the case of commercial, industrial, and other business uses, the LESSEE was required to put in substantial building improvements; (2) the LESSEE becomes mentally and physically disabled; (3) extreme

economic hardship is demonstrated to the satisfaction of the LESSOR; or (4) it is the corporate successor of the LESSEE; provided, further, that prior to the approval of any assignment of lease, the LESSOR shall have the right to review the consideration paid by the Assignee and condition its consent to the assignment of this Lease on payment by the LESSEE of the premium of fifty percent (50%) of the amount by which the consideration for the assignment whether by cash, credit, or otherwise, exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the Assignee, as further explained in Exhibit "C", Assignment of Lease and Premium Evaluation Policy, attached hereto and incorporated herein by reference. The premium on any subsequent assignments shall be based on fifty percent (50%) of the (selling price less the unamortized purchase price less the adjusted depreciated cost of all improvements, renovations and trade fixtures constructed or installed by the Assignor). For the purposes of the foregoing formula, the unamortized purchase price is the purchase price paid by the Assignor when this Lease was assigned to Assignor, less amortization on a straight-line basis over the term of this Lease remaining at the time of the assignment to Assignor.

If the LESSEE is a partnership, joint venture or corporation, the sale or transfer of twenty percent (20%) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to the LESSOR and shall be deemed an assignment for purposes of this paragraph and subject to the right of the LESSOR to impose the foregoing premium on the difference between the selling price and the cost of the investment appreciated at eight percent (8%) per year, it being the intent that any substantial profit resulting from the sale or transfer of ownership interest shall be subject to the payment of a premium to the LESSOR.

Depreciation of improvements, renovations 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 this Lease. Depreciation of a trade fixture will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

29. SUBLETTING. The LESSEE shall not rent or sublet the whole or any portion of the Premises, without the prior written approval of the LESSOR and the Federal Highway Administration (FHWA). Unless authorized by law, the LESSOR shall deny consent to any uses not specified as allowable under this Lease. The LESSOR may review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rent and rent structure charged to the proposed sublessee by the LESSEE (the LESSOR may

also include such other terms and conditions the LESSOR deems appropriate, prior to any approval by the LESSOR), provided further, that the rent may not be revised downward; provided further that if the proposed sublessee pays the LESSEE any consideration other than said rent, whether by cash, credit or otherwise, or the term of the proposed sublease is for substantially the same term as this Lease or if it otherwise appears to the LESSOR that the proposed sublease is actually an assignment, the LESSOR may treat the proposed sublease as an assignment under paragraph 28 herein. The LESSOR's Sublease Evaluation Policy attached hereto as Exhibit "D" and incorporated herein by reference shall be applicable to this paragraph 29. If it appears to the LESSOR that the proposed sublease is actually a combination of an assignment and a sublease, then the LESSOR may treat the proposed sublease as both an assignment and a sublease and apply the applicable portions of paragraphs 28 and 29, respectively.

30. MORTGAGE. Upon due application and with the written consent of the LESSOR, the LESSEE may mortgage this Lease or any interest herein or create a security interest in the Premises. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure to any qualified purchaser, including the Mortgagee, under Chapter 171, Hawaii Revised Statutes, as amended, to lease, own, or otherwise acquire and hold the Premises or any interest therein. 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 such 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 nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

31. INDEMNITY. The LESSEE shall indemnify, defend and hold the LESSOR harmless: (a) from and against any claim or demand by third persons for loss, liability, or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the Premises occasioned by any act or nuisance made or suffered on the Premises, or by any fire thereon or growing out of or caused by any failure on the part of the LESSEE to maintain the Premises in a safe condition and will reimburse the LESSOR for all costs and expenses in connection with the defense of such claims; and (b) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the

nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

32. COSTS OF LITIGATION. That in case the LESSOR shall, without any fault on its part, be made a party to any litigation commenced by or against the LESSEE (other than condemnation proceedings), the LESSEE shall pay all costs and expenses incurred by or imposed on the LESSOR. Furthermore, the LESSEE shall pay all costs and expenses which incurred 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, or any and all other charges.

33. LIABILITY INSURANCE. The LESSEE shall procure, maintain, and keep in force at its own cost and expense, during the entire term of this Lease, a policy or policies of comprehensive general liability insurance in a combined single limit amount of not less than \$1,000,000.00 for bodily injury and property damage per occurrence, with an insurance company or companies acceptable to the LESSOR. Said policy or policies shall cover the Premises, including all buildings, improvements, grounds, and all roadways and sidewalks on or adjacent to the Premises in the control of the LESSEE. The LESSEE shall furnish the LESSOR with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer that the LESSOR shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in said policy. The procuring of this policy shall not release or relieve the LESSEE of its responsibility under this Lease. The policy or policies required under this provision shall name the LESSOR as an additional insured.

The minimum limits of insurance recited herein may be increased by such amounts as the Director, in the exercise of sound and prudent judgment, may require.

34. PERFORMANCE BOND. The LESSEE shall, at its own cost and expense, within thirty (30) days after 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 said LESSEE of all of the terms, conditions, and covenants of this Lease, in an amount equal to two times the annual rental payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions or agreements contained herein, the full amount of the bond shall be paid to the LESSOR as liquidated and ascertained damages and not as a penalty. Said bond shall be maintained by the LESSEE at its own cost and expense and shall cover the LESSEE'S

operations during the term of this Lease; provided, that suits thereon by the State or anyone else entitled to do so may be commenced within the period of limitation for contract claims unless otherwise specifically provided.

35. LESSOR'S LIEN. The LESSOR shall have a lien on all improvements placed within the Premises by the LESSEE; and on all property kept or used on the Premises, whether the same is exempt from execution or not for all such 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 monies as provided in this Lease to be paid by the LESSEE, and such lien shall continue until the amounts due are paid.

36. SURRENDER. The LESSEE shall at the expiration or sooner termination of this Lease, peaceably and quietly surrender and deliver possession of the Premises to the LESSOR, together with all improvements constructed thereon of whatever name or nature, in good order and condition, reasonable wear and tear excepted; provided, that trade fixtures, equipment and personal property may be removed by the LESSEE; and provided further, that within thirty (30) days after the termination or expiration of this Lease, the LESSOR may, at its option and upon written notice to the LESSEE, require the LESSEE to remove all or any portion of any improvements constructed on the Premises of whatever name or nature, and its equipment, fixtures, trade or otherwise, and/or personal property all at LESSEE'S sole expense and cost.

The LESSEE shall, in the removal of any of its improvements, equipment, trade fixtures and/or personal property from the Premises, conduct such removal in a manner as to cause no damage to the Premises, and in the event of such damage, LESSEE shall, at its own cost and expense, repair or replace the same.

If the LESSEE fails or neglects when so required by the LESSOR to remove all or any portion of any improvements constructed on the Premises of whatever name or nature, equipment, fixtures, trade or otherwise, personal property within thirty (30) days after receipt of written notice to so remove, the LESSOR may remove and dispose of the same and charge the cost of such removal and disposal to the LESSEE, which costs the LESSEE hereby agrees to pay.

37. BREACH. Time is of the essence for this Lease and if the LESSEE shall fail to yield or pay such rent or any portion thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the LESSEE'S property for the benefit of creditors, or if the LESSEE shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure

shall continue for a period of more than five (5) business days where the breach involves failure to make timely rental payments or for a period of more than sixty (60) days where there is any other breach covered herein, after delivery by the LESSOR of a written notice of such breach or default by personal service, registered mail, or certified mail to the LESSEE at its last known address and to each mortgagee or holder of record having a security interest in the Premises, the LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, at once re-enter such Premises, or any part thereof without a need for a court order, terminate this lease, without prejudice to any other remedy or right of action for arrears of rent or any other breach of the terms of this lease. In the event of such termination, all improvements within the Premises shall become the property of the LESSOR it is so chooses. Otherwise the provisions of paragraph 35 (Lessor's Lien) shall apply.

In the event of nonpayment of rent during the term of this Lease and the LESSOR re-enters the Premises and terminates this Lease, the LESSEE shall be liable for subsequently accruing rent during the term of this Lease when the Premises are not re-let and for any deficiency resulting from re-letting such Premises plus expenses for re-letting.

In the event LESSEE discontinues using the Premises for the required uses and purposes enumerated herein and activities related thereto, without the consent of LESSOR, the LESSOR reserves the right to terminate this Lease. The failure of the LESSEE to operate the facilities for the above-mentioned uses for a period of at least fifteen (15) consecutive days shall constitute discontinuance of use of the Premises.

38. RIGHT OF HOLDER OF RECORD OF A SECURITY INTEREST. In the event of the LESSOR seeks to terminate the privilege interest or estate created by this Lease for breach by or default of the LESSEE, each recorded holder of a security interest may, at its option, cure or remedy the default or breach for nonpayment of rent within five (5) business days or any other default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the LESSOR may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option to cure or remedy, the LESSOR may, if the property cannot be reasonably reassigned without loss to the LESSOR, 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 thereupon use its best efforts to redispense of the land affected thereby to a qualified and responsible person free and clear of the mortgage and debt thereby secured; provided, that a reasonable delay by the LESSOR in instituting or prosecuting any right or remedy it may have under Section 171-21, Hawaii Revised Statutes, as amended, shall not

operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default involved. The proceeds of any redistribution effected hereunder shall be applied, first, to reimburse the LESSOR for costs and expenses in connection with such redistribution; second, to discharge in full any unpaid purchase price or other indebtedness owing the LESSOR in connection with such privilege, interest or estate terminated; third, to the mortgagee to the extent of the value received by the LESSOR upon redistribution which exceeds the fair market lease value of the land as previously determined by the LESSOR'S appraiser; and fourth, to the owner of the privilege, interest or estate.

39. CONDEMNATION. In the event that at any time during said term the Premises or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, including the LESSOR, then and in every such case the estate and interest of the LESSEE in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking and any land shall be payable to and be the sole property of the LESSOR, and the LESSEE shall not by reason of the taking be entitled to any claim against the LESSOR for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of the improvements erected or owned by the LESSEE upon the Premises shall be divided between the LESSOR and LESSEE in the ratios that the expired and unexpired portions of the term of this Lease, respectively, shall bear to the whole term hereby created, and that in case only a part of the improvements constructed or owned by the LESSEE are taken the LESSEE may claim and receive from the condemning authority but not from the LESSOR, any expense incurred by the LESSEE in repairing any damage thereto; provided that, in case a part of said Premises shall be required, taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced in the proportion that the area so taken shall bear to the Premises hereby demised; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the Premises unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this Lease.

40. RIGHT TO ENTER. The LESSOR and the agents and representatives of the county in which the Premises are situated may enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the LESSEE to the use and enjoyment of the Premises shall not be unreasonably interfered with.

41. INSPECTION BY PROSPECTIVE BIDDERS. The LESSOR and the FHWA 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 the proposed disposition of the

same for purposes of informing and apprising such person or persons of the condition of the Premises preparatory to such proposed disposition; provided, however, that any such 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.

42. 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 such term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such right for any subsequent breach of any term, covenant, or condition.

43. EXTENSION OF TIME. Notwithstanding any provision contained herein to the contrary, wherever applicable, the LESSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply with, observe or perform any of the terms, conditions and covenants contained herein.

44. JUSTIFICATION OF SURETIES. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such 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, as amended; 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 such period as the LESSOR may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to LESSOR a deed or deeds of trust of real property, all of such character as shall be satisfactory to the LESSOR and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the LESSOR under the foregoing proviso 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 judgement 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 such consent be granted, which shall be discretionary with the LESSOR, no surety shall be released or relieved from any obligation hereunder.

45. WAIVER, MODIFICATION, REIMPOSITION OF BOND PROVISION. Upon substantial compliance by the LESSEE of the terms, covenants, and conditions herein contained on its part to be observed and performed, the LESSOR at its discretion may waive or suspend the improvement bond requirement or modify the same by reducing the amount thereof; provided, however, that the LESSOR reserves the right to reactivate or reimpose said bond in and to their original tenor and form at any time throughout the term of this Lease.

46. FORCE MAJEURE. The LESSOR and the LESSEE covenant and agree with each other that neither party shall be deemed to be in default for the nonobservance or nonperformance of any covenant, obligation or undertaking required under this Lease in the event that and as long as such observance or performance is prevented, delayed or hindered by an act of God or public enemy, fire, earthquake, hurricane, floods, explosion, rain, wind, war or national defense preemptions, strikes, lockouts, or action of the labor union or any other such causes which are not within the respective control of such party. In the event of any delay arising by reason of any of the foregoing events, the time for performance of such covenant, obligation, or undertaking as provided for in this Lease shall be extended for a period equal to the number of days of such delay, and the respective parties shall commence such observance or performance of the covenant, obligation, or undertaking so delayed immediately after removal of the delaying cause. The LESSOR further agrees that notwithstanding anything in this Lease to the contrary, in the event that and as long as the Premises or any portion thereof shall be unusable for the LESSEE'S purpose as herein provided by reason of damage, destruction by an act of God, public enemy, earthquake, hurricane, action of the elements, war, or national defense preemptions, the rent payable hereunder by the LESSEE to the Premises or any portion thereof shall be reduced in the proportion that the Premises so rendered unusable shall bear to the remainder, provided that, in such case damage or destruction shall by mutual agreement of the parties hereto be held to render more than half of the Premises unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this Lease and be relieved of any further obligations hereunder.

47. FLAMMABLE OR HAZARDOUS MATERIALS. The LESSEE shall not at anytime during said term, store or cause to be stored nor allow to be stored, any flammable or hazardous materials on the Premises.

48. ADDITIONAL CONDITIONS.

(1) All plans and specifications shall be in compliance with standards for access driveway into the State Highways as established by the Department of Transportation, State of Hawaii, and also, in compliance with the provisions set forth in the Federal Highway Administration, Federal Aid Paragraphs 5(g), (i), (j), (k), (m), (p) and (s) dated October 4, 1974, as amended.

(2) The LESSEE shall notify the Director in writing upon the commencement and completion of all construction work.

(3) The perimeter of the Premises shall be fully enclosed with six (6) foot high fencing, driveway and maintenance gate excepted.

(4) The building footing shall not encroach upon the pier footings.

(5) The highway columns shall be protected with the column protection barriers specified in the approved construction plans and be placed at least two feet away from the columns.

(6) The LESSOR will not be responsible for any damage to improvements, personal property, and injury or death on the Premises, resulting from, but not limited to the following: 1) runoff, 2) water leakage from the expansion joints, 3) falling or thrown objects, 4) bird droppings, etc. from the viaduct, ramps, and adjacent roads.

(7) The LESSEE shall provide the LESSOR with as-built plans showing grades; elevation views of ground; building, etc.; utility connections and layouts and all other improvements.

(8) No additional load shall be placed onto the existing pier footings.



(9) The minimum cover over existing footings shall be two feet.

(10) Right of access to a public road must be obtained from the adjacent land owner.

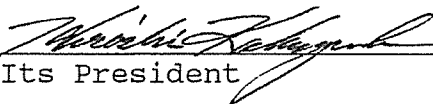
49. NON-WARRANTY. The LESSOR does not warrant the conditions or suitability of the Premises for the use intended by LESSEE and the same is being leased as is.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be executed by their duly authorized officers as of the day and year first above written.

LESSOR: STATE OF HAWAII

By 
Its Director of Transportation 

LESSEE: HONOLULU WAREHOUSE CO., LTD.

By 
Its President


APPROVED AS TO FORM:


Deputy Attorney General

3/17/97
Date

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 24th day March 1997 before me appeared HIROSHI KOBAYASHI to me personally known, who, being by me duly sworn, did say that he is the President of HONOLULU WAREHOUSE CO., LTD., a Hawaii corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and the said HIROSHI KOBAYASHI acknowledged said instrument to be his free act and deed of said corporation.



Notary Public, First Judicial
Circuit, State of Hawaii

My Commission Expires: April 30, 1997

PUULOA INTERCHANGE
PARKING AREA MOANALUA ETHNIC VILLAGE
LOT 3886 /

Being all of the area extending vertically above with the upper boundary limit following a surface seven (7) to eight (8) feet above and parallel to the surface of the Parking Lot and lower boundary limit parallel to the existing ground.

HORIZONTAL LIMITS OF LOT 3886

Being a portion of Moanalua Road FAUP No. U-078-1 (1) Puuloa Interchange.
Being all of Lot 3886 as shown on map 701 of Land Court Application 1074 of the Trustees Under the Will and of The Estate of Samuel M. Damon.

LAND SITUATED SOUTHERLY OF PUULOA INTERCHANGE
AT MOANALUA, HONOLULU, OAHU, HAWAII

Covered by owner's Transfer Certificate of Title Number 488,684 /
filed in the office of the Assistant Registrar of the Land Court and containing an area of 46,435 Square Feet or 1.066 Acres, more particularly described as follows:

Beginning at the South corner of this parcel of land on the Northerly side of Lot 3264-B-2-A-1, Map 467, of Land Court Application 1074, the coordinates of said point of beginning referred to Government Survey Triangulation Station "SALT LAKE" being 5,708.47 feet South and 3,889.61 feet East and running by azimuths measured clockwise from True South:

1. 145° 04' 45" 36.65 feet along Lot 3885 of Land
Court Application 1074;
 2. 154° 37' 10" 85.67 feet along Lot 3885 of Land
Court Application 1074;
 3. 191° 52' 30" 32.31 feet along Lot 3885 of Land
Court Application 1074;
- Thence along the Southerly side of Exclusion 14 of Land Court Application 1074
(Puuloa Road) on a curve to the
right with a radius of 1,098.85 feet,
the chord azimuth and distance being:
4. 229° 27' 49.5" 97.73 feet;
 5. 255° 21' 10" 34.74 feet along Lot 3887 of Land
Court Application 1074;
 6. 255° 21' 10" 10.00 feet along Lot 3887 of Land
Court Application 1074;
 7. 255° 21' 10" 6.36 feet along Lot 3887 of Land
Court Application 1074;
 8. 263° 38' 30" 107.03 feet along Lot 3887 of Land
Court Application 1074;
 9. 289° 29' 30" 25.48 feet along Lot 3887 of Land
Court Application 1074;
 10. 315° 27' 30" 50.03 feet along Lot 3887 of Land
Court Application 1074;
 11. 333° 32' 30" 87.12 feet along Lot 3887 of Land
Court Application 1074;
 12. 75° 21' 10" 101.83 feet along Lot 3264-B-2-A-1, Map 467, of
Land Court Application 1074;
 13. 66° 00' 195.35 feet along Lot 3264-B-2-A-1, Map 467, of
Land Court Application 1074 to the
point of beginning and containing an
Area of 46,435 Square Feet or 1.066
Acres.

Access shall not be permitted over and across courses 1 to 13 inclusive of the above described Lot 3886.

Access, however, shall be permitted for maintenance purposes only over and across course 6 and under the highway structure only over and across courses 12 and 13, of the above described Lot 3886.

VERTICAL LIMITS OF LOT 3886

LOWER BOUNDARY

Being the lower vertical boundary of Lot 3886. Being also a surface parallel to the existing ground within the horizontal limits of Lot 3886.

UPPER BOUNDARY

Being the upper vertical boundary of Lot 3886. Being also the surface seven (7) to eight (8) feet above and parallel to the surface of the Parking Lot within the horizontal limits of Lot 3886.



TOWILL, SHIGEOKA & ASSOCIATES, INC.

By Lester T. Shimabukuro
Lester T. Shimabukuro
Licensed Professional Land Surveyor
Certificate Number 2723

1270 Queen Emma Street, Suite 700
Honolulu, Hawaii 96813
March 17, 1997
Job No. 2687

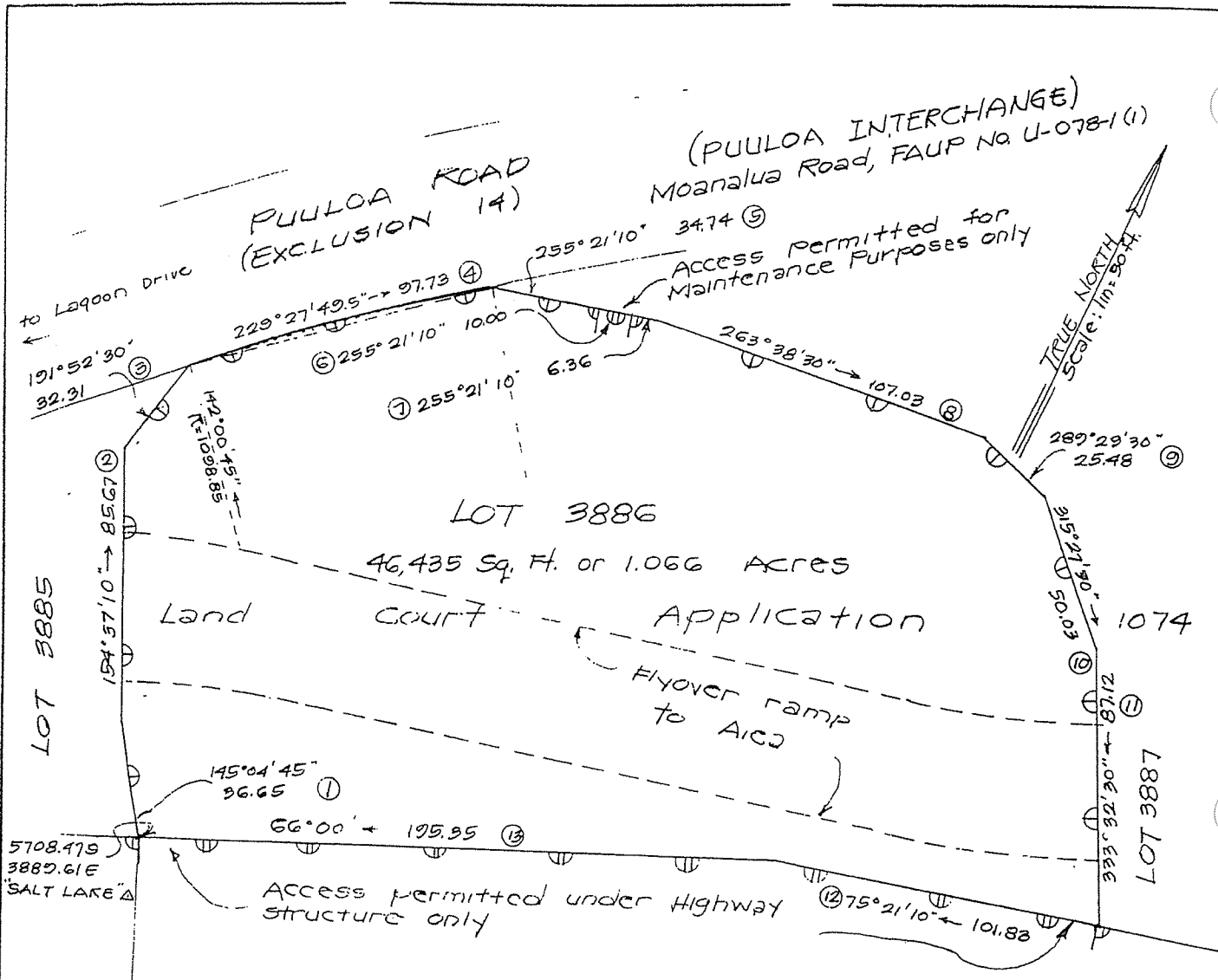
Description Checked

D. Kusaka
Cadastral Engineer
Date: 3/21/97

-3-

TOWILL, SHIGEOKA & ASSOCIATES, INC.
SURVEYORS

1270 QUEEN EMMA STREET • SUITE 700 • HONOLULU, HAWAII 96813



LOT 3886
46,435 Sq. Ft. or 1.066 ACRES

Land COURT Application

Flyover ramp
to Aiea

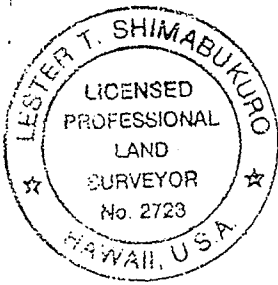
Access permitted under Highway
structure only

(PUULOA INTERCHANGE)
Moanalua Road, FAUP No U-078-1(1)

Access permitted for
Maintenance Purposes only

TRUE NORTH
Scale: 1" = 50' ±

Lot 3264-B-2-A-1 (Map 467)



PLAN SHOWING

THIS WORK WAS PREPARED BY ME OR
UNDER MY SUPERVISION

Lester T. Shimabukuro
LICENSED PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER 2723

Lot 3886 as shown on Map 701 of Land Court
Application 1074 of the Trustees Under The Will
and of the Estate of Samuel H. Damon

Parking Area For Moanalua Ethnic Village
Phase 2 - Parking Beneath Flyover Ramp
to Aiea

Moanalua, Oahu, Hawaii

Tax Map Key: 14-07

- Denotes Limited Access Permitted
- Denotes No Access Permitted

EXHIBIT B

Revised 12/6/96

DEPARTMENT OF TRANSPORTATION

ASSIGNMENT OF LEASE AND PREMIUM EVALUATION POLICY

Reference

Chapter 171-36(a)(5), Hawaii Revised Statutes (HRS)

"No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made if:

- (A) It contains the personal residence of the lessee;
- (B) In the case of commercial, industrial, hotel, resort, apartment, and other business uses, the lessee was required to put in substantial building improvements;
- (C) The lessee becomes mentally or physically disabled;
- (D) Extreme economic hardship is demonstrated to the satisfaction of the board; or
- (E) It is to the corporate successor of the lessee;

provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration 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; provided further that with respect to state agricultural leases, 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;..." (Amended 1992)

Prior Approval

Any assignment of lease of Department of Transportation (DOT) property must have the prior written approval of DOT. Prior to giving its consent to an assignment, DOT must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the proposed assignment and purchase 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 statements of the proposed assignee or any other such statements acceptable to the appropriate division, which statements shall be no older than one year prior to the date of the purchase agreement and audited or certified as correct by a financial officer of the proposed assignee. A consent to assignment by DOT shall not release the lessee (assignor) of any obligation to be performed by the lessee or liability for acts or occurrences related to or resulting from the lessee's use or occupancy of the DOT property whether occurring before or after such consent unless the particular division is convinced that the assignee's financial responsibility is equal to or greater than the assignor.

No assignment of lease of DOT property shall be entered into until the Attorney General's Office (LEG) has first reviewed the proposed assignment and purchase agreement and the Director of Transportation (DIR) and the Board of Land and Natural Resources (Land Board) have given their approval. Such an assignment shall be entertained only if it meets one of the criteria set forth in Section 171-36(a)(5), HRS, except that the prerequisite stated in Section 171-36(a)(5)(A), HRS, shall be inapplicable to any DOT property.

EXHIBIT "C"

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.

If a qualification questionnaire was required to be submitted by a lessee or concessionaire as a precondition of the lease or concession contract, the assignor shall submit a qualification questionnaire filled out by the prospective assignee in order that the appropriate division can evaluate whether the assignee has the required experience and background to assume the lease or concession contract.

Consideration to be Paid

Prior to review by LEG and approval by DIR and the Land Board, the lessee (assignor) must present the appropriate division with a written copy of the proposed purchase which includes the total consideration to be paid by the assignee whether by cash, credit or otherwise and any other cost data that the particular division may require.

Adjustment of Rental

In those leases wherein the DOT has the right to revise the rent of the demised premises upon an assignment, the lessee (assignor) shall also be required to present its cost data so that the appropriate division may review and analyze that information to determine whether the rent for the premises should be increased. The analysis shall accompany the request for review by LEG and the Land Board submittal.

Payment to DOT

All leases shall have an assignment clause that provides that the DOT shall receive from the lessee (assignor) a premium based on the amount by which the net consideration paid for the assignment, whether by cash, credit or otherwise exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee. The appropriate cost indices (the U.S. Construction Index for Apts., Hotels, Office Bldgs. (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI)) will be applied to determine the adjusted depreciated costs. The value of the lessee's/assignor's inventory of merchandise should be deducted from the gross consideration paid to determine the net consideration. Intangibles such as goodwill, business name recognition, etc., are not deductible. (See Schedule A.)

To encourage long-term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be fifty percent (50%) of the excess payment determined under Schedule A hereto, unless otherwise specifically provided in the lease. The premium on subsequent assignments shall be fifty percent (50%) of the excess payment (the selling price less the unamortized purchase price less the adjusted depreciated cost of all improvements, renovations and trade fixtures constructed or installed by the assignor). For the purposes of the foregoing formula, the unamortized purchase price on subsequent assignments is the purchase price paid by the assignor when the lease was assigned to assignor, less amortization on a straight line basis over the term of the lease remaining at the time of the assignment to assignor.

In addition to other remedies available to DOT under the lease, including, without limitation, the payment to DOT of the amount of the performance bond posted by lessee, DOT may, if the lessee has not performed lease covenants to improve or use the property for its specific uses, impose a surcharge of at least ten percent (10%) of the greater of the minimum guaranteed annual rental or the percentage rental for the year in which the lessee fails to so perform, provided the minimum guaranteed annual rental shall be no less than the minimum guaranteed annual rental for the second year of the lease term.

Depreciation of improvements, renovations and trade fixtures will be determined on a

straight line basis. The whole term of improvements or renovations shall be defined as the period beginning with 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 and shall be based upon the anticipated life of the trade fixture. (See Schedules B and C.)

All lessees shall be required to furnish the appropriate divisions with the actual costs of construction of all improvements and renovations within thirty (30) days after their completion as well as the purchase price and other costs of all fixtures acquired for the lessee's operations on, related to or connected with the premises, within thirty (30) days after such costs are incurred. Lessees shall be required to furnish evidence satisfactory to the divisions of the actual costs including, without limitation, furnishing copies of construction contracts, receipts and/or purchase agreements. Lessees shall also be required to furnish the appropriate division with an inventory of all equipment and personal property placed on the premises. The appropriate division shall maintain records of all costs incurred by the lessee for construction of improvements and renovations as well as installation of trade fixtures, equipment and personal property submitted by the lessee and shall include with said records, a copy of the Construction Cost Index (CCI) and Consumer Price Index (CPI) as published by the U.S. Department of Commerce's Bureau of the Census and the U.S. Department of Labor's Bureau of Labor Statistics, respectively, for the year construction and/or installation are completed.

In cases where the lessee has constructed or directed the construction of its own improvements, the lessee may be given the option of paying for an appraiser to determine the valuation of the improvements constructed, provided that the appraiser shall be selected by DOT.

If the lessee is a partnership, joint venture or corporation, the sale or transfer of twenty percent (20%) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to DOT and shall be deemed an assignment subject to a fifty percent (50%) premium on the difference between the selling price and the cost of the investment appreciated at eight percent (8%) per year. However, transfers will not include (i) transfers of ownership among the lessee's shareholders when such transfer involve less than fifty percent (50%) of the ownership interest or (ii) transfers of ownership to persons who are not shareholders of the lessee at the time of the transfer, but who become both shareholders and employees of the lessee, and the transfer is of less than fifty percent (50%) of the ownership interest.

Qualifying Leases

All leases entered into or assigned after May 24, 1989 are subject to a premium percentage of fifty percent (50%).

For all leases entered into or assigned prior to May 24, 1989, the assessment of an assignment premium will only apply to those leases wherein it has been determined by the Office of the Attorney General, that the assessment of the assignment premium is applicable.

SCHEDULE A. Assignment of Lease Calculations

1. Subtract the amount, if any, attributable to inventory from the gross consideration for the assignment to obtain the net consideration.
2. Calculate the Adjusted Depreciated Cost of Improvements and Renovations (see Schedule B).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule C).
4. Determine the amount, if any, by which the net consideration for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee by subtracting the amounts derived in Steps 2 and 3 above from the net consideration.
5. Then multiply the excess amount, if any, determined in Step 4 above, by the premium percentage of fifty percent (50%)
6. The result is the premium due DOT.

Example

A lease is being assigned 57 months after completion of the improvements at a gross consideration of \$650,000, \$50,000 of which is attributable to inventory.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI are 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.	Gross Consideration:	\$650,000
	Inventory:	\$ 50,000
	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:	<u>(693)</u>
4.	Excess:	\$ 90,110
5.	Premium Percentage:	x 50%
6.	Premium Due DOT:	<u>\$ 45,055</u>

APPENDIX A

SCHEDULE B. Adjusted Depreciated Cost of Improvements and Renovations .

1. Adjusted Cost of Improvements and Renovations

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

2. Depreciation

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

3. Adjusted Depreciated Cost of Improvements and Renovations

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

*As published by the U.S. Department of Commerce, Bureau of Census

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 and Renovations:

Actual Cost x CCI (most recent) / CCI (base year)

$$\$500,000 \times 121.1/102.3 = \$591,887$$

2. Depreciation:

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

3. Adjusted Depreciated Cost of Improvements and Renovations:

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

SCHEDULE C. 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. Adjusted Depreciated Cost of Trade Fixtures

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

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

Example	Refrigerator	
	Actual cost:	\$1510
	CPI (most recent):	118.1
	CPI (base year):	104.6
	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

1. Adjusted Cost of Trade Fixture:

Actual Cost x CPI (most recent) / CPI (base year)

$$\$1510 \times 118.1/104.6 = \$1705$$

2. Depreciation:

$$\$1705 \times 57 \text{ mos}/96 \text{ mos.} = \$1012$$

3. Adjusted Depreciated Cost of Trade Fixture:

$$\$1705 - \$1012 = \underline{\$693}$$

Department of Transportation

SUBLEASE EVALUATION POLICY

Reference

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

"The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublease shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;..." (Amended 1992)

Purpose

The purpose of the sublease evaluation policy is to prevent speculation.

The basic rationale or philosophy behind the sublease evaluation policy is that the State, as mandated by statutes, should not allow anyone to make sandwich profits from the use of State-owned land, but, at the same time, recognize the sublessor's right to make a fair return for the investment.

When the State determines that "sandwich profits" are being realized, the State may take such action as it deems necessary, including, without limitation:

- (1) limiting the amount of rent charged to the sublessee; or
- (2) permit the sublessor to receive the sublease rental but increase the lease rent paid to the State by the amount of the sandwich profit determined by the State.

The State may reevaluate the "sandwich profit" on an annual basis.

Procedure

At the time the lessee requests approval of a sublease, the lessee shall submit any and all information the DOT deems necessary to properly analyze the proposed sublease, including, without limitation, the proposed sublease document, floor plans of the leased premises and the premises to be subleased, plans for any and all proposed improvements, estimated operating and other costs, total investment of the lessee, the proposed payments to DOT for permitting the sublease and any other financial information.

As part of its analysis of the proposed sublease, the State will consider:

- a. data found in the real estate market, including, without limitation, data relating to what other investors are experiencing for similar/comparable investments; and
- b. those allowances and operating expenses that are properly attributable to the subleased premises.

To qualify as properly attributable to the subleased premises and therefore eligible for deduction from the effective sublease income (gross annual sublease income minus the general excise taxes paid and/or payable), such allowances (including, without limitation, reserves for replacement of

limited life items) and operating expenses must be reasonable, legitimate, adequately justified by the lessee and approved by the State. The operating expenses are to be prorated on an annual basis. Operating expenses are the periodic expenditures necessary to maintain the real property and continue the production of the effective gross income and include, but are not limited to the following:

1. Fixed Expenses - Fixed Expenses are operating expenses that generally do not vary with occupancy and have to be paid whether the property is occupied or vacant (i.e., real estate taxes, building insurance costs, etc.).
2. Variable Expenses - Variable Expenses are operating expenses that generally vary with the level of occupancy or the extent of services provided (i.e., utilities, painting, repair, maintenance, etc.).
3. Reserve for Replacement Allowances - Reserve for Replacement Allowances provides for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced periodically during the buildings economic life (i.e., roofing, carpeting, sidewalks, driveways, parking areas, etc.).
4. Lease Rental - The lease rental amount shall be the proportionate share of the total lease rent attributable to the subleased premises, based on the proportion the subleased area bears to the entire leased premises.

The Fixed Expenses, Variable Expenses and the Reserve for Replacement Allowances shall be prorated based on the proportion the leasable area of the subleased premises bears to the total leasable area of the building.

(For a detailed explanation on allowable operating expenses, please refer to Chapter 19, "Income Estimates," The Appraisal of Real Estate, Ninth Edition or such later edition, as applicable, prepared by the Textbook Revision Committee of the American Institute of Real Estate Appraisers.)

A reasonable return on the sublessor's investment which includes recapture of the sublessor's investment and some amount of profit is allowed. The allowance is the result of multiplying the sublessor's total investment in the subleased area by the Investment Return Rate.

The "Investment Return Rate" used in this DOT Sublease Evaluation Policy will be the sum of the following rates:

- a. Treasury bonds rate. The interest rate for thirty (30) year Treasury bonds in effect at the time the proposed sublease is being evaluated, as listed in the Wall Street Journal, or if not available, such similar publication as mutually agreed upon by the lessor and the lessee;
- b. Capital recapture rate. The annual percentage rate which would enable the lessee to recover the lessee's investment in the improvements constructed on the leased premises over the term of the lease (hereinafter the "capital recapture rate"). For example, if the lease term is twenty-five (25) years, the capital recapture rate shall be four percent (4%) per year; and
- c. Premium rate. A premium rate of two percent (2%).

The existing DOT lease rent attributable to the subleased area is also subtracted from the sublease income. Any balance remaining is the sandwich profit. If the State selects the option to approve the sublease rental, then the sandwich profit will be paid to DOT.

Should the State decide to consent to the sublease but limit the amount of rental charged to the sublessee, the maximum allowable sublease income may be determined by applying the following mathematical equation:

$$M - T - R(M - T) - E = 0$$

whereby,

M = maximum allowable sublease income

T = general excise tax

R = rate for management and vacancy loss (10%)

E = total allowances excluding management and general excise tax*

*when applicable

Solving for M:

$$M = \frac{E + T - RT}{1 - R}$$

Effect of Termination or Involuntary Assignment

In the event that a lease or sublease becomes available to a new lessee or sublessee as a result of the involuntary termination of the lease or sublease by foreclosure of the lien of any mortgagee's interest in the leased or subleased premises (whether by court order or otherwise), the purchaser/assignee thereof and the interest so acquired shall not be subject to the requirements of this DOT Sublease Evaluation Policy. Subsequent subleases shall be subject to the requirements of this DOT Sublease Evaluation Policy.

