

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

December 9, 2022

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

PSF No.: 04OD-22A

Oahu

Set-Aside to Department of Accounting and General Services for State Office and Hawaii State Art Museum Site, Honolulu, Oahu, Tax Map Key: (1) 2-1-017: 002.

Amend Prior Board Action of October 27, 2000, Item D-10, *Lease Purchase of the No. 1 Capitol District Property (Formerly Hemmeter Headquarters) and Eventual Set-Aside of Same to The Department of Accounting and General Services (DAGS), Honolulu, Oahu, Tax Map Key: (1) 2-1-017:001.*

The purpose of this amendment is to expand the purpose of the set-aside from “State office space” to “State office space, museum, and ancillary purposes”. In addition to office space, the subject property also houses the Hawaii State Art Museum and retail shop space and a commercial kitchen and café space.

APPLICANT:

Department of Accounting and General Services (DAGS)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Government lands of Honolulu, Oahu, identified by Tax Map Key: (1) 2-1-017: 002, as shown on the attached map labeled Exhibit A.

AREA:

Tax Map Key: (1) 2-1-017: 002      -      2,255 square feet.

ZONING:

State Land Use District: Urban and located in the Hawaii Capitol Special District  
City and County of Honolulu CZO: BMX-4 (Central Business Mixed Use District)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

State Office and Hawaii State Art Museum Site

PURPOSE:

State office space, museum, and ancillary purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) § 11-200.1-15 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 minor expansion or minor change of use beyond that previously existing,” and Part 1, Item 36 that states, “Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor’s executive order.” The subject request 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.

A draft environmental assessment addressing the parcels purchased by the State via lease purchase agreement and eventual set-aside to DAGS, was prepared and its notice of availability was published in The Environmental Notice. The final environmental assessment, together with a finding of no significant impact (FONSI), was submitted to the Office of Environmental Quality Control and published in the October 23, 2000, Environmental Notice.

REMARKS:

Land Division staff working with DAGS recently completed the acquisition of the Hemmeter Building in Honolulu through a 20-year lease financing arrangement. Before the acquired land and improvements can be set-aside to DAGS, the approval of the Board of Land and Natural Resources (Board) is needed to include a small lot already owned by the State in the set-aside. Staff consulted with Land Division’s abstracting section and

confirmed that this small lot is unencumbered public land under the jurisdiction of the Board.

The No.1 Capitol District Building (formerly the Hemmeter Headquarters and prior to that the Armed Forces YMCA) was built in 1928 and contains 129,067 square feet of floor area. In 1989, the building was substantially renovated as the corporate headquarters for the Hemmeter Investment Company. It is listed in both the Federal and State Historic Registers.

Throughout the 1990s, the State occupied 4 of the 5 floors of the building. Several State offices are currently located in the building. The State had entered into an office space lease with the owner, with an option to renew. Given the building's close proximity to other state buildings, such as the adjacent State Office Tower and the Capitol, and because the State already occupied 4 of the 5 floors for State offices, and because the State was involved in lengthy negotiations with the owner over the renewal option, the Governor decided it would be in the State's best interest to own the premises rather than continue renting. Based on an independent appraisal, a mutually agreeable purchase price was negotiated with the property owner.

At its meeting of October 27, 2000, under Item D-10 (copy attached as Exhibit B) the Board approved the acquisition of the land and improvements. A lease purchase agreement authorized under Chapter 37D, HRS was used to finance the project. It is a financing method by which the State acquires legal title to the property over time but may immediately take possession of and use the property, subject to the negotiated terms and conditions.

The purchase price of \$22.5 million and other expenses of the transaction were raised through the issuance of certificates of participation (COPs). In addition to the real property, the purchase price included the inventoried contents of the property. The transaction closed on December 1, 2000. Upon closing, the seller, BIGI Corporation, received the negotiated price of \$22.5 million. On December 14, 2000, BIGI Corporation transferred legal title of the property to the trustee, Bank of Hawaii, and subsequently vacated the second floor of the property it occupied at the time. Upon closing, the State took occupancy of the entire building and began making periodic lease payments to the trustee pursuant to the lease purchase agreement between the trustee, as lessor, and the State (through DAGS), as lessee. The lease purchase agreement imposed on the State, as lessee, all responsibilities typically assumed by the legal owner of a property.

The trustee used the lease payments it received from DAGS to pay the COPS holders pursuant to a Trust Agreement. The funds for such payments had to be appropriated to DAGS each year by the Legislature. The lease payment obligations were specifically structured so that the obligations were not considered to be "debt" for purposes of the State Constitution.

Once all payments had been made, the Board approval of October 27, 2000 provided that title to the property would be transferred to the State. The Board approval additionally

authorized the Department of Land and Natural Resources (Department) to process a set-aside of the acquired property to DAGS by Governor's executive order.

After the Board approval of October 27, 2000, there were several assignments of interest and name changes. On February 9, 2004, Bank of Hawaii assigned its interest as trustee to BNY Western Trust Company and subsequently resigned as trustee. On November 1, 2004, BNY Western Trust Company converted from a state-chartered trust company into a nationally chartered trust entity under the name The Bank of New York Trust Company, N.A. Land Court Order No. 166935 was issued to note the conversion, which was further memorialized under State of Hawaii, Supplemental Agreement No. 1 on May 31, 2005. On July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to The Bank of New York Mellon Trust Company, N.A. Land Court Order No. 180209 was issued on September 11, 2009, to note the conversion. At its meeting of October 23, 2009, under Item D-8 (Copy attached as Exhibit C), the Board consented to refinance the COPs and approved the First Amendment to the Lease Purchase Agreement amending the names of entities and the schedule of payments.

On May 1, 2020, DAGS made the final payment in satisfaction of the amended lease purchase agreement in the amount of \$1,944,800. Staff worked with the Department of the Attorney General and DAGS Land Survey to prepare the necessary documents and maps to complete this transaction and transfer title of the purchased property to the State. On September 20, 2022, staff recorded the fully executed warranty deed and satisfaction of lease purchase agreement in the Land Court and Regular System.

In the process of preparing the acquired lands for set-aside to DAGS, staff noted that within the Hawaii State Art Museum site there is a small parcel of land with an area of 2,225 square feet that is already owned by the State. This parcel is designated as Tax Map Key: (1) 2-1-017:002 (Parcel 2) on the map attached as Exhibit A, while the private lands recently acquired by the State are designated as Tax Map Key: (1) 2-1-017:001 (Parcel 1). The prior Board actions of October 27, 2000, Item D-10, and October 23, 2009, Item D-8, covered the acquisition and set-aside of Parcel 1 to DAGS but did not mention Parcel 2. Parcel 2 is within the fenced grounds of the museum and an integral part of the site. Staff is therefore recommending that Parcel 2 be included in the set-aside to DAGS together with Parcel 1.

The Board's action of October 27, 2000, under Item D-10 authorized the purchase and eventual set-aside of Parcel 1 for State office space purposes. Presently, Parcel 1 also houses the Hawaii State Art Museum, a retail shop space and commercial kitchen and café space. To ensure that these additional uses may continue after the subject parcels are set-aside to DAGS, staff is recommending amending this prior action by changing the purpose to "State office space, museum, and ancillary purposes".

#### RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 action.
2. Approve of and recommend to the Governor the issuance of an executive order setting-aside the subject lands to the Department of Accounting and General Services under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting-aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Amend its prior Board action of October 27, 2000, under Agenda Item D-10, by changing the purpose of the set-aside to “State office space, museum, and ancillary purposes”.
4. Except as amended hereby, all terms and conditions as approved on October 27, 2000, shall remain the same.

Respectfully Submitted,

*Luke Sarvis*

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Luke J. Sarvis  
Project Development Specialist

APPROVED FOR SUBMITTAL:

*Suzanne D. Case*

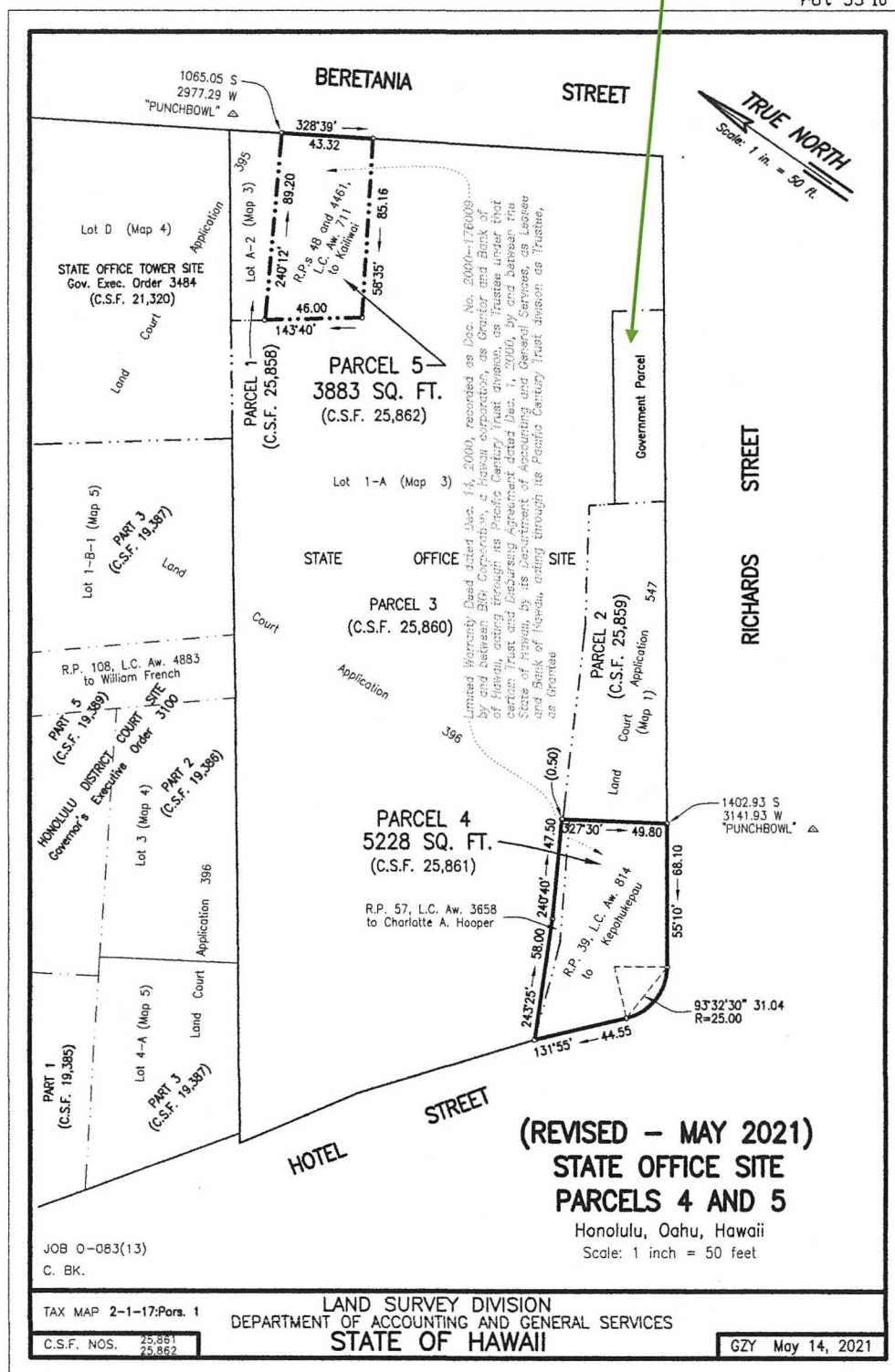
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Suzanne D. Case, Chairperson

# EXHIBIT A

## TAX MAP KEY: (1) 2-1-017:002



# EXHIBIT B

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

October 27, 2000

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813

OAHU

LEASE PURCHASE OF THE NO. 1 CAPITOL DISTRICT  
PROPERTY (FORMER HEMMETER HEADQUARTERS)  
AND EVENTUAL SET ASIDE OF SAME TO THE  
DEPARTMENT OF ACCOUNTING AND GENERAL  
SERVICES (DAGS), HONOLULU, OAHU, TAX MAP KEY:  
2-1-17:1

STATUTE:

Sections 37D, 107-10 and 171-30, Hawaii Revised Statutes, as amended.

PROPERTY OWNER:

BIGI Corporation, a Hawaii corporation since January 18, 1990, whose business address is 250 South Hotel Street, Suite 200, Honolulu, Hawaii 96813.

FOR:

A. A lessee's interest under a Chapter 37D financing lease in the following parcels of land:

Parcel 1 being all of Lot A-2 as shown on Map 3 of Land Court Application 395, containing an area of 1,830 square feet and covered by Transfer Certificate of Title 347,622 issued to BIGI Corporation.

Parcel 2 being all of Land Court Application 547, containing an area of 6,263 square feet and covered by Transfer Certificate of Title 347,623 issued to BIGI Corporation.

Parcel 3 being all of Lot 1-A as shown on Map 3 of Land Court Application 396, containing an area of 70,267 square feet and covered by Transfer Certificate of Title 347,624 issued to BIGI Corporation.

Parcel 4 being a portion of Royal Patent 39, Land Commission Award 814 to Kepahukepau, portion of Royal Patent 57, Land Commission Award 3658 to Charlotte A. Hooper, containing an area of 5,228 square feet.

Parcel 5 being a portion of Royal Patents 48 and 4461; Land Commission Award 711 to Kaliwai, containing an area of 3,883 square feet.

ITEM D-10

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

Oct. 27, 2000. [Signature]

Parcels 1 to 5 being located at Honolulu, Oahu, Tax Map Key: 2-1-17: 1 as shown on the attached map.

- B. A lessee's interest under a Chapter 37D financing lease in a five (5)-story office building known as No. 1 Capitol District (formally the Hemmeter headquarters).
- C. Immediate title to miscellaneous furniture and equipment located on site.

AREA:

Total of 87,471 square feet, or two (2) acres, more or less.

PURPOSE:

State office space.

STATUS:

State agencies currently occupy about 75% of the building's leaseable space. The property's owner occupies the remaining 25%.

ZONING:

State Land Use Commission:	Urban and located in the Capitol Special Design District.
City & County of Honolulu CZO:	BMX-4 (Central Business mixed use)

CONSIDERATION:

Twenty-two million five hundred thousand dollars (\$22,500,000), based upon independent appraisal; mutual release of any and all possible claims arising out of the State's prior occupancy and use of four of the five floors.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

A draft environmental assessment, addressing the subject acquisition, was prepared and its notice of availability was published in the Environmental Notice. The final environmental assessment, together with a finding of no significant impacts (FONSI), was submitted to the Office of Environmental Quality Control and published in the October 23, 2000 Environmental Notice.

REMARKS:

The No. 1 Capitol District Building (formally the Hemmeter Headquarters and prior to that the Armed Forces YMCA) was built in 1928 and contains 120,000 square feet of floor area. In 1989, the building was substantially renovated as the corporate headquarters for the Hemmeter Investment Company. It is listed in both the Federal and State Historic Registers.

For the past 10 years, the State occupied 4 of the 5 floors of the building. Several State offices (including units within the Departments of Budget and Finance, Business and Economic Development and Tourism and the Attorney General) are located in the building. The State had entered into an office space lease with the owner, with an option to renew. Given the building's close proximity to other state buildings, such as the adjacent State Office Tower and the Capitol, and because the State already occupies and uses 4 of the 5 floors for State offices, and because the State was involved in lengthy negotiations with the owner over the renewal option, the Governor decided it would be in the State's best long term interest to own the premises rather than continue renting. Based on an independent appraisal, a mutually agreeable purchase price was negotiated with the property owner.

To finance this purchase, a financing lease authorized under HRS Chapter 37 D is being used. It is a financing method by which the State acquires legal title to the property over time, but may immediately take possession of and use the property, subject to the negotiated terms and conditions. The most recent significant real estate transaction using a Chapter 37D financing lease was the purchase and construction of the State Office Building on Lot 11000 in Kapolei several years ago.

The purchase price of \$22.5 million, along with other expenses for the transaction, will be raised through the issuance of certificates of participation (COPs). The transaction is expected to close in mid-December 2000, when the proceeds from the sale of COPs become available. Upon closing, the seller, BIGI Corporation, will receive the negotiated purchase price of \$22.5 million, will transfer legal title of the property to the Trustee, and will vacate the entire second floor it currently occupies. Upon closing, the State will take occupancy of the entire building and will henceforth be responsible for making periodic lease payments to the Trustee pursuant to the financing lease between the Trustee as lessor and the State (through DAGS) as lessee. The financing lease also imposes on the State, as lessee, all the other responsibilities and obligations typically assumed by the legal owner. Such obligations and responsibilities include maintaining, repairing, and providing insurance on the property. In many regards the financing lease is similar to a "triple net" lease of commercial space.

The Trustee will use the lease payments it receives from DAGS to pay the certificate holders pursuant to a Trust Agreement. The funds for such lease payments must be appropriated to DAGS each year by the Legislature. During the 2000 legislative session, by way of a budget proviso, the legislature authorized and appropriated sums to be used for such lease payments. Similar appropriations must be obtained each year to make the lease payments. The lease payment obligations are specifically structured so that the obligations are not considered to be "debt" for purposes of the State Constitution. In the event of non-payment, the Trustee retakes possession of the property and may sell or lease the property to satisfy the COP investors.

Only if and when all the lease payments are made, and if there are no defaults in any of the other obligations of the State under the financing lease, will title to the property be transferred to the State. It is anticipated that at the end of the financing lease, title to the property will be transferred to the Department of Land and Natural Resources (DLNR), and DLNR will then recommend to the Governor the set aside of the property to DAGS.

The terms of the COPs and Lease Purchase Agreement, including the amount of the lease payments that must be made each year and whether the lease will have a 20 year or 25 year duration, and the terms of the Trust Agreement have not yet been decided. The terms of the financing lease will be

dependent on market conditions at the time the COPs are sold, and the State will seek to issue the COPs upon terms that are most advantageous to the State and agreeable to the Trustee.

Although title to the property does not pass to the State immediately upon closing but only later if and when all payments contemplated by the financing lease have been made, the authorization of the Board is currently required so that the State may enter into this transaction that will eventually result in the State owning the property.

RECOMMENDATION: That the Board

- A. Authorize the Chairperson, upon consultation and advice from the Department of the Attorney General, to enter into and execute such documents as may be required under Chapter 37D to achieve the ultimate objective of the State eventually obtaining title to the property while enjoying the immediate benefits of use and occupancy of the property
- B. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject property to the Department of Accounting and General Services for State office space, contingent upon and subject to any applicable terms and conditions of a Chapter 37D financing lease, and subject further to the following:
  - 1. The standard terms and conditions of the most current executive order document form, as may be amended from time to time;
  - 2. Review and approval by the Department of the Attorney General;
  - 3. Disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by the majority vote of both, in any regular or special session next following the date of the set aside; and
  - 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the Department of Accounting and General Services to occupy and be responsible for the subject property as may be required by the terms and conditions of the financing lease.

Respectfully submitted

*Gary Martin*

GARY MARTIN  
Land Agent

*JS*

APPROVED FOR SUBMITTAL:

*Timothy E. Johns*

TIMOTHY E. JOHNS, Chairperson



DEC. 11. 2000 11:00AM

U H GENERAL COUNSEL

NO. 4518 P. 2/7



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**  
P.O. BOX 821  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

OCT 30 '2000

Ref.: LD-GM

PSF: 000D-591

TO: Mr. Presley Pang, Deputy Attorney General  
Department of the Attorney General

FROM: Dean Y. Uchida, Administrator *Dean Y. Uchida*  
DLNR, Land Division

SUBJECT: Lease Purchase of the No. 1 Capitol District Property and Eventual Set Aside to  
DAGS, Honolulu, Oahu, Tax Map Key: 2-1-17:1

We are pleased to inform you that at its October 27, 2000 meeting, under agenda item D-10 (copy attached), the Board of Land and Natural Resources approved your above referenced request.

Please let us know how we can assist you further with the subject acquisition.

Should you have any questions, please call Gary Martin at 587-0421.

Attachment

c: ODLO

# EXHIBIT C

**AMENDED**

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

October 23, 2009

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

OAHU

Consent to Refinance Certificate of Participation (COPS) for the No. 1 Capitol District State Office Building and Approve the First Amendment to the Lease Purchase Agreement and Related Documents (e.g., the Accompanying Memorandum of Amendment of Lease Purchase Agreement) between the Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, Honolulu, Oahu, Tax Map Key: (1) 2-1-17:1

Consent to Refinance Certificate of Participation (COPS) for the Kapolei State Office Building, and Approve the First Amendment to Lease Agreement and Related Documents (e.g., the Consent, Joinder and Agreement forms and the Memorandum of First Amendment to Lease Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, Kapolei, Oahu, Tax Map Key: (1) 9-1-88:5

APPLICANT:

Department of Budget and Finance on behalf of the Department of Accounting and General Services.

LEGAL REFERENCE:

Section 37D, 107-10, 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Lands situated at Honolulu, Oahu, identified by Tax Map Key: (1) 2-1-17:1 and lands situated at Kapolei, Oahu, identified by Tax Map Key: (1) 9-1-88:5, as shown on the attached map labeled Exhibit A.

*as Amended*

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

*October 23, 2009*

D-8

AREA:

2.008 acres, more or less.

7.145 acres, more or less.

TRUST LAND STATUS:

Acquired after Statehood

DHHL 30% entitlement lands pursuant to the Hawaii State

Constitution: YES \_\_\_\_ NO x

CHARACTER OF USE:

State office space.

REMARKS:

The Department of Budget and Finance (B&F) is currently pursuing refinancing opportunities for two outstanding Certificates of Participation (COPs). The COPs were issued by the State to finance the acquisition of the following buildings:

1. No. 1 Capitol District State Office Building  
\$23,140,000 Certificates of Participation, 2000 Series A

The Department of Accounting and General Services (DAGS) had entered into a lease purchase agreement for the land and building with the prior owner BIGI, whereby COPs were issued by the State to fund the acquisition of the land and improvements. BIGI Corporation assigned its fee interest in the land and building to the COP trustee and upon the full payment of the COPs by the State, the fee title to the land and improvements will transfer to the State.

2. Kapolei State Office Building  
\$54,580,000 Certificates of Participation, 1998 Series A

The Estate of James Campbell issued a ground lease to the developer, who constructed the building. The fee title to the land was deeded to the State, which then entered into a sublease with the developer for the land and improvements. The developer assigned its interest in the ground lease and the sublease to the COP trustee, who now holds title to the ground lease and is the sublessor under the sublease, but upon the full payment of the COP by the State, the fee title to the land and building will continue to be held by the State, but unencumbered by the existing ground lease and sublease.

B&F is currently in the process of refunding (refinancing) the two (2) COPs previously issued and mentioned above to take advantage of lower interest rates and generate debt service savings to the State. It is also necessary to amend the leases to revise the

existing payment schedule to correspond to the 2009 certificates of participation. Accordingly, the Board is asked to approve the aforesaid refinancing transactions, the First Amendment of Lease or Lease Purchase Agreements (as the case may be) and Related Documents (e.g., any Consent, Joinder, and Agreement, and any Memorandum of First Amendment of Lease). The respective documents are attached hereto as Exhibits.

RECOMMENDATION: That the Board:

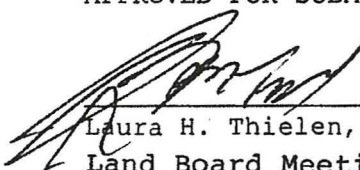
- A. Consent to the refinance of Certificate of Participation for the No. 1 Capitol District State Office Building and Approve the First Amendment to Lease Purchase Agreement and Related Documents (e.g., the accompanying Memorandum of First Amendment to Lease Purchase Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, and
- B. Consent to the refinance of Certificates of Participation for the Kapolei State Office Building and Approve the First Amendment to Lease Agreement and Related Documents (e.g., the Consent, Joinder and Agreement forms and the accompanying Memorandum of First Amendment to Lease Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, subject to the following:
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

Land Board Meeting October 23, 2009: D-8 - Approved As Amended

The Board amended the staff recommendations by including the express authorization for the First Deputy Director to execute all necessary documents in the event of the Chairperson's unavailability.

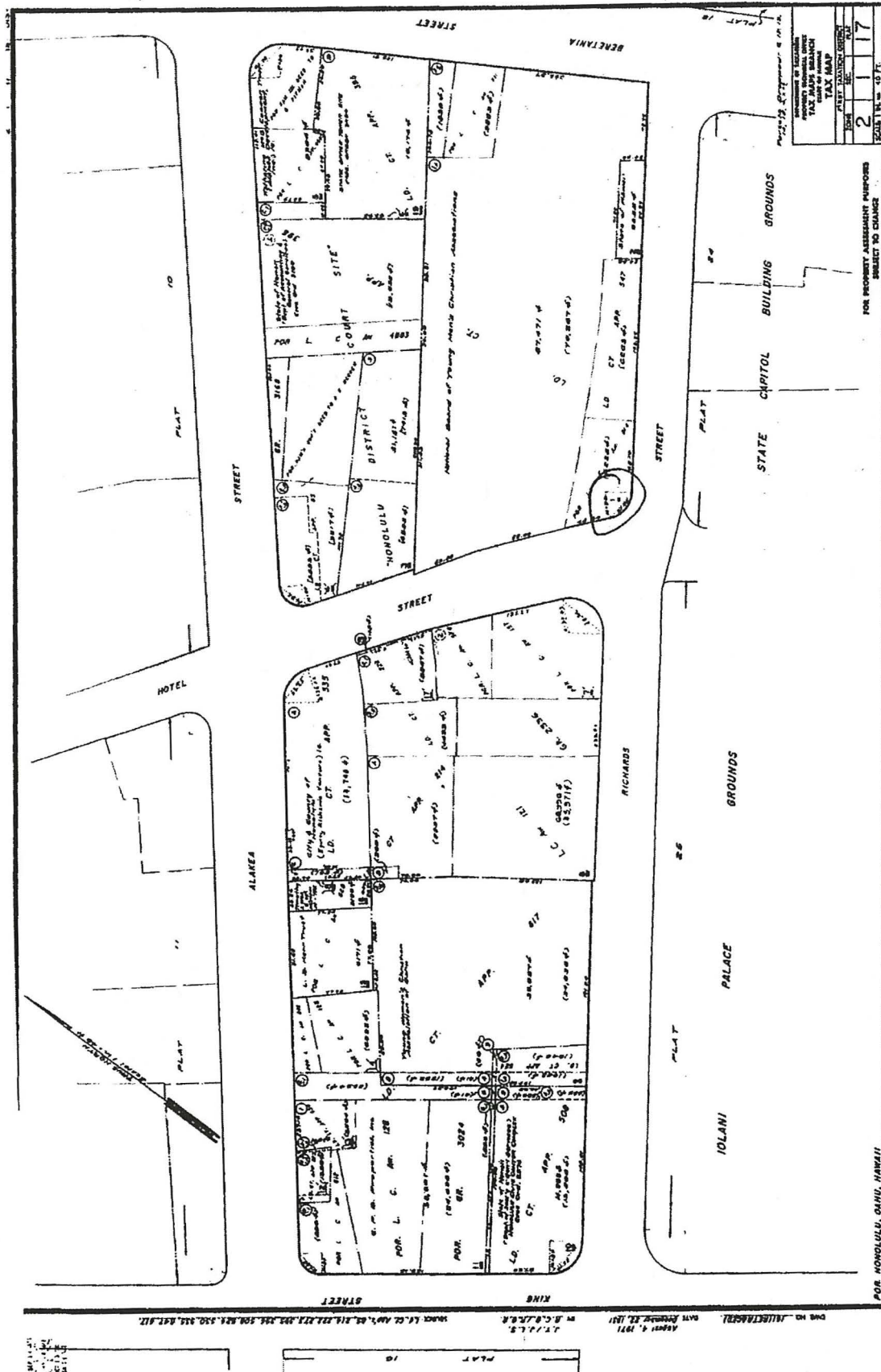


EXHIBIT "A"



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STATE OF HAWAII  
by its  
Department of Accounting and General Services

FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

"Lessor"

and

STATE OF HAWAII  
by its  
Department of Accounting and General Services

"Lessee"

dated as of November 1, 2009

covering

- (i) Lot A-2, area approximately 1,830 square feet, as shown on Map 3 filed with Land Court Application 395;
- (ii) Land shown on Map 1, filed with Land Court Application 547, containing an area of approximately 6,263 square feet;
- (iii) Lot 1-A, area approximately 70,267 square feet, as shown on Map 3 filed with Land Court Application 396;
- (iv) Portion of land covered by Royal Patent 39, Land Commission Award 814 to Kapahukepau, and a portion of Royal Patent 57, Land Commission Award 3658 to Charlotte A. Hooper and containing an area of approximately 5,228 square feet,
- (v) Portions of land covered by Royal Patents 48 and 4461, Land Commission Award 711 to Kailiwai and containing an area of approximately 3,883 square feet.

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## FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT (this "First Amendment to Lease") dated as of November 1, 2009, by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "Lessor"), whose address is 700 South Flower Street, Suite 500, Los Angeles, California 90017, and the STATE OF HAWAII, by its Department of Accounting and General Services (the "Lessee"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813;

### WITNESSETH

WHEREAS, the State and BIGI Corporation (the "Capitol District Lessor") entered into an unrecorded Lease Purchase Agreement dated as of December 1, 2000 (the "Lease"), for which a Memorandum of Lease Purchase Agreement was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-176008 and also filed in the Office of the Assistant Registrar of the State of Hawaii as Document No. 2670817 and noted on Transfer Certificate of Title No. 696,237, whereby the Capitol District Lessor leased the premises described therein (the "Project") to the State, as Lessee, in the manner and on the terms set forth therein; and

WHEREAS, under the Lease the Lessee is obligated to pay the Lease Payments to the Capitol District Lessor for the use and possession of the Project; and

WHEREAS, for the purpose of obtaining moneys for the acquisition of the Project, the Capitol District Lessor assigned and transferred to the predecessor to The Bank of New York Mellon Trust Company, N.A. (the "Prior Capitol District Trustee"), as assignee, by the terms of an Assignment Agreement and Acknowledgment dated as of December 1, 2000, between the Capitol District Lessor and the Prior Capitol District Trustee, and recorded as aforesaid as Document No. 2000-176010 and also filed as aforesaid as Document No. 2670819 and noted on the foregoing Transfer Certificate of Title (the "Assignment"), all of its rights and obligations under the Lease, including without limitation the right to receive Lease Payments; and

WHEREAS, in consideration of such assignment and certain other consideration, the predecessor to the Prior Trustee has previously executed and delivered certificates of participation (the "2000 Certificates"), pursuant to the Trust and Disbursement Agreement, dated as of December 1, 2000 (the "Prior Trust Agreement"), by and among the Lessee, the Prior Trustee, as trustee, and the Prior Trustee, as assignee, in an amount equal to the aggregate principal components of the Lease Payments due and payable under the Lease, each evidencing and representing a fractional undivided interest in such Lease Payments; and

WHEREAS, all rights, title and interest of Prior Trustee in the Lease and in the Prior Trust Agreement, including all rights to receive the Lease Payments (as defined under the Lease), have been assigned without recourse by the Prior Trustee to the BNY Western Trust Company, a state chartered trust company ("BNY") pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "BNY Assignment"), and Land Court Order No. 156225 was issued to note BNY as the successor trustee under the Prior Trust Agreement on the foregoing Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, by virtue of the BNY Assignment and the Land Court Orders referenced above, The Bank of New York Mellon Trust Company, N.A., is qualified to enter into this Lease Amendment, as Lessor; and

WHEREAS, the State has now determined that it would be beneficial to the State to refund the 2000 Certificates; and

WHEREAS, in order to finance such refunding, the State and The Bank of New York Mellon Trust Company, N.A., as current trustee (the "2009 Trustee") have determined to issue under the Prior Trust Agreement (as amended and restated by the Amended and Restated Trust Agreement dated as of November 1, 2009 (the "2009 Trust Agreement")), certificates of participation in the Lease (the "2009 Series A Certificates"), each evidencing a fractional undivided interest in the combined amount of the Lease Payments and certain other rental payments; and

WHEREAS, pursuant to Section 12.04 of the Lease and Section 6.02 of the Prior Trust Agreement, the Lease may be amended as may be mutually agreed by the Lessee and the Lessor, subject to the approval of the Director of Finance and the Attorney General of the State, for the purpose of the execution and delivery of Additional Certificates (as such term is defined under the Prior Trust Agreement); and

WHEREAS, in connection with the above referenced refunding the Lessor and the Lessee desire to amend the Lease in order to amend the original Lease Payment schedule; and;

WHEREAS, Lessor and Lessee are authorized under the Prior Trust Agreement (including the 2009 Trust Agreement) and under Constitution and laws of the State of Hawaii, including but not limited to Chapter 37D, Hawaii Revised Statutes (the "Act"), to enter into this Lease Amendment for the purposes and subject to the terms and conditions set forth herein, and the Lessee is entering into this Lease under and in compliance with the Act;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Terms not otherwise defined herein which are defined in the Lease shall have the meanings assigned to them therein.

## ARTICLE II

### AMENDMENTS TO LEASE

Section 2.01. References to Lessor under the Lease. All references to the Lessor under the Lease shall be amended to refer to The Bank of New York Mellon Trust Company, N.A.

Section 2.02. Amendments of Exhibit A of the Lease. Exhibit A of the Lease ("SCHEDULE OF LEASE PAYMENTS") is hereby amended and restated as set forth in Exhibit A attached hereto.

Section 2.03. Amendments of Section 12.11. The reference to the contact information for the Lessor and the Trustee, respectively, in Section 12.11 of the Lease shall be amended as follows:

Lessor:                   The Bank of New York Mellon Trust Company, N.A.  
700 South Flower Street, Suite 500  
Los Angeles, California 90017  
Attention: Corporate Trust Administration

Trustee:                   The Bank of New York Mellon Trust Company, N.A.  
700 South Flower Street, Suite 500  
Los Angeles, California 90017  
Attention: Corporate Trust Administration

Section 2.04. Amendments of Section 4.01. The first paragraph of Section 4.01 of the Lease is hereby amended and restated in its entirety as follows:

The Lessee shall pay or cause to be paid to the Lessor (or assigns) Lease Payments for the Project in the amounts set forth in Exhibit A hereto. Lease Payments must be deposited by the Lessee with the Trustee not later than the Business Day prior to each Lease Payment Date. Interest shall be payable on the overdue interest and principal components of the Lease Payments and on overdue prepayment premiums, if any, at the interest rate per annum allocable to the interest component of the related Lease Payment and shall be payable until such overdue principal, premium or interest, as the case may be, is paid or made available for payment. The parties hereto have agreed and determined that the Lease Payments represent the fair rental value of the Project.

## ARTICLE III

### MISCELLANEOUS

Section 3.01. Reaffirmation of Covenants and Representations in the Lease. The Lessor and Lessee hereby reaffirm the covenants and representations contained in the Lease.

Section 3.02. Execution in Counterparts. This First Amendment to Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.03. Effectiveness of Other Provisions of the Lease. Except as amended hereby, all of the other provisions of the Lease shall continue to be effective as the Lease was originally executed and delivered.

IN WITNESS WHEREOF, Lessor has executed this First Amendment to Lease in its name and Lessee has caused this First Amendment to Lease to be executed in its name, all as of the date first above written.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Lessor

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF HAWAII

By \_\_\_\_\_  
Department of Accounting and General Services

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_  
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_  
Attorney General

Approved:

BOARD OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
Its Chairperson and Member

Approved by the Board of Land and  
Natural Resources at its meeting held  
on \_\_\_\_\_, Item \_\_\_\_\_

**EXHIBIT A\***  
**AMENDED SCHEDULE OF LEASE PAYMENTS**

<b>Date</b>	<b>Principal Component</b>	<b>Interest Component</b>	<b>Annual Lease Payment</b>
5/1/2010	\$173,454	\$275,513	\$448,967.21
11/1/2010	-	336,695	-
5/1/2011	241,725	280,127	858,548.14
11/1/2011	-	339,653	-
5/1/2012	1,328,102	277,885	1,945,639.23
11/1/2012	-	311,725	-
5/1/2013	1,384,603	248,888	1,945,215.75
11/1/2013	-	282,681	-
5/1/2014	1,444,989	216,734	1,944,404.18
11/1/2014	-	246,493	-
5/1/2015	1,515,805	180,588	1,942,885.29
11/1/2015	-	212,221	-
5/1/2016	1,585,516	145,563	1,943,299.89
11/1/2016	-	172,567	-
5/1/2017	1,662,367	106,887	1,941,820.77
11/1/2017	-	128,092	-
5/1/2018	1,747,050	65,344	1,940,485.96
11/1/2018	-	73,300	-

5/1/2019	1,795,000	73,300	1,941,600.00
11/1/2019	-	37,400	-
5/1/2020	1,870,000	37,400	1,944,800.00

## **EXHIBIT B**

### **DESCRIPTION OF REAL PROPERTY**

#### **FIRST:**

All of that certain parcel of land situate on the lower or southwest side of Beretania Avenue near Alakea Street, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT A-2, area 1,830.0 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 395;

#### **-SECOND:-**

All of that certain parcel of land situate in Honolulu, City and County of Honolulu, State of Hawaii, containing an area of 6,263 square feet, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 547;

#### **-THIRD:-**

All of that certain parcel of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1-A, area 70,267 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 396;

#### **-FOURTH:-**

All of that certain parcel of land (being portion(s) of the land described in and covered by Royal Patent Number 39, Land Commission Award Number 814 to Kapahukepau and Royal Patent Number 57, Land Commission Award Number 3658 to Charlotte A. Hooper) situate, lying and being on the north corner of Hotel and Richards Streets at Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey of Towill, Shigeoka & Associates, Inc., to-wit:

Beginning at a spike at the northwest corner of this parcel of land, being also the southwest corner of Lot 1-A of Land Court Application 396 (Map 3) and on the northeast side of Hotel Street and running by azimuths measured clockwise from true South:

1.        243° 25'    58.00                    feet along Lot 1-A of  
Land Court Application 396;
2.        240° 40'    47.50                    feet along Lot 1-A of Land Court  
Application No. 396;
3.        327° 30'    49.80                    feet along Lot 1-A Land Court  
Application 396 and Land Court  
Application 547;
4.        55° 10'    68.10                    feet along the northwest side of  
Richards Street;
5.        Thence along the northerly side of Richards Street on a curve to the right with a  
radius of 25.00 feet, the chord  
azimuth and distance being: 93° 32'  
30" 31.04 feet;
6.        131° 55'    44.55                    feet along the northeast  
side of Hotel Street to  
the point of beginning  
and containing an area of  
5,228 square feet, more  
or less.

**-FIFTH:**

All of that certain parcel of land (being portion(s) of the land described in and covered by Royal Patents Numbers 48 and 4461, Land Commission Award Number 711 to Kailiwai) situate, lying and being on the southwest side of Beretania Street, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey of Towill, Shigeoka & Associates, Inc., to-wit:

Beginning at the southeast corner of this parcel of land, being also the northeast corner of Lot 1-A of Land Court Application 396 (Map 3) and on the southwest side of Beretania Street, the direct azimuth and distance from a "+" cut on concrete at the southwest corner of Beretania and Richards Streets being: 148° 39' 137.29 feet and running by azimuths measured clockwise from true South:

1.        58° 35'    85.16                    feet along Lot 1-A of  
Land Court Application 396;

- |    |          |       |   |
|----|----------|-------|---|
| 2. | 143° 40' | 46.00 | feet along Lot 1-A of<br>Land Court Application<br>396;   |
| 3. | 240° 12' | 89.20 | feet along Lot A-2 of<br>Land Court Application<br>395;   |
| 4. | 328° 39' | 43.32 | feet along the southwest<br>side of Beretania Street<br>to the point of beginning<br>and containing an area of<br>3,883 square feet, more<br>or less. |

Items First through Third above are described in Transfer Certificate of Title No. 696,237.

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ( )

State of Hawaii Department of Accounting  
and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Total No. of Pages: \_\_

Tax Map Key No.: (1) 2-1-017-001

**MEMORANDUM OF FIRST AMENDMENT TO  
LEASE PURCHASE AGREEMENT**

THIS MEMORANDUM OF FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT (this "**Memorandum**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association (the "**Lessor**"), whose address is at 700 South Flower Street, Suite 500, Los Angeles, California 90017 and the STATE OF HAWAII, by its Department of Accounting and General Services (the "**Lessee**"), whose address is at 1151 Punchbowl Street, Honolulu, Hawaii 96813.

**W I T N E S S E T H**

WHEREAS, BIGI Corporation, as lessor and Lessee as the lessee executed a Lease Purchase Agreement dated December 1, 2000 (the "**Lease**"), for which a Memorandum of Lease Purchase Agreement dated as of December 14, 2000 was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2670817 and noted on Transfer Certificate of Title 696,237 and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-176008 ("**Memorandum of Lease Agreement**"); and

WHEREAS, all right, title and interest of BIGI Corporation as lessor under the Lease was assigned without recourse to Bank of Hawaii, as trustee, pursuant to that certain Assignment Agreement dated as of December 1, 2000, filed as aforesaid as Document No.

2670819 and noted on said Transfer Certificate of Title, and also recorded as aforesaid as Document No. 2000-176010; and

WHEREAS, all rights, title and interest of Bank of Hawaii, as lessor under the Lease, including all rights to receive the Base Rental Payments and the Additional Rental Payments (each as defined under the Lease), was assigned without recourse to BNY Western Trust Company ("BNY"), pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "BNY Assignment"), and Land Court Order No. 156225 was issued to note BNY as the successor trustee on said Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, the Lessor, as the current lessor under the Lease, and the Lessee have entered into a First Amendment to Lease Purchase Agreement dated as of November 1, 2009;

NOW, THEREFORE, this Memorandum witnesseth that:

A. The Lessor and Lessee have executed that certain unrecorded First Amendment to Lease Purchase Agreement dated as of November 1, 2009 (said First Amendment to Lease Purchase Agreement is hereinafter referred to as the "**First Amendment**" and the Lease together with First Amendment is hereinafter collectively referred to as the "**Amended Lease**") The terms and conditions of the First Amendment are incorporated by reference as if herein specifically set out in full.

B. The Amended Lease constitutes a Financing Agreement under Chapter 37D of the Hawaii Revised Statutes.

C. The Amended Lease shall remain in full force and effect and shall be enforceable in accordance with its terms and is hereby ratified, confirmed and approved.

This instrument may be executed in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Each party has the right to rely upon a facsimile counterpart or electronic transmission of this instrument signed by the other party to the same extent as if such party received an original counterpart. For all purposes, including, without limitation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

IN WITNESS WHEREOF, the undersigned parties have executed this  
Memorandum of First Amendment of Lease Purchase Agreement as of the date first above  
written.

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,  
a national banking association

By: \_\_\_\_\_  
Name:  
Title:  
Lessor

STATE OF HAWAII,

By: \_\_\_\_\_  
Department of Accounting and General Services  
Lessee

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Attorney General

Approved:

BOARD OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
Its Chairperson and Member

Approved by the Board of Land and  
Natural Resources at its meeting held  
on \_\_\_\_\_, Item \_\_\_\_\_

STATE OF CALIFORNIA

)

) ss.:

COUNTY OF \_\_\_\_\_

)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_ page instrument entitled Memorandum of First Amendment to Lease Purchase Agreement, dated as of \_\_\_\_\_, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
(Print or Type Name of Notary)

\_\_\_\_\_  
(Signature of Notary)

Notary Public, State of California

My Commission Expires:

STATE OF HAWAII

)

) ss.:

CITY AND COUNTY OF HONOLULU

)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_ page instrument entitled Memorandum of First Amendment to Lease Purchase Agreement, dated as of \_\_\_\_\_, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
(Print or Type Name of Notary)

\_\_\_\_\_  
(Signature of Notary)

Notary Public, State of Hawaii  
First Circuit

My Commission Expires:

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STATE OF HAWAII  
by its  
Department of Accounting and General Services

FIRST AMENDMENT TO LEASE AGREEMENT

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

"Lessor"

and

STATE OF HAWAII  
by its  
Department of Accounting and General Services

"Lessee"

dated as of November 1, 2009

covering

Lot 11000, as shown on Map 820, filed in  
the Land Court in Application No. 1069,  
consisting of approximately 7.145 acres,  
District of Ewa, City and County of Honolulu, State of Hawaii

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## FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "First Amendment to Lease") dated as of November 1, 2009, by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "Lessor"), whose address is 700 South Flower Street, Suite 500, Los Angeles, California 90017, and the STATE OF HAWAII, by its Department of Accounting and General Services (the "Lessee"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813;

### WITNESSETH

WHEREAS, the Trustees under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual capacities ("Campbell Estate"), and KCCD LP, a Hawaii limited partnership (the "Kapolei Lessor") entered into Lot 11000 Ground Lease (the "Original Groundlease"), dated as of April 1, 1997, a Short Form Lot 11000 Groundlease of which was dated April 1, 1997 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2376563 and noted on Transfer Certificate No. 496,527, whereby Campbell Estate leased the land more particularly described in Exhibit "B" attached hereto (the "Site") and transferred certain other property rights to Kapolei Lessor on the terms and conditions set forth therein; and

WHEREAS, on July 28, 1997, by City of Kapolei Limited Warranty Deed with Covenants, Conditions, Restrictions and Encumbrances filed as aforesaid as Document No. 2399297 and noted on said Transfer Certificate of Title, Campbell Estate conveyed the Site to the State of Hawaii (the "State"); and

WHEREAS, the State and the Kapolei Lessor entered into the Amended and Restated Groundlease (the "Groundlease"), dated as of November 1, 1998, which amended and restated the Original Groundlease in its entirety, for which a Short Form Amended and Restated Ground Lease was filed as aforesaid as Document No. 2500489 and noted on said Transfer Certificate of Title; and

WHEREAS, Kapolei Lessor subleased to the Lessee, and Lessee has subleased from the Lessor, the Site, together with the Improvements pursuant to a Lease Agreement, dated as of November 1, 1998 (as amended and supplemented, the "Lease"), for which a Short Form Lease dated as of November 1, 1998 was filed as aforesaid as Document No. 2500491 and noted on said Transfer Certificate of Title; and

WHEREAS, under the Lease, the Lessee is obligated to make base rental and additional rental payments to the Kapolei Lessor for the lease of the Premises; and

WHEREAS, all rights, title and interest of Kapolei Lessor in the Groundlease and the Lease, including all rights to receive the Rental Payments, have been assigned without recourse by the Kapolei Lessor to the predecessor to The Bank of New York Mellon Trust Company, N.A. (the "Prior Trustee") pursuant to an Assignment Agreement, dated as of November 1, 1998 filed as

aforesaid as Document No. 2500493 and noted on said Transfer Certificate of Title (as amended and supplemented, the "Assignment"); and

WHEREAS, in consideration of such assignment and certain other consideration, the predecessor to the Prior Trustee has previously executed and delivered certificates of participation (the "1998 Certificates"), pursuant to the Trust Agreement, dated as of November 1, 1998 (the "Prior Trust Agreement"), by and among the Lessee, the Kapolei Lessor and the Prior Trustee, in an amount equal to the aggregate principal components of the Base Rental due and payable under the Lease, each evidencing and representing a fractional undivided interest in such Base Rental payments; and

WHEREAS, all rights, title and interest of Prior Trustee in the Groundlease, the Lease and in the Prior Trust Agreement, including all rights to receive the Base Rental Payments and the Additional Rental Payments (each as defined under the Lease), have been assigned without recourse by the Prior Trustee to the BNY Western Trust Company, ("BNY"), pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "BNY Assignment") and Land Court Order No. 155626 was issued to note BNY as the successor trustee under the Prior Trust Agreement on the foregoing Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion on the foregoing Transfer Certificate of Title; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, by virtue of the BNY Assignment the Land Court Orders referenced above, The Bank of New York Mellon Trust Company, N.A., is qualified to enter into this Lease Amendment, as Lessor; and

WHEREAS, the State has now determined that it would be beneficial to the State to refund the 1998 Certificates; and

WHEREAS, in order to finance such refunding, the State and The Bank of New York Mellon Trust Company, N.A., as the current trustee (the "2009 Trustee") have determined to issue under the Prior Trust Agreement (as amended and restated by the Amended and Restated Trust Agreement, dated as of November 1, 2009 (the "2009 Trust Agreement")), certificates of participation in the Lease (the "2009 Series A Certificates"), each evidencing a fractional undivided interest in the combined amount of the Base Rental payments and certain other rental payments; and

WHEREAS, pursuant to Section 14.04 of the Lease, the Lease may be amended as may be mutually agreed by the Lessee and the Lessor, subject to the approval of the Director of Finance and the Attorney General of the State; and

WHEREAS, pursuant to Section 6.02 of the Prior Trust Agreement, the Lessee is permitted to amend the Lease, without the Prior Trustee, for the purpose of executing Additional Certificates (as such term is defined under the Prior Trust Agreement); and

WHEREAS, in connection with the above referenced refunding the Lessor and the Lessee desire to amend the Lease in order to: (1) amend the original Base Rental payment schedule; and (2) remove references to the Certificate Reserve Fund; and

WHEREAS, Lessor and Lessee under the are authorized under Prior Trust Agreement (including the 2009 Trust Agreement) and under the Constitution and laws of the State of Hawaii, including but not limited to Chapter 37D, Hawaii Revised Statutes (the "Act"), to enter into this Lease Amendment for the purposes and subject to the terms and conditions set forth herein, and the Lessee is entering into this Lease under and in compliance with the Act;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Terms not otherwise defined herein which are defined in the Lease shall have the meanings assigned to them therein.

## ARTICLE II

### AMENDMENTS TO LEASE

Section 2.01. References to Lessor under the Lease. All references to the Lessor under the Lease shall be amended to refer to The Bank of New York Mellon Trust Company, N.A.

Section 2.02. Amendments of Exhibit A of the Lease. Exhibit A of the Lease ("SCHEDULE OF BASE RENTAL PAYMENTS") is hereby amended and restated as set forth in Exhibit A attached hereto.

Section 2.03. Amendments Relating to the Removal of References to the Certificate Reserve Fund. All references to the Certificate Reserve Fund in the Lease are hereby removed and deleted.

Section 2.04. Amendments of Section 14.01. Section 14.01 of the Lease is hereby amended and restated as follows:

Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

Lessor: The Bank of New York Mellon Trust Company, N.A.  
700 South Flower Street, Suite 500  
Los Angeles, California 90017  
Attention: Corporate Trust Administration

Lessee: State of Hawaii  
Department of Accounting and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813  
Attn: Comptroller

State of Hawaii  
Department of Budget and Finance  
250 South Hotel Street, 3<sup>rd</sup> Floor  
Honolulu, Hawaii 96813  
Attn: Director of Finance

Trustee: The Bank of New York Mellon Trust Company, N.A.  
700 South Flower Street, Suite 500  
Los Angeles, California 90017  
Attention: Corporate Trust Administration

Section 2.05. Amendments of Section 6.01(a). Section 6.01(a) of the Lease is hereby amended and restated as follows:

Lessee shall pay to Lessor as base rental payments (herein called the "Base Rental") with principal and interest components, the principal being due annually and the interest being due semiannually, in accordance with the Rental Payment Schedule attached hereto as Exhibit A and made a part hereof. Base Rental shall be calculated on an annual basis, for the twelve-month periods commencing on May 1 and ending on April 30 of each year (the "rental payment period"), and each annual Base Rental shall be divided into two interest components, due on November 1 and May 1 of each rental payment period, and one principal component, due on May 1 of each rental payment period. Base Rental payments due on May 1 and November 1 shall be payable in advance on the Business Day prior to each May 1 and November 1, respectively. Any interest or other income with respect to Base Rental payments accruing prior to their due date shall belong to Lessee and shall be returned to Lessee on May 1 and November 1 of each year or credited against the next succeeding Base Rental payment. The interest components of the Base Rental payments shall be paid by Lessee as, and constitute interest paid on, the principal components of the Base Rental payments to be paid by Lessee hereunder computed on the basis of a 360-day year composed of twelve 30-day months. Each annual payment of Base Rental shall be for the use of the Premises.

### ARTICLE III

#### MISCELLANEOUS

Section 3.01. Reaffirmation of Covenants and Representations in the Lease. The Lessor and Lessee hereby affirm the covenants and representations contained in the Lease.

Section 3.02. Execution in Counterparts. This First Amendment to Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.03. Effectiveness of Other Provisions of the Lease. Except as amended hereby, all of the other provisions of the Lease shall continue to be effective as the Lease was originally executed and delivered.

IN WITNESS WHEREOF, Lessor has executed this First Amendment to Lease in its name and Lessee has caused this First Amendment to Lease to be executed in its name, all as of the date first above written.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Lessor

\_\_\_\_\_  
By:  
Title:

STATE OF HAWAII

By \_\_\_\_\_  
Department of Accounting and General Services

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_  
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_  
Attorney General

**EXHIBIT A****AMENDED SCHEDULE OF BASE RENTAL PAYMENTS**

<b>Date*</b>	<b>Principal Component</b>	<b>Interest Component</b>	<b>Total Fiscal Year Base Rental Payments</b>
5/1/2010	\$411,546	\$653,694	\$1,065,239.46
11/1/2010	-	607,780	-
5/1/2011	573,275	664,348	1,845,401.86
11/1/2011	-	596,672	-
5/1/2012	3,146,898	658,440	4,402,010.77
11/1/2012	-	527,725	-
5/1/2013	3,285,397	590,562	4,403,684.25
11/1/2013	-	450,019	-
5/1/2014	3,440,011	515,966	4,405,995.82
11/1/2014	-	364,082	-
5/1/2015	3,609,195	429,987	4,403,264.71
11/1/2015	-	280,329	-
5/1/2016	3,779,484	346,987	4,406,800.11

11/1/2016	-	189,108	-
5/1/2017	3,962,633	254,788	4,406,529.23
11/1/2017	-	92,958	-
5/1/2018	4,162,950	155,706	4,411,614.04

\*Payable on or before each April 15th or October 15th respectively

**EXHIBIT B**

**DESCRIPTION OF REAL PROPERTY**

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 11000, area 7.145 acres, more or less, as shown on Map 820, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased:

Being the land described in Transfer Certificate of Title No. 496,527 issued to the State of Hawaii, by its Board of Land and Natural Resources and set aside for public purposes under the control and management of the Department of Accounting and General Services pursuant to Executive Order No. 3736, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 286061 and noted on said Transfer Certificate of Title No. 496,527.

## CONSENT, JOINDER AND AGREEMENT

In connection with a financing agreement described in Chapter 37D, Hawaii Revised Statutes, THE BOARD OF LAND AND NATURAL RESOURCES consents and joins in the foregoing First Amendment to Lease Agreement, dated as of November 1, 2009, by and between The Bank of New York Mellon Trust Company, N.A., as Lessor, and the State of Hawaii, by its Department of Accounting and General Services, as Lessee (together with that certain Lease Agreement dated as of November 1, 1998 as defined in said First Amendment to Lease Agreement, the "Amended Lease"), and the Board of Land and Natural Resources agrees that, in the event that the setting aside of the land described in Exhibit "B" of said Amended Lease for the use of the Department of Accounting and General Services is disapproved pursuant to Section 171-11 of the Hawaii Revised Statutes, or if for any other reason the fee simple interest in such land reverts in the Board of Land and Natural Resources, the fee simple interest in such land shall, notwithstanding such disapproval or reversion, be encumbered by the Amended Lease.

IN WITNESS WHEREOF, the Board of Land and Natural Resources has executed this Consent, Joinder and Agreement as of this \_\_\_ day of \_\_\_\_\_, 2009.

BOARD OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
Name:  
Title:

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_  
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_  
Attorney General

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ( )

State of Hawaii Department of Accounting  
and General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Total No. of Pages: \_\_\_\_

Tax Map Key No.: (1) 9-1-088-005

#### MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT

THIS MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT (this "**Memorandum**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association (the "**Lessor**"), whose address is at 700 South Flower Street, Suite 500, Los Angeles, California 90017 and the STATE OF HAWAII, by its Department of Accounting and General Services (the "**Lessee**") whose address is at 1151 Punchbowl Street, Honolulu, Hawaii 96813.

#### W I T N E S S E T H:

WHEREAS, KCCD LP, a Hawaii limited partnership, as lessor and Lessee as the lessee, executed a Lease Agreement dated as of November 1, 1998 (the "**Lease**"), for which a Short Form Lease dated as of November 1, 1998 was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2500491 and noted on Transfer Certificate of Title 496,527 (the "**Short Form Lease Agreement**"); and

WHEREAS, all right, title and interest of KCCD LP as lessor under the Lease was assigned to Bank of Hawaii, as trustee, pursuant to that certain Assignment Agreement dated as of November 1, 1998, filed as aforesaid as Document No. 2500493 and noted on Transfer Certificate of Title No. 496,527; and

WHEREAS, all right, title and interest of Bank of Hawaii as lessor under the Lease, including all rights to receive the Base Rental Payments and the Additional Rental

Payments (each as defined under the Lease), was assigned without recourse to BNY Western Trust Company, ("BNY"), pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "BNY Assignment"), and Land Court Order No. 155626 was issued to note BNY as the successor trustee on said Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, the Lessor, as the current lessor under the Lease, and the Lessee have entered into a First Amendment to Lease Agreement dated as of November 1, 2009;

NOW, THEREFORE, this Memorandum witnesseth that:

A. The Lessor and Lessee have executed that certain unrecorded First Amendment to Lease Agreement dated as of November 1, 2009 (said First Amendment to Lease Agreement is hereinafter referred to as the "**First Amendment**" and the Lease together with First Amendment is hereinafter collectively referred to as the "**Amended Lease**"). The terms and conditions of the First Amendment are incorporated by reference as if herein specifically set out in full.

B. The Amended Lease constitutes a Financing Agreement under Chapter 37D of the Hawaii Revised Statutes.

C. The Amended Lease shall remain in full force and effect and shall be enforceable in accordance with its terms and is hereby ratified, confirmed and approved.

This instrument may be executed in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Each party has the right to rely upon a facsimile counterpart or electronic transmission of this instrument signed by the other party to the same extent as if such party received an original counterpart. For all purposes, including, without limitation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

IN WITNESS WHEREOF, the undersigned parties have executed this  
Memorandum of First Amendment of Lease Agreement as of the date first above written.

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Lessor

STATE OF HAWAII,

By: \_\_\_\_\_  
Department of Accounting and General Services  
Lessee

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Attorney General

STATE OF CALIFORNIA

)

) ss.:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_ page instrument entitled Memorandum of First Amendment to Lease Agreement, dated as of \_\_\_\_\_, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
(Print or Type Name of Notary)

\_\_\_\_\_  
(Signature of Notary)

Notary Public, State of California

My Commission Expires:

STATE OF HAWAII

)

) ss.:

CITY AND COUNTY OF HONOLULU

)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_ page instrument entitled Memorandum of First Amendment to Lease Agreement, dated as of \_\_\_\_\_, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
(Print or Type Name of Notary)

\_\_\_\_\_  
(Signature of Notary)

Notary Public, State of Hawaii  
First Circuit

My Commission Expires:

### CONSENT, JOINDER AND AGREEMENT

In connection with a Financing Agreement as described in Chapter 37D of the Hawaii Revised Statutes, THE BOARD OF LAND AND NATURAL RESOURCES consents and joins in the foregoing Memorandum of First Amendment to Lease Agreement (the "Memorandum"). And the Board of Land and Natural Resources agrees that, in the event that the setting aside of the land described in Exhibit "A" of the Amended Lease (as defined in the Memorandum), for the use of the Department of Accounting and General Services is disapproved pursuant to Section 171-11 of the Hawaii Revised Statutes, or if, for any other reason, the fee simple interest in such land reverts in the Board of Land and Natural Resources, the fee simple interest of such land shall, notwithstanding such disapproval or reversion, be encumbered by the Amended Lease, by the Short Form Lease Agreement (as defined in the Memorandum), by the foregoing Memorandum, and by the Lot 11000 Ground Lease described in the Amended Lease.

IN WITNESS WHEREOF, the Board of Land and Natural Resources has executed this Consent, Joinder and Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

BOARD OF LAND AND NATURAL  
RESOURCES

By \_\_\_\_\_  
Name:  
Title:

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,  
HAWAII REVISED STATUTES:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Attorney General

STATE OF HAWAII

)

) ss.:

CITY AND COUNTY OF HONOLULU

)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_ page instrument entitled Consent, Joinder and Agreement, dated \_\_\_\_\_, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
(Print or Type Name of Notary)

\_\_\_\_\_  
(Signature of Notary)

Notary Public, State of Hawaii  
First Circuit

My Commission Expires: