

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: 19HD-039

Hawai'i

**Approve a Development Agreement for a 30-Year Extension of Lease Term, General Lease No. S-3621, Crescent City Properties, Inc., Lessee; and**

**Authorize the Chairperson to Negotiate and Execute a Lease Extension Document for a 30-Year Extension of Lease Term of General Lease No. S-3621, Crescent City Properties, Inc., Lessee; Lot 32, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:006.**

APPLICANT AND REQUEST:

Crescent City Properties, Inc., a Hawaii corporation, is requesting an extension of General Lease No. S-3621 of 30 years, commencing on February 24, 2026 and expiring on February 23, 2056 for an aggregate term of 95 years.

LEGAL REFERENCE:

Sections 171-36(a)(6), -191 and -192, Hawaii Revised Statutes (HRS), as amended, and Act 149, Session Laws of Hawaii 2018 (Act 149).

LOCATION:

Portion of Government lands of Lot 32, Kanoelehua Industrial Lots, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-049:006, as shown on the attached map labeled Exhibit A and photos labeled Exhibit A-1.

AREA:

39,000 square feet, more or less.

TRUST LAND STATUS:

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

CHARACTER OF USE:

Allowed uses under the County of Hawaii zoning code, ML-20, Limited Industrial.

TERM OF LEASE:

Original term of 55 years, commencing on February 24, 1961 and expiring on February 23, 2016. Board approved extension of 10 years commencing on February 24, 2016 and expiring on February 23, 2026.

Requested extension of 30 years commencing on February 24, 2026 and expiring on February 23, 2056.

ANNUAL RENTAL:

Current rent is \$34,100.00, due in semi-annual installments of \$17,050.00 on the 24<sup>th</sup> of February and August each year for the remaining term of the 10-year extension period.

Annual rent for the requested 30-year extension term has been determined by independent appraisal and is as follows:

For the period 02/24/2026 – 02/23/2036	\$43,607.00 per annum
For the period 02/24/2036 – 02/23/2046	\$58,604.00 per annum
For the period 02/24/2046 – 02/23/2056	\$78,759.00 per annum <sup>1</sup>

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> years of the original term. A rental reopening for the extended term was determined by an appraisal that projected rent for the 10-year extension period commencing February 24, 2016 and expiring February 23, 2026.

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<sup>1</sup>The lessee had initially proposed over a million dollars (plus contingencies) worth of improvements in connection with its extension request, and at the time planned to finance the construction of improvements. Fixed known rents throughout the extended period was a condition of financing. As such, the State's appraisal determined the fair market rents throughout the 30-year extended period. Due to current economic conditions and uncertainly, the lessee has decided to self-finance a more moderate amount (\$896,540) of improvements (still at 97% of the value of existing improvements on the premises). Nevertheless, the staff is recommending the fixed known rents for the extended period as determined above, as it reflects fair market rents.

The 30-year extension will not include rental reopenings as the annual rents for the extension periods have been determined by independent appraisal.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,” Part 1, Item 40 that states, “Leases of state land involving negligible or no expansion or change of use beyond that previously existing.” The proposed extension of a long-term lease 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.

With respect to the improvements proposed by Lessee, which include installation of a drywell, renovation of exposed structural framing on exterior eaves, replacement of gutters and flashing, replacement of roll up doors, replacement of steel wall siding, installation of south-side firewall as required by County of Hawaii building code, and removal of 4,000 square feet of asphalt within the building envelope and replace with concrete, the improvements are exempt from the preparation of an environmental assessment pursuant to General Exemption Type 3 that states:

“Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities, including but not limited to: (A) Single family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units; (B) Multi-unit structures, designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of utility easements.”

Part 1, Item 14 that states, “Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers)

and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities.”

Part 1, Item 22 that states, “Interior alterations and renovations to offices, buildings or structures that do not increase the floor area or change the maximum occupancy to include: a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems; b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations; c. renovations that will result in energy or other operational/cost savings; or d. other similar interior alterations.”

The proposed improvements are de minimis actions 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.

#### DCCA VERIFICATION:

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

#### PROPOSED IMPROVEMENTS:

The Lessee’s proposed improvements include installation of a drywell, renovation of exposed structural framing on exterior eaves, replacement of gutters and flashing, replacement of roll up doors, replacement of steel wall siding, installation of south-side firewall as required by County of Hawaii building code, and removal of 4,000 square feet of asphalt within the building envelope and replace with concrete<sup>2</sup>. A complete list of improvements is attached as Exhibit B.

The estimated cost of the proposed improvements is \$896,540. The Lessee is self-financing the improvements.

#### BACKGROUND:

General Lease No. S-3621 (GL3621) was issued to Hawaiian Grocery Stores, Ltd. pursuant to Act 4, First Special Session of 1960, which authorized the direct issuance of leases to victims of a natural disaster (tsunami). The lease was for a term of fifty-five (55) years, commencing on February 24, 1961 and expiring February 23, 2016. A condition of the direct lease was that for the first five years, the character of use be consistent with the

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<sup>2</sup> Staff has verified with the County of Hawaii, Department of Environmental Management – Wastewater Division that the subject property is connected to the County sewer system. As such, the property is in alignment with the US Environmental Protection Agency rules regarding large capacity cesspool conversion.

business being relocated, provided, however that the character of use could be changed with prior written consent of the Board. Additionally, the lease required that within 1-year of commencement the lessee construct improvements on the premises at a total cost of not less than \$25,000. A warehouse building comprising an area of some 7,680 square feet was constructed in compliance with the building requirements of the lease.

At its meeting of November 20, 1970, the Board consented to the assignment of the lease from Hawaiian Grocery Stores, Ltd. to Seair Corporation (Seair). Seair agreed, as part of the transaction, to expand the existing warehouse by an additional 10,000 square feet.

In a September 29, 1995 letter, Seair requested that the Character of Use for General Lease No. S- 3621 be changed from Wholesale Grocery to Light Industrial to allow the Lessee a greater range of use for the property. The Board approved this request at its meeting of October 27, 1995, Item F-1-b.

At its meeting of March 10, 2000, under item D-22, the Board, approved the Assignment of Lease from Seair to the current Lessee, Crescent City Properties, Inc. (CCP or Lessee).

As indicated above, the original term of this lease was for 55 years, commencing on February 24, 1961 and expiring on February 23, 2016. In July 2012, CCP requested a 10-year extension of GL3621 to amortize self-financed improvements of \$53,700.00 pursuant to Act 207, Session Laws of Hawaii 2011.<sup>3</sup> The Board approved the 10-year extension of the lease at its meeting of December 14, 2012, agenda item D-5. The improvements were completed in January 2013 and consisted of replacement of the warehouse roof and complete renovation of the restrooms.

At its meeting of July 12, 2019, agenda item D-3 (attached as Exhibit C), the Board authorized the Department of Land and Natural Resources, Land Division, to negotiate a Development Agreement for a 30-year extension of the subject lease pursuant to Act 149 Session Laws of Hawaii 2018. The appraisal to determine the annual rent was ordered and work on the development agreement began.

At that time CCP intended to increase its production and distribution of dried and fresh fish products into a larger market, including the US mainland. To accommodate this expanded market, it was necessary to increase its operational capacity. Therefore, CCP had proposed improvements of \$1,067,000 and estimated the improvements would take 24 months to complete.

The appraisal was completed on January 10, 2020 and the offer letter was sent to CCP on January 17, 2020. CCP accepted the appraised rent on April 12, 2021.

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<sup>3</sup> Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to: Extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

During the COVID-19 pandemic, CCP paused progress on the extension and revisited its business plan in light of a vastly different economic climate. CCP has now provided a revised list of improvements (see Exhibit B). The estimated costs of the revised improvements are \$896,540 with the improvements being primarily on the building and grounds as they have postponed the refrigeration upgrades for now.

#### LEASE EXTENSION:

With the Lessee's current lease set to expire on February 23, 2026, the Lessee is requesting an additional 30-year extension pursuant to Act 149, Session Laws of Hawaii 2018 (Act 149)<sup>4</sup> in order to amortize the cost of additional improvements to the property. Act 149 allows up to a 40-year extension of the original lease term for leases located in the Hilo Community Economic District (HCED) based on "substantial improvements" to the lease premises:

"Substantial improvements" means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

Act 149 requires that, prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. In determining whether to approve the development agreement, the Board shall review the plans and specifications and consider: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; and 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount.

The subject lease is located within the HCED as defined in Act 149. Lessee's proposed improvements include installation of a drywell, renovation of exposed structural framing on exterior eaves, replacement of gutters and flashing, replacement of roll up doors, replacement of steel wall siding, installation of south-side firewall as required by County of Hawaii building code, and removal of 4,000 square feet of asphalt within the building envelope and replace with concrete at an estimated cost of \$896,540 (Exhibit B). These cost estimates were acquired at the height of COVID-19 new construction market, recently indications are that the market is in a slow decline and therefore some improvements may be performed at a lesser cost. It is noted that the total final costs incurred for the stated improvements must be at least 30% (\$276,000) of the appraised value of the existing improvements.

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<sup>4</sup> Act 149 was codified as sections 171-191 to 193, Hawaii Revised Statutes.

An appraisal evaluation performed by a certified appraiser has determined that the economic life of the proposed improvements will exceed the thirty-five-plus-year period necessary to amortize the improvements. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$920,000. Lessee's proposed expenditure of \$896,540 represents 97% of the value of the existing improvements (\$920,000), and the estimated time for completion is 24 months. Lessee is seeking a 30-year extension of the lease. Accordingly, Lessee's proposed expenditure appears to justify the requested 30-year extension under Act 149.

Land Division has procured the services of an independent appraiser to review the appraisal report submitted by the Lessee relating to the value of the existing improvements expressly referenced in Act 149 in order to assure the Lessee's appraisal report and valuation is consistent with the Uniform Standards of Professional Practice (USPAP) or otherwise in line with industry standards.<sup>5</sup>

The subject parcel is located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that have been extended and are scheduled to expire within the next ten years. Most of the DLNR leases in this area were established pursuant to Act 4, First Special Session of 1960 and Act 32, Sessions Laws of Hawaii 1962 resulting from the destruction of the Hilo Bay front caused by the 1960 tsunami. Businesses that were severely impacted by the tsunami were given the opportunity to relocate to the newly created industrial area of Kanoelehua. These acts provided the lessees with an option to purchase the land within two years. Several businesses exercised this option creating an industrial area of mixed DLNR leases and fee simple properties.

The Lessee has submitted a proposed development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192(b), HRS. Land Division prepared its own version of the development agreement that has been reviewed by Lessee's counsel, a copy of which is attached as Exhibit D. The Lessee has accepted the minimum revised annual rent based on the fair market value of the lands to be developed as determined by the Board's appraiser. Upon the Board's approval of the terms and conditions of the development agreement, staff is recommending that the Chairperson be authorized to approve and execute the development agreement once it is finalized and thereafter to execute the lease extension document. As noted above, this lease was originally issued by direct negotiation and will therefore be updated to the current standard terms used by the Department of the Attorney General in the extended lease period.

There are no outstanding rental reopening issues. The Lessee is current with rent, insurance and performance bond.

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<sup>5</sup> The report from the State's appraiser is pending. However, the Lessee's proposed investment of \$896,540 would qualify the lease for an extension under Act 149 even if the existing improvements were valued much higher, up to \$2,988,466, which is probably unlikely in the Hilo industrial market (\$896,540 is 30% of \$2,988,466).

No agency comments were solicited on the request because it involves a lease extension; not a new disposition.

RECOMMENDATION:

That the Board, under the terms and conditions cited above, which are by this reference incorporated herein:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the extension of a long-term lease is a de minimis action under Section 11-200.1-16, HAR, and Type 1, Part 1, Item 40 of the Exemption List for the Department dated November 10, 2020, will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment and the requirements of Section 11-200.1-17, HAR. Similarly, the proposed improvements including installation of a drywell, renovation of exposed structural framing on exterior eaves, replacement of gutters and flashing, replacement of roll up doors, replacement of steel wall siding, installation of south-side firewall as required by County of Hawaii building code, and removal of 4,000 square feet of asphalt within the building envelope and replace with concrete are de minimis actions under Section 11-200.1-16, HAR, and General Exemption Type 3, Part 1, Items 14 and 22 will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment and the requirements of Section 11-200.1-17, HAR.
2. Determine that: 1) the development proposed is of sufficient worth and value to justify the extension of the lease; 2) the estimated time to complete the improvements is approximately 24 months from the date the development agreement is executed; and 3) the minimum revised annual rent based on the fair market value of the lands to be developed shall be as follows:

<u>Effective Date</u>	<u>Annual Lease Rent</u>
02/24/2026	\$43,607.00
02/24/2036	\$58,604.00
02/24/2046	\$78,759.00

3. Approve a development agreement for a 30-year extension of lease term in substantially the form of Exhibit D attached hereto and to authorize the Chairperson to negotiate and execute a lease extension document on General Lease No. S-3621, Crescent City Properties, Inc., pursuant to Act 149, Session Laws of Hawaii 2018 and Section 171-192, HRS, as amended, under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:

- a. The standard terms and conditions of the most current development agreement and lease extension document forms, as may be amended from time to time;
- b. The annual rent for the 30-year extension period will be fixed as previously determined by independent appraisal and cited above;
- 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,

*Candace Martin*

*KOM*

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Candace Martin  
Land Agent

APPROVED FOR SUBMITTAL:

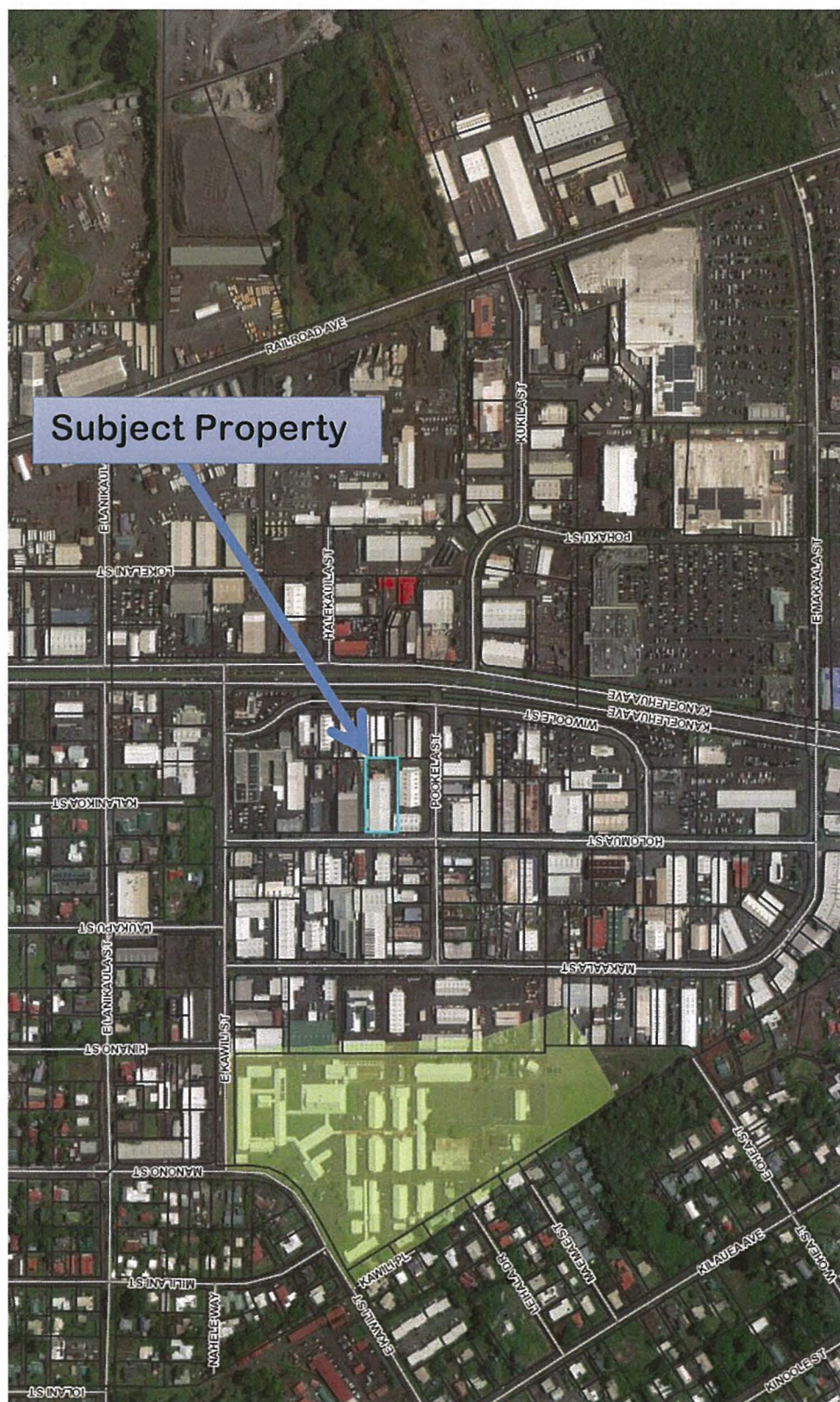
*Suzanne D. Case*

*RT*

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Suzanne D. Case, Chairperson

## EXHIBIT A



## SUBJECT PHOTOGRAPHS



Google Maps aerial of subject site outlined in red.

## Ground Photographs



Left: Holomua St. frontage facing southerly (subject at left).



Right: Facing northerly (subject at right).



Left: Site interior facing easterly (subject at center and right).



Right: Facing westerly (subject at center and left).

## EXHIBIT B

### EXHIBIT B LESSEE'S DEVELOPMENT PLAN DATED \_\_\_\_\_

1	Repair, replace and repaint rafters and exposed structural framing on exterior, replace gutters and flashings. Remove and replace steel wall siding with prefinished 24 ga panels. Remove and replace old warehouse doors.	\$	442,840.00
2	Install shallow drywell, remove approximately 4,500 sf of existing asphalt pavement, regrade for proper drainage flow to sump and replace with asphalt pavement	\$	45,800.00
3	Replace 4000 sf of old concrete and asphalt inside the warehouse, repour and replace.	\$	196,500.00
4	Installation of south-side firewall. Mauka side of building	\$	136,400.00
5	Engineered drawings	\$	30,000.00
6	Demolition of old existing offices to shell	\$	45,000.00
TOTAL		\$	896,540.00

Note: Estimated costs for all items may be subject to price fluctuations and conditions

**EXHIBIT C**

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

July 12, 2019

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

19HD-039

Hawaii

**Authorize the Department of Land and Natural Resources, Land Division, to Negotiate a Development Agreement for a 30-Year Extension of Lease Term of General Lease No. S-3621, Crescent City Properties, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:006.**

APPLICANT AND REQUEST:

Crescent City Properties, Inc., a Hawaii corporation, is requesting an extension of General Lease No. S-3621 of 30 years, commencing on February 24, 2026 and expiring on February 23, 2056 for an aggregate term of 95 years pursuant to Act 149 of Hawaii Session Laws of 2018.

LEGAL REFERENCE:

Sections 171-191 and -192, Hawaii Revised Statutes (HRS), as amended.  
Act 149, Session Laws of Hawaii 2018 (Act 149)

LOCATION:

Portion of Government lands of Lot 32, Kanoiehua Industrial Lots, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-049:006, as shown on the attached map labeled Exhibit A.

AREA:

39,000 square feet, more or less.

TRUST LAND STATUS:

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

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

July 12, 2019 GO.

CHARACTER OF USE:

Light Industrial purposes as permitted under County of Hawaii zoning code.

TERM OF LEASE:

Original term of 55 years, commencing on February 24, 1961 and expiring on February 23, 2016. Board approved<sup>1</sup> a 10-year extension, commencing on February 24, 2016 and expiring on February 23, 2026.

Requested extension of 30 years commencing on February 24, 2026 and expiring on February 23, 2056.

ANNUAL RENTAL:

Current rent is \$34,100.00, due in semi-annual installments of \$17,050.00 on the 24<sup>th</sup> of February and August each year for the remaining term of the 10-year extension period.

Annual rent for the requested 30-year extension term to be determined by independent appraisal and included in the negotiated development agreement that Staff will bring back to the Board for approval at a later date.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> years of the original term. A rental reopening for the extended term was determined by an appraisal that projected rent for the extension period commencing February 24, 2016 and expiring February 23, 2026.

Reopenings for the 30-year extension will be addressed in the negotiated development agreement.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to comply with the requirements of Act 149, including but not limited to: provide complete plans and specifications for the total development, negotiate a development agreement with department staff and return to the Board at a later date for review and approval of the development agreement and requested lease extension.

## BACKGROUND:

General Lease No. S-3621 (GL3621) was issued to Hawaiian Grocery Stores, Ltd. pursuant to Act 4, First Special Session of 1960, which authorized the direct issuance of leases to victims of natural disaster (tsunami). The lease was for a term of fifty-five (55) years, commencing on February 24, 1961 and expiring February 23, 2016. The character of use was restricted to wholesale grocery use. A warehouse building comprising an area of some 7,680 square feet was constructed in compliance with the building requirements of the lease.

At its meeting of November 20, 1970, the Board consented to the assignment of the lease from Hawaiian Grocery Stores, Ltd. to Seair Corporation. Seair agreed, as part of the transaction, to expand the existing warehouse by an additional 10,000 square feet.

In a September 29, 1995 letter, the Lessee requested that the Character of Use for General Lease No. S- 3621 be changed from Wholesale Grocery to Light Industrial to allow the Lessee a greater range of use for the property. The Board approved this request at its meeting of October 27, 1995, Item F-1-b.

At its meeting of March 10, 2000, under item D-22, the Board, approved the Assignment of Lease from Seair Corporation to the current Lessee, Crescent City Properties, Inc.

In July 2012, Crescent City Properties, Inc. (CCP) requested a 10-year extension of GL3621 to amortize self-financed improvements of \$53,700.00 pursuant to Act 207, Session Laws of Hawaii 2011.<sup>2</sup> The Board approved the 10-year extension of the lease at its meeting of December 14, 2012, agenda item D-5. The improvements were completed in January 2013 and consisted of replacement of the warehouse roof and complete renovation of the restrooms.

## EXTENSION:

CCP intends to increase its current production and distribution of dried fish products into a larger market, including the mainland US. To accommodate this expanded market, it is necessary to increase its operational capacity. Therefore, CCP is planning to make substantial improvements to the property. A detailed list of the improvements is attached as Exhibit B and the improvements are estimated to take 24 months to complete.<sup>3</sup>

The proposed improvements require an investment of at least \$1,067,445; total final cost will invariably exceed this amount due to increasing building costs and associated soft costs not included on the improvements list. CCP has been pre-qualified for a commercial real estate mortgage loan of \$1,500,000-\$2,000,000 from the Bank of Hawaii. As a condition of the loan, the bank is requesting the Lessee obtain an extension of the current lease including a known fixed annual rent for a minimum of 10 years beyond the 25-year amortization period.

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<sup>2</sup> Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to: Extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

Act 149:

CCP is requesting a 30-year extension of the lease pursuant to Act 149 in order to amortize the cost of the proposed improvements to the property. Act 149 provides the opportunity for lessees located within the Hilo Community Economic District (HCED) to acquire a lease extension of up to 40 years beyond the initial lease term provided they make “substantial improvements” to the leased premises and the length of the extended term be based on the economic life of those improvements, as determined by the board or an independent appraiser.

The subject lease is located within the HCED as defined in Act 149. Lessee’s proposed improvements include the replacement of warehouse exterior siding and roll-up doors, major renovations of interior warehouse space and remediation of on-site drainage issues at a cost in excess of \$1,067,445 (Exhibit B).

The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$920,000. Lessee’s proposed expenditure of \$1,067,445 represents 116% of the value of the existing improvements. Lessee’s proposed expenditure exceeds the required 30% under Act 149.

In order to grant an extension of lease term pursuant to Act 149, the Board must approve a development agreement proposed by the lessee to make substantial improvements to the existing improvements or to construct new substantial improvements.

Act 149 also stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine:

- 1) Whether the development proposed is of sufficient worth and value to justify the extension;
- 2) The estimated time to complete the improvements and expected date of completion; and
- 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount.

The Lessee has submitted a proposed development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192(a), HRS, as amended. Staff is requesting authority to negotiate the terms and conditions of the development agreement with Lessee and present it to the Board for approval at a later date.

Staff is also requesting authorization to contract appraisal services at Lessee’s expense to determine the minimum revised annual rent in accordance with Act 149.


The Lessee is in compliance with the terms and conditions of the lease. The Lessee is current with rent, insurance and performance bond. The current use of leased premises is in agreement with the character of use designated in the lease.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Authorize the Department of Land and Natural Resources, Land Division, to negotiate a development agreement with Crescent City Properties, Inc. for a 30-year extension of General Lease No. S-3621, covering the State-owned parcel identified by Tax Map Key: (3) 2-2-049:006 pursuant to Act 149 Session Laws of Hawaii 2018 and Section 171-192, Hawaii Revised Statutes, as amended, with the understanding that the authorization shall not be deemed to be an approval of the development proposal or lease extension at this time, as staff shall return to the Board at a later date for review and approval of development agreement and lease extension, including plans and specifications for improvements submitted by the Lessee.
2. Authorize the Department of Land and Natural Resources, Land Division, to contract appraisal services at Lessee's expense to determine the minimum revised annual rent of the subject leased premises in accordance with Act 149.

Respectfully Submitted,

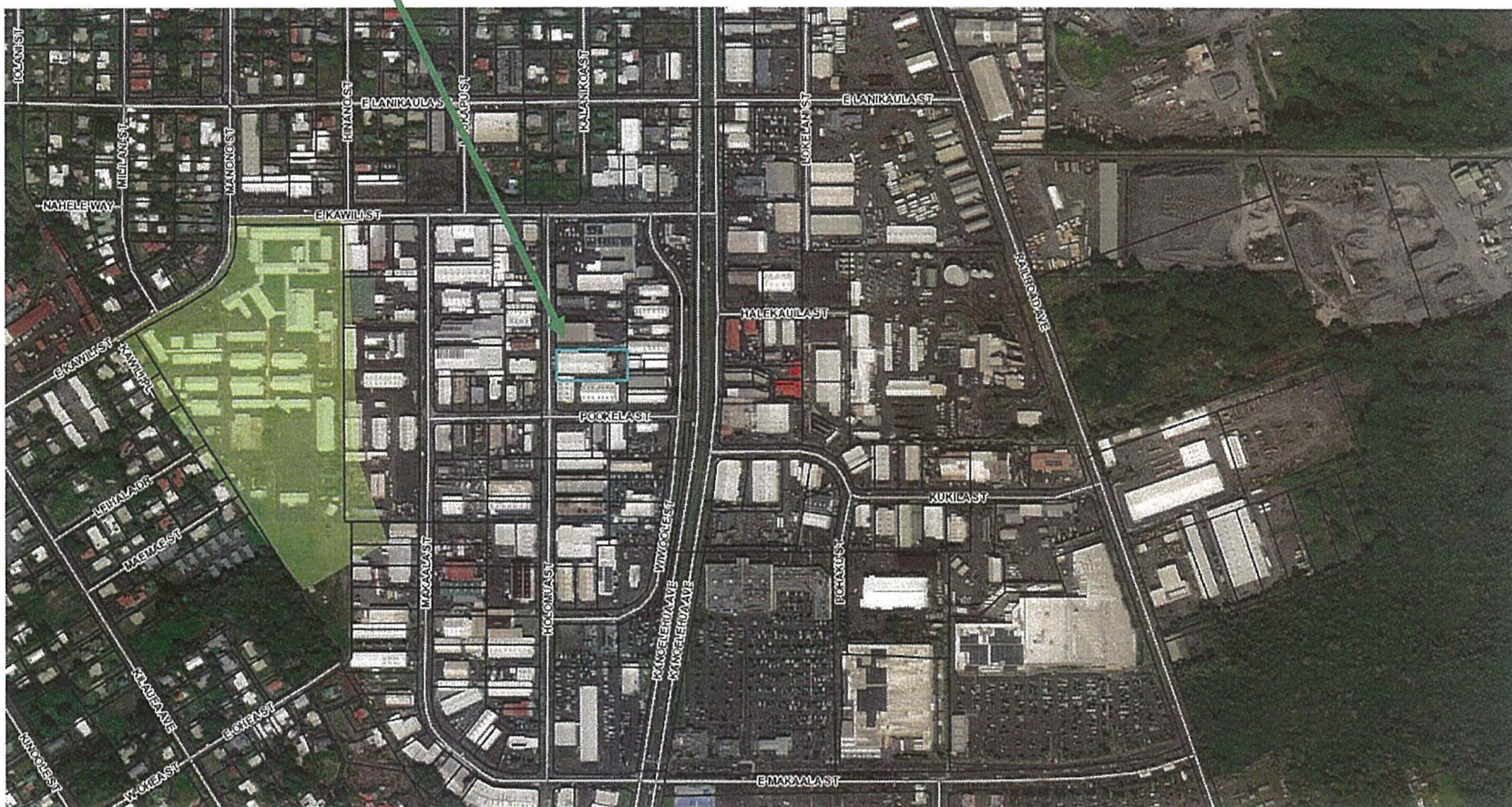
  
\_\_\_\_\_  
Candace M. Martin  
Land Agent

APPROVED FOR SUBMITTAL:

  
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Suzanne D. Case, Chairperson

## EXHIBIT A

## Subject Property



## EXHIBIT B

### Proposed Improvements by Crescent City Properties, Inc. for GL S-3621

1.	Repaint rafters and exposed structural framing on exterior	\$ 10,400
2.	Remove and replace 2 roll-up doors (\$15,000 each)	\$ 30,000
3.	Install a shallow drywell 7'9" deep by 8' in diameter with 10" thick Concrete grated inlet cover	\$ 16,000
4.	Remove approximately 4,500 sf. of existing asphalt pavement, regrade for proper drainage flow to sump and repave with 2" thick asphalt pavement.	\$ 23,000
5.	Remove 6,000 sf. of asphalt pavement in building. Demo existing offices to shell. Dispose of all waste.	\$ 32,000
6.	Construct concrete pads for 1,500 sf. of freezer space, 1,000 sf. of chiller space and 500 sf. of commercial kitchen space. Provide proper insulation, thermal break and rebar as per specs provided by owner.	\$ 72,000
7.	Remove and replace steel wall siding with pre-finished 24 ga. material Use stainless steel fasteners. Remove and re-install existing gutters.	\$ 78,400
8.	Electrical engineered drawings and electrical permits.	\$ 15,000
9.	Pad mount transformer and consolidated electrical service.	\$150,000
10.	Power and control wiring for new freezer, chill, processing, kitchen, and office additions.	\$ 65,000

#### Refrigeration Upgrades:

11.	1,500 sf. freezer room w/5" wall & ceiling panels and 2-8'x10' auto sliding doors. LED lighting & air conditioning.	\$245,147
12.	1,000 sf. chill/processing room w/4" wall & ceiling panels, 3-6'x8' manual sliding doors and 2-2'x5' windows. LED lighting & air conditioning.	\$123,486
13.	500 sf. packing room w/4" wall & ceiling panels, 2-6'x8' manual sliding doors and 2-4'x3' windows. LED lighting & air conditioning.	\$ 74,490
14.	500 sf. office/lab w/4" wall & ceiling panels, 2-6'x8' manual sliding doors and 2-4'x3' windows. LED lighting & air conditioning.	\$ 68,168
15.	500 sf. R&D cooler room w/bi-swing "Chase door", 4" wall & ceiling panels, 2-4'x3' windows and 2-6'x8' manual slider doors. LED lighting & air conditioning.	\$ 64,354

TOTAL	\$1,067,445
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**DEVELOPMENT AGREEMENT**

**FOR**

**CRESCENT CITY PROPERTIES, INC.**

\* \* \*

**Department of Land and Natural Resources  
Land Division**

**State of Hawaii**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and dated effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”), by and between the **STATE OF HAWAII**, by its Chairperson of the Board of Land and Natural Resources (“**Chairperson**”) by the authority granted by the Board of Land and Natural Resources (“**Board**”) at its meetings held on July 12, 2019, Item D-2, and December 9, 2022 , Item D- , for the Department of Land and Natural Resources, Land Division, whose principal place of business and post office address is 1151 Punchbowl Street, Room 220, Honolulu, Hawaii 96813 (“**State**”), and **CRESCENT CITY PROPERTIES, INC.**, a Hawaii corporation, whose business address is 124 Makaala Street, Hilo, Hawaii 96720 (“**Lessee**”).

### **RECITALS:**

- A. The State owns in fee simple that certain parcel of land, a portion of government lands, situated at Kanoolehua Industrial Lots, Waiakea, South Hilo, Hawaii, shown as the shaded area on **Exhibit A** attached hereto, incorporated herein and made a part hereof. The parcel consists of approximately 39,000 square feet and is identified by Tax Map Key No. (3) 2-2-049:006 (“**Subject Property**”).
- B. The parcel is currently leased to Lessee under General Lease No. S-3621, as amended, for a term of fifty-five (55) years from February 24, 1961 to February 23, 2016, which was extended for ten (10) years through February 23, 2026 (“**Lease**”).
- C. Session Laws of Hawaii 2018 ("**Act 149**"), and Sections 171-191 and 171-192(a), Hawaii Revised Statutes ("**HRS**"), as amended, create the Hilo community economic district which includes the Subject Property. The purpose for creating the district was to allow the State to “facilitate efficient and effective improvement, and economic opportunity, in the area for lessees who commit to making substantial improvements to the existing improvements or constructing new substantial improvements”
- D. Act 149 authorizes the Board to extend the term of leases for public lands within the Hilo community economic district for lessees who commit to substantial improvements to the existing improvements or to new substantial improvements so long as the length of the extension granted does not extend the original lease term by more than forty (40) years, and/or to extend the terms of such leases to the extent needed to qualify the lessee for loans or to amortize the cost of substantial improvements to the premises paid for by the lessee without institutional financing.
- E. Act 149 allows the Lessee to present a development agreement to the Board for its approval showing the renovations, rehabilitation, reconstruction or construction for off and on-site improvements that would allow the Lessee to qualify for a lease extension under this act, which must be “substantial improvements”. Substantial improvements are renovations, rehabilitation, reconstruction, or

construction with a total cost which equals or exceeds 30% of the "Market Value" of the existing improvements.

- F. The development agreement and plans and specifications therein are presented to the Board as evidence of the planned substantial improvements along with the amortization Lessee needs to complete those improvements to allow the Board to approve the development agreement and lease extension. This approval is based upon the following statutory considerations, each of which are satisfied by the exhibits referred to below:
1. Whether the development proposed in the development agreement is of sufficient worth and value to justify the extension of the lease;
    - a. Attached hereto as Exhibit B is an appraisal showing the existing leasehold value of the improvements, and Exhibit B also shows the cost proposals for the development work, which proposals estimate the cost of the planned substantial improvements.
  2. The estimated period of time to complete the improvements and expected date of completion of the improvements; and
    - a. Attached as Exhibit B is the contractor's estimate for completion of the project.
  3. The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the board, and the percentage of rent where gross receipts exceed a specified amount.
- G. A summary appraisal report prepared for the Lessee determined the market value of the leasehold improvements on the Subject Property to be \$920,000.00 as of November 13, 2018. Thirty percent of this amount is \$276,000.00.
- H. Lessee has requested that the term of the lease be extended to February 23, 2056, is planning to make additional improvements to the land and existing improvements to exceed the minimum required for substantial improvements, as the total cost of Lessee's improvements will be approximately \$896,540.00.
- I. The Development Agreement sets forth the terms and conditions that Lessee must satisfy and successfully perform in order for the requested lease extension to be issued, and for Lessee to retain the benefit of the requested extension of the term of the Lease by the State for the Subject Property pursuant to Act 149.
- J. On July 12, 2019, under Agenda Item D-3, the Board authorized Land Division to negotiate with the Lessee, a Development Agreement for a thirty (30) year extension of General Lease No. S-3621 pursuant to Act 149.

## AGREEMENT:

In consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, the State and Lessee hereby mutually agree as follows:

1. Term. The term of this Agreement shall commence on the Effective Date and terminate on the Completion Date as defined in Paragraph 8 herein, unless terminated sooner pursuant to the terms of this Agreement.

2. Continuation of the Payment of Lease Rental. Lessee shall continue to pay to the State, throughout the term of this Agreement, all rent and other charges due by Lessee under the Lease pursuant to the terms and conditions of the Lease. Upon the execution of the instrument extending the Lease (the **"Extended Lease"**), Lessee shall pay to the State the Revised Annual Rent as defined in Paragraph 3.A.3) herein, and all other rent and other charges due by Lessee under the Extended Lease pursuant to its terms and conditions.

3. Development Plan.

A. Pursuant to Act 149, prior to entering into a development agreement, Lessee prepared and submitted to the Board the plans and specifications of its proposed development plan for the substantial upgrades to the existing improvements on the Subject Property dated \_\_\_\_\_, a copy of which is attached hereto as **Exhibit B** incorporated herein and made a part hereof (such plans and specifications are collectively referred to as the **"Development Plan"**). All such plans and specifications of the Development Plan shall meet the requirements of and be in full compliance with this Agreement and all applicable municipal, county, state and federal regulations, rules, codes and ordinances. The Board reviewed the Development Plan at its meeting held on \_\_\_\_\_, 2022, Item D-\_\_, and determined that:

(i) The Development Plan proposed in this Agreement is of sufficient worth and value to justify the extension of the term of the Lease to February 23, 2056;

(ii) The estimated period of time to complete the Development Plan shall be twenty-four (24) months, which is reasonable;

(iii) The minimum revised annual rent to be paid by Lessee shall be based on the fair market value of the lands comprising the Subject Property to be developed, as agreed to by the parties, as the annual rent for the period from 2026-2036 would be set at \$43,607.00, rent for the period from 2036-2046 would be set at \$58,604.00, and rent for the period from 2046-2056 would be set at \$78,759.00(**"Revised Annual Rent"**); and,

(iv) The economic life of the improvements which are included in the Development Plan is in excess of February 23, 2056;

B. The State granted final approval of the Development Plan and this Agreement at its meeting held on \_\_\_\_\_, 2022, Item D-\_\_.

C. Lessee shall have submitted evidence reasonably satisfactory to the Chairperson that Lessee has adequate funding and/or financing to fully develop the Subject Property in accordance with the approved Development Plan.

D. Notwithstanding anything contained in this Agreement to the contrary, no such final approval of the Development Plan by the State shall be deemed a warranty or other representation on its part that (1) Lessee will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Lessee to develop the Subject Property in accordance with the approved Development Plan; or (2) such approved Development Plan by the State and the plans and specifications of substantial improvements to the existing improvements on the Subject Property described therein are legal or structurally safe or sound.

4. Condition of the Subject Property. The State makes no representations regarding the condition or suitability of the Subject Property and of the existing structures and improvements at the Subject Property for the approved Development Plan. Lessee shall, at its sole cost and expense, be responsible for conducting its own investigations and due diligence regarding the Subject Property and the existing structures and improvements at the Subject Property, and any site work necessary to implement the approved Development Agreement, including but not limited to the removal of hazardous materials, if any. Lessee acknowledges and agrees that it assumes all risks of development at the Subject Property.

5. Construction Period. Lessee shall have twenty-four (24) months from the Effective Date to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan (“**Construction Period**”).

Lessee shall, at Lessee’s sole cost and expense, expeditiously and diligently seek to obtain all necessary and appropriate permits and/or other regulatory approvals from the Federal Government, State of Hawaii (including the State Legislature if applicable), and/or County of Hawaii (“**County**”) so as to enable Lessee to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan. Lessee shall use diligent and all commercially reasonable efforts to obtain all required permits and/or other regulatory approvals from the Federal Government, State of Hawaii and/or County.

6. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous material in completing the approved Development Plan at the Subject Property, except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Subject Property any such materials except to use in the ordinary course of Lessee’s business, and then only after written notice is given to the State of the identity of such materials and upon the State’s consent, which consent may be withheld at the State’s sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the Lessee, then the Lessee shall be responsible for the

reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at the State's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the Subject Property placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the Subject Property occurring while Lessee is in possession, or elsewhere if caused by the Lessee or persons acting under the Lessee. These covenants shall survive the expiration or earlier termination of this Agreement.

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

7. Bonds. Lessee shall not commence construction of the improvements until Lessee has filed with the State sufficient bonds conditioned upon the full and faithful performance of all the terms and conditions of this Agreement, including a completion bond for the fully, faithful and timely completion of this Agreement, free from all liens and claims, including the completion of the substantial improvements to described in this Agreement, and a labor and materialmen's bond in the amount of \$896,540.00, in such form and upon such terms and conditions as may be approved by the State. The Lessee shall, at its own cost and expense, within fifteen (15) days from the Effective Date of this Agreement, procure and deposit with the State and thereafter keep in full force and effect during the term of this Agreement, such bonds acceptable to the State in the amount of \$896,540.00 as aforesaid, which bonds shall name the State as obligee, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions and covenants of this Agreement, including, but not limited to, the completion of the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property on or before the date of completion, free from all liens and claims, pursuant to the approved Development Plan. Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property incorporated herein this Agreement. These bonds shall provide that in case of a breach or default of any of the terms of this Agreement, covenants, conditions and agreements of such bonds, the full amounts payable pursuant to the terms and conditions of such bonds shall be paid to the State as liquidated and ascertained damages and not as a penalty.

8. Completion of Construction; Inspection. Upon Lessee's completion of the substantial improvements on the Subject Property in accordance with the approved Development Plan, Lessee shall provide written notice to the State acknowledging and confirming the same. Representatives of the State and Lessee shall then conduct a final inspection and walk through of the Subject Property within fourteen (14) days of such written notice, and a "punchlist" shall be mutually prepared and agreed upon by representatives of the State and Lessee within seven (7)

days of such inspection and walk through of the Subject Property. Such punchlist shall itemize any areas of construction that were not in accordance with the approved Development Plan, or any unauthorized construction or work not acceptable to the State or any other governmental agency having jurisdiction over such work. Lessee, at Lessee's sole cost and expense, shall immediately repair all deficiencies identified as potential safety hazards on the punchlist, and all other deficiencies on the punch list shall be remedied, or the work to remedy has commenced if a remedy may not reasonably be completed within the timeframe specified herein, within fourteen (14) days of the preparation of the same.

If the State is satisfied that completion of the substantial improvements to the existing improvements on the Subject Property has been performed in accordance with the approved Development Plan by Lessee, including any and all punch list items, and forty-five (45) days have elapsed after the filing and publication of the Notice of Final or Substantial Completion by Lessee without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such substantial improvements, being filed against the Subject Property, then the State shall confirm and notify Lessee of the same in writing ("**Completion Date**"), at which time Lessee shall have the right to terminate the bonds posted by Lessee pursuant to Paragraph 7 hereof.

9. Justification of Sureties. Any bonds required by this Agreement shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two (2) personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, HRS; 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 State security in certified checks, certificates of deposit (payable on demand or after a period the State may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the State a deed or deeds of trust of real property, all of a character which is satisfactory to State and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the State shall be determined by the State, and that the Lessee may, with the approval of the State, exchange other securities or money for any of the deposited securities if in the judgment of the State 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 State and that until this consent is granted, which shall be discretionary with the State, no surety shall be released or relieved from any obligation, except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove.

10. Waiver, Modification, Reimposition of Bond and Liability Insurance Provisions. Upon substantial completion of the improvements contemplated herein and after forty-five (45) days after the filing and publication of the Notice of Final or Substantial Completion by Lessee without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such substantial improvements, being filed against the Subject Property, and upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this Agreement

on its part to be observed or performed, the State at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove, the State reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this Agreement.

11. Modifications to the Development Plan. Lessee shall be entitled to make changes or modifications to the approved Development Plan as may be required to address and satisfy any comments made or issues raised by the appropriate agencies of the Federal Government, State of Hawaii and/or County without the further consent or approval by the State, provided that: (a) Lessee provides advance written notice to the State of such changes or modifications, including a reasonably specific explanation as to why such changes or modifications are being undertaken and their anticipated effect; and (b) such changes or modifications: (i) do not materially alter or change the Development Plan as approved by the State; (ii) do not reduce the rents and all other charges to be paid by Lessee under the Lease or the Extended Lease; (iii) do not provide for uses that are not permitted by applicable laws or ordinances; or (iv) do not adversely affect or delay the Construction Period for more than one hundred and eighty (180) days.

In addition, the State recognizes that from time to time the approved Development Plan may require changes or modifications initiated by Lessee. Lessee may make any such changes or modifications to said approved Development Plan with the prior written consent of the State, which consent shall not be unreasonably withheld, provided that such changes or modifications: (a) do not materially alter or change the Development Plan as approved by the State; (b) do not reduce the rents and all other charges to be paid by Lessee under the Lease or Extended Lease; (c) do not provide for uses that are not permitted by applicable laws or ordinances; or (d) do not adversely affect or delay the Construction Period for more than one hundred and eighty (180) days.

12. Agreement to Issue Extension of Term of Lease. Upon execution of this Agreement, the State will request the Department of the Attorney General to prepare the Extended Lease. Pursuant to Act 149, the Extended Lease shall reflect an extension term of thirty (30) years. The Extended Lease will cover the aggregate extended term between February 24, 2026 through February 23, 2056, and will provide that in the event that the Lessee fails to successfully perform, timely satisfy or fully comply with any of the terms and conditions of this Agreement and/or approved Development Plan, the Extended Lease term will be rescinded and the Lease, together with its current termination date of February 23, 2026, will be reinstated. The State and Lessee will promptly sign the Extended Lease when the form thereof is approved by the Department of the Attorney General and Lessee.

13. Default; State's Right to Terminate Agreement and/or Rescind Lease Extension. The State may, at its option and in its sole and absolute discretion, upon written notice to Lessee without prejudice to any other remedy or right of action, terminate this Agreement and/or rescind the Extended Lease at any time for any one of the following reasons:

A. If Lessee fails to pay rent or any part thereof or any other charge, payment or amount it is obligated to pay or that is due by Lessee under the Lease or the Extended Lease, and this failure continues for a period of more than thirty (30) days after delivery by the State of a written notice of such breach or default and demand for cure, by personal service, registered mail or certified mail to Lessee that the same is past due;

B. If Lessee fails to observe or perform any of the material covenants, terms and conditions contained in this Agreement, including but not limited to, those listed in subparagraphs (i) through (iv) herein, the Lease or the Extended Lease on the Lessee's part to be observed and performed, and such breach or default continues for a period of more than sixty (60) days after delivery by the State of a written notice of such breach or default and demand for cure, by personal service, registered mail or certified mail to Lessee of such breach or default, or if such breach or default in observance and performance of such other covenants cannot reasonably be cured within said sixty (60)-day period, then such longer time as may be required, provided that Lessee shall within said period commence such cure and thereafter diligently prosecute the same to completion within sixty (60) days thereafter;

(i) If Lessee fails to obtain any and all Federal Government, State of Hawaii (including the State Legislature if applicable), and County permits and approvals required and necessary for the completion of the approved Development Plan;

(ii) If Lessee becomes bankrupt or insolvent, or seeks protection under any provision of any bankruptcy or insolvency law or any similar law providing for the relief of debtors, or abandons the project contemplated under the approved Development Plan, or if any assignment is made of Lessee's rights hereunder for the benefit of creditors;

(iii) If the Subject Property or any part of the Subject Property, appurtenances or improvements are used, or intended to be used in any manner to commit or to facilitate the commission of a crime; or

(iv) If the Lessee is not in compliance with Section 171-192, HRS.

Any default under this Agreement, the Lease, or Extended Lease by the Lessee shall be cause by the State to terminate this Agreement and rescind the Extended Lease, and the State shall have all other rights and remedies provided herein, in the Lease or the Extended Lease, as applicable, or as otherwise provided by law with respect to a default by the Lessee under this Agreement, the Lease or Extended Lease. Provided further, a default under this Agreement shall cause the Extended Lease to be void ab initio.

Upon any early termination by the State under this Agreement, this Agreement shall terminate on the date as provided for in the State's written notice and shall become null and void except as to any provisions which expressly survive termination in this Agreement. The Extended Lease shall be rescinded and Lessee shall not be entitled to an extension of the term of the Lease for the Subject Property pursuant to Act 149. Upon the effective date of termination and without waiving any other remedies to which it may be entitled, the State shall be entitled to: (1) prosecute any claim against Lessee for fees, costs or other payments or charges that accrued prior to the effective date of termination, including the interest thereon; and (2) assert any claim

that it may have against Lessee for any damages, costs, or expenses, suffered or incurred by the State, which obligations shall survive termination of this Agreement, the Lease and/or Extended Lease.

14. Non-Waiver. The waiver by the State of any breach by the Lessee of any term, covenant, or condition of this Agreement or the Lease, nor of the State's right of re-entry for breach of covenant, nor of the State's right to declare and enforce a forfeiture for any breach, nor of the failure of the State to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

15. Liens. Lessee will not commit or suffer any act or neglect whereby the Subject Property or any improvements thereon or the estate or interest of the State therein shall at any time during the term of this Agreement become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will indemnify, defend and hold the State harmless from and against all loss, cost or expense with respect thereto (including reasonable attorney's fees). If any lien for work, labor, services or materials done for or supplied to the Subject Property by, on behalf of, or through Lessee is filed against the Subject Property, Lessee shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit, bond or other reasonably satisfactory alternative approved by the State, as the case may be. The foregoing covenants of Lessee shall survive expiration or any early termination of this Agreement.

16. Expenses to be Paid by Lessee. Pursuant to Act 149, Lessee shall pay all costs and expenses incurred by the State in connection with the processing, analyzing and negotiating of any request for a lease term extension and document, and the development agreement.

17. Observance of Laws, Ordinances and Regulations. Each party hereto, and their respective officers, agents, assigns, employees, consultants and/or contractors, or persons acting for or on its behalf, shall at all times observe and comply with all applicable laws, ordinances, rules and regulations of the federal, state, county and municipal governments, now in force or which may be in force.

18. Archaeology; Historic Preservation. Lessee, including any agent or contractor, upon encountering any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human remains, or any historic properties or burials, on the Subject Property, will immediately stop all work and contact the State DLNR Historic Preservation Division in compliance with Chapter 6E, HRS.

19. Recordation. This Agreement shall not be recorded. However, upon request by either the State or Lessee, a short form memorandum of this Agreement shall be prepared by the State and shall be duly executed and acknowledged in proper form and may be placed of record so as to give public notice as to the existence of this Agreement.

20. Notices. Any notice or demand to the State or Lessee provided for or permitted by this Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail,

return receipt requested, postage prepaid, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally within the respective County as applicable, the State or to any officer of Lessee, or (c) sent by facsimile transmission (herein "Fax") to the Fax number, if any, of such party as specified herein or such other Fax number designated by such party in writing to the other. Any such written notice shall be deemed conclusively to have been received at the time of such personal delivery, or receipt of Fax, or at 4:00 p.m. on the third business day after being deposited with the United States mail as aforesaid, as follows:

If to the State: Board and Department of Land and Natural Resources  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Attention: Chairperson  
Fax No.: (808) 587-0390

And a copy to: Department of the Attorney General  
Attention: Land/Transportation Division  
Kekuanaoa Building  
465 South King Street, Suite 300  
Honolulu, Hawaii 96813  
Fax No.: (808) 587-2999

If to Lessee: Crescent City Properties, Inc.  
124 Makaala Street  
Hilo, Hawaii 96720  
Attention: Kerry Umamoto  
Fax No.: (808) 934-8783

And a copy to: Katherine A. Garson  
Carlsmith Ball LLP  
121 Waianuenue Avenue  
Hilo, Hawaii 96720  
Fax No.: (808) 935-7975

21. Status Reports; Lessee Cooperation. Lessee acknowledges that the State's staff may be required to periodically report to the Board during the term of this Agreement on the status of Lessee's progress of the approved Development Plan incorporated in this Agreement. Lessee agrees to reasonably assist and meet with the State's staff in making such reports, including without limitation, upon commercially reasonable advance written notice, having a representative available to answer questions at any meetings of the Board at which such reports are given, providing information that State's staff reasonably requests for the purposes of making such reports, and being available to meet with the State's staff prior to the time such reports are made.

22. Costs and Attorney's Fees. Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants, terms and conditions of this Agreement, including, but not limited to, recovering possession of the Subject Property, or in the collection of delinquent fees, taxes, assessments, and any and all other amounts or charges. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the State, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.

23. Construction and Amendment. This Agreement has been negotiated extensively by Lessee and the State with and upon the advice of their respective counsel, all of whom have participated in the drafting hereof. Consequently, the usual rule of construction shall not be applicable, which provides that the document is to be interpreted against the interests of the party who has primarily drafted the language in an agreement. No amendment or modification of this Agreement or any Exhibit attached hereto shall be effective unless incorporated in a written instrument executed by and between the State and Lessee; provided however, this Agreement may only be amended or modified with the approval of the Chairperson. The State and Lessee agree to execute such other documents and instruments as may be reasonably requested by the other party and as may be necessary to effectuate the terms and conditions of this Agreement.

24. Governing Law. This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii.

25. Ratification. To the extent of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall govern and control to the extent only where there is any conflict or inconsistency with regard to the terms and conditions that Lessee must satisfy and successfully perform in order for it to be issued an extension of the term of the Lease by the State for the Subject Property pursuant to Act 149.

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

27. Partial Invalidity. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect which is not material to the transactions contemplated hereunder, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

28. Assignment. Any and all rights under this Agreement granted to Lessee may not be sold, assigned, conveyed or transferred in any manner by Lessee to any other person or entity. Notwithstanding the foregoing, however, Lessee may assign this entire Agreement and the development rights provided for herein to an institutional lender or lenders providing financing for the development of all or any portion of the Subject Property as security for the repayment of such loan or loans, with the prior written consent of the State.

29. State's Right to Assign. It is specifically understood and agreed that the State (through the Board) may convey or otherwise transfer the Subject Property subject to the terms and conditions of this Agreement, and assign this entire Agreement (including, but not limited to the assignment of any lease issued or to be issued under this Agreement) to any other department or agency of the State of Hawaii, subject to such department or agency affirmatively agreeing to accept such Subject Property subject to the terms and conditions of this Agreement and assuming all undertakings and obligations under this Agreement and/or the extension of the term of the Lease issued or to be issued under this Agreement. Upon any such assignment, Lessee agrees to attorn to the assignee on the terms and conditions of this Agreement, the lease, or any other lease that is part of this Agreement.

30. Development Rights. Upon the expiration or any early termination of this Agreement by the State for whatever reason, all development rights, permits, approvals, plans, specifications, etc. prepared by or for Lessee in connection with Lessee's efforts relating to the proposed development and improvements to be constructed at the Subject Property or under this Agreement shall, to the extent owned by and/or assignable by Lessee, vest with and become a part of the Subject Property of the State. At the request of the State, Lessee shall do all things reasonably necessary to assign to the State, all such development rights, permits, approvals, plans, specifications, etc.

31. DLNR. Notwithstanding anything herein to the contrary, it is specifically understood and agreed by the parties that: (a) the "State" as used herein means the Department of Land and Natural Resources, State of Hawaii, and the "Chairperson" as used herein means the Chairperson of the Board of Land and Natural Resources; (b) whenever action is taken, or required to be taken by the "State" under this Agreement (e.g., approve, disapprove, consent or otherwise), it shall be deemed to be an act of only the Board of Land and Natural Resources, and shall not be construed to be the act of any other department or agency of the State of Hawaii. Lessee acknowledges and accepts the responsibility for obtaining all entitlements and governmental approvals from the other applicable governing boards, agencies and departments of the State, County and Federal Government.

32. No Third-Party Beneficiaries. No third-party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

33. Nondiscrimination. The use of the Subject Property shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or a physical handicap.

34. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

35. Time is of the Essence. Time is of the essence in all provisions of this Agreement.

36. Exhibits. The following exhibits are attached to this Agreement and deemed incorporated herein this Agreement by reference:

Exhibit A: Map of Subject Property

Exhibit B: Lessee's Development Plan dated \_\_\_\_\_.

[THE NEXT PAGE IS THE SIGNATURE PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Approved and Executed by the Chairperson  
pursuant to authority granted by the Board  
of Land and Natural Resources at its  
meetings held on December 9, 2022

**STATE OF HAWAII**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_

Deputy Attorney General

Dated: \_\_\_\_\_

**CRESCENT CITY PROPERTIES, INC.**  
a Hawaii corporation

By \_\_\_\_\_

Name: \_\_\_\_\_

Title:

Lessee

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

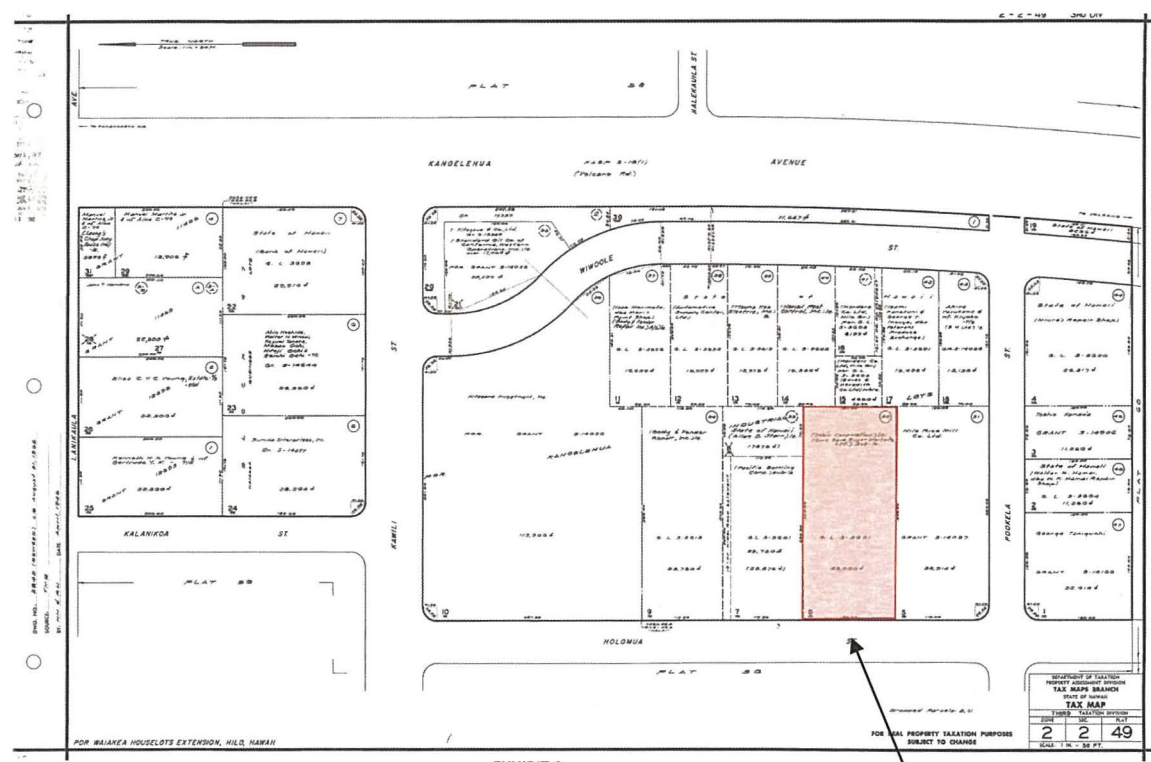
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of **CRESCENT CITY PROPERTIES, INC.** a Hawaii corporation, and that the foregoing instrument was signed in behalf of said company by authority of its \_\_\_\_\_, and the said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said company.

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

EXHIBIT A

TMK: (3) 2-2-049:006



SUBJECT PROPERTY

**EXHIBIT B**  
**LESSEE'S DEVELOPMENT PLAN DATED \_\_\_\_\_**

1	Repair, replace and repaint rafters and exposed structural framing on exterior, replace gutters and flashings. Remove and replace steel wall siding with prefinished 24 ga panels. Remove and replace old warehouse doors.	\$	442,840.00
2	Install shallow drywell, remove approximately 4,500 sf of existing asphalt pavement, regrade for proper drainage flow to sump and replace with asphalt pavement	\$	45,800.00
3	Replace 4000 sf of old concrete and asphalt inside the warehouse, repour and replace.	\$	196,500.00
4	Installation of south-side firewall. Mauka side of building	\$	136,400.00
5	Engineered drawings	\$	30,000.00
6	Demolition of old existing offices to shell	\$	45,000.00
		TOTAL	\$ 896,540.00

Note: Estimated costs for all items may be subject to price fluctuations and conditions