

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

May 26, 2023

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

PSF: 23OD-038

OAHU

Authorize the Department of Land and Natural Resources, Land Division to Negotiate a Development Agreement for a 40-Year Extension of Lease Term, General Lease No. S-4095 Olomana Golf Links, Inc., Lessee; Waimanalo, Koolaupoko, Oahu, Hawaii, Tax Map Key: (1) 4-1-013:010.

LESSEE AND REQUEST:

Development Agreement for Lease Extension.

Olomana Golf Links, Inc., a Hawaii corporation (“Lessee”), is requesting a second extension of General Lease No. S-4095, for 40 years, commencing on May 4, 2032, and expiring on May 3, 2072 for an aggregate term (initial term plus all extensions) of 105 years.

LEGAL REFERENCE:

Sections 171-36 and 36.5, Hawaii Revised Statutes (“HRS”), as amended, and Act 236 (Session Laws of Hawaii 2021).

LOCATION:

Portion of Government (Crown) land of Waimanalo, Koolaupoko, Oahu, Hawaii, identified by Tax Map Key: (1) 4-1-013:010, as shown on **Exhibit A**.

AREA:

129.859 acres, more or less.

Note: Lessee also holds Revocable Permit No. 7517 over the adjoining parcel, (1) 4-1-013:012 for 4.77 acres for golf course nursery purposes.

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:

Solely for the purpose of construction and operation of a golf course and allied facilities.
The allied facilities may include but are not limited to the clubhouse.

TERM OF LEASE:

Original term of 40 years, commencing on May 4, 1967 and expiring on May 3, 2007.
Board approved extension of 25 years commencing on May 4, 2007 and expiring on May 3, 2032.¹

Requested extension of 40 years commencing on May 4, 2032 and expiring on May 3, 2072.

ANNUAL RENTAL:

Current rent is \$140,000.00, or percentage of the gross receipts, whichever is greater.
Percent rent sources: 9% from green fees, 5% from food, 7% from liquor, and 6% from pro shop.

The rent is due in quarterly installments on the 28th day of January, April, July, and October of each year.

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 20th and 30th years of the original term. A rental reopening for the extended term was determined by an appraisal that projected the rent for the extension period commencing October 28, 2014 through October 27, 2024.

Reopenings for the 40-year extension will be addressed in the negotiated development agreement.

PROPOSED IMPROVEMENT ITEMS AND COSTS:

Lessee proposes to complete general improvements to certain golf course facilities, comprised of the main building renovations-club house/ restaurant, flood prevention (wastewater treatment plant), turf management, cart barn, and parking lot for a projected cost of \$2,725,640.00. A complete list of improvements is attached as **Exhibit B**.

¹ October 28, 1994, Agenda Item F-6

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) Section 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 Item 40, which states that “leases of state land involving negligible or no expansion or change of use beyond that previously existing”. 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 Section 11-200.1-17, HAR.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u> x </u>	NO
Registered business name confirmed:	YES	<u> x </u>	NO
Good standing confirmed:	YES	<u> x </u>	NO

APPLICANT REQUIREMENTS:

Lessee shall be required to comply with the applicable requirements of Sections 171-36(a) and 171-36.5, HRS to 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 in accordance with and pursuant to the Department of Attorney General current lease terms and conditions necessary to implement and conform to the requirements of Act 236, Session Laws of Hawaii 2021 (“Act 236”) and current law, including but not limited to substantive provisions relating to Lease Assignments, Sublease Rents and Ownership of Improvements, as discussed and recommended below.

BACKGROUND:

General Lease No. S-4095 was issued to Olomana Golf Links, Inc. for a period of 40 years effective May 4, 1967 through May 3, 2007.

The Board, at its meeting of October 28, 1994 under agenda item F-6, granted Olomana Golf Links, Inc. an extension of its lease and consent to mortgage (in the amount of \$800,000) for an additional 25 years, from May 4, 2007 up to and including May 3, 2032, upon revised rental terms and conditions to allow the Lessee to amortize the self-financed improvements made to the property. The mortgage was released in 2012.

The Board, at its meeting on May 11, 2012 under agenda item D-9, consented to the Stock Purchase Agreement and Assignment and Assumption Agreement between Olomana Golf Links, Inc. and Hawaii OGL LLC, as Assignee.

The Board, at its meeting on April 8, 2016 under agenda item D-8 consented to the Stock Purchase Agreement and Consent to Mortgage (in the amount of \$2,000,000) between Hawaii OGL LLC, Seller/Mortgagee, and JNC USA, Inc., Purchaser, and Olomana Golf Links, Inc., Lessee, Mortgagor. The mortgage was released in 2018.

LEASE EXTENSION:

With the Lessee's current lease set to expire on May 3, 2032, the Lessee is requesting an additional 40-year extension pursuant to Act 236 as promulgated in HRS Section 171-36.5 in order to amortize the cost of additional improvements to the property. Act 236 allows up to a 40-year extension of commercial, industrial resort, mixed-use or government leases 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 installs, constructs, and completes by the date of completion of the total development.

The operation of a golf course and allied facilities on the lease premises qualifies this lease as a commercial lease. Lessee's proposed improvements include general improvements to certain golf course facilities, comprised of the main building renovations-club house/restaurant, flood prevention (wastewater treatment plant), turf management, cart barn, and parking lot, at a cost of \$2,725,640 utilizing applicant's own funds. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$8,434,000.00. Lessee's proposed expenditure of \$2,725,640 represents 32.3% of the value of the existing improvements (\$8,434,000).

Land Division procured the services of an appraiser to review the appraisal report submitted by the Lessee/applicant relating to the value of the existing improvements expressly referenced in Act 236 in order to ensure the Lessee's appraisal report and valuation is consistent with USPAP or otherwise in line with industry standards. The division's appraiser reviewed and analyzed the adequacy of and methodology used in Lessee/applicant's appraisal report(s) as it relates to the market value of improvements of the subject premises to determine compliance with Act 236.

The appraisal evaluation performed for Land Division has verified that the value of the existing improvements on the leased premises as determined by Lessee's appraisal report is sufficiently accurate for the purposes of Act 236. (**Exhibit C**).

Accordingly, Lessee’s proposed expenditure makes it eligible for the requested 40-year extension under Act 236.² The Board has the discretion to approve an extension up to 40 years under Act 236; Lessee is not entitled to it as a matter of right.³

The Lessee will need to submit a proposed development agreement outlining the terms and conditions required in compliance with Act 236. Staff is requesting authority to negotiate the terms and conditions of the development agreement with Lessee and present it to the Board for approval later, along with detailed improvement plans and specifications.

The lease extension document for GL4095 issued in 1994 updated the original 1967 lease to the then current provisions used by the Department of the Attorney General (ATG), including the provisions on assignment, sublease rent participation, and ownership of improvements. This was done prior to the interpretation of the *Kahua Ranch* case⁴ to prohibit the amendment of public auction leases, even if agreed to by both parties. Last year, the Department received advice from the ATG clarifying the limits and inapplicability of *Kahua Ranch* in the context of Act 236. Staff now understands that the Board may require that public auction leases be updated to the ATG's current lease terms and conditions, to the extent necessary to implement the requirements of Act 236, as a condition of approving the extension.

To resolve any potential conflict between the original 1967 lease and the 1994 extension document, staff recommends that the development agreement and the 40-year lease extension document for GL S-4095 be drafted to incorporate the following specific lease terms and conditions in order to implement Act 236 and conform the lease in the extension period to current law and the standard lease terms and conditions used by the ATG:

2 Another eligibility requirement for a lease extension under Act 236 is that lease shall “not [have] been assigned or transferred within ten years prior to receipt of an application for a lease extension submitted pursuant to this section.” As noted above, the ownership of Lessee changed twice – once in 2012 and once in 2016. However, Act 236 provides that a “sale or change in ownership of a lessee that is a company or entity” shall not be deemed an assignment or transfer for purposes of the Act.

3 The alternative is for the Board to approve the sale of a new long-term lease at public auction. At lease expiration, the State owns the improvements. If the improvements are in good condition, they may add value to the market rent that could be collected for the property. In contrast, a lease extension allows the Board to collect ground rent only, exclusive of improvements. However, a public auction of a new lease cannot occur until the last two years of the lease term pursuant to Section 171-36(a)(3), HRS (in this case, after May 3, 2030). In the meantime, the Lessee will have no incentive to invest in the property due to the short term remaining on the lease and the uncertainty of winning the public auction for the new lease. As a result, the improvements may not be in a condition at lease expiration to add value to rent that could be charged for the property.

4 *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), *aff'd on reh'g*, 47 Haw. 466, 390 P.2d 737, *reh'g denied*, 47 Haw. 485, 391 P.2d 872 (1964) (*Kahua Ranch*).

- **Lease Assignments.** Current lease form includes an assignment of lease premium analysis that allows the State to share in the consideration paid for an assignment of a lease under some circumstances. This term is consistent with Section 171-36, HRS. GL S-4095 is silent on this provision, and the lease extension period should include this standard assignment of lease premium term.
- **Sublease Rents.** Current lease form includes language allowing the State to adjust the lease rent based on the sublease rent charged to the sublessee, which is also consistent with Section 171-36, Hawaii Revised Statutes. GL S-4095 is silent on this provision, and the lease extension period should include this standard sublease rent participation language.
- **Ownership of Improvements.** Current lease form includes a provision on ownership of improvements at lease expiration giving the State the option of assuming ownership or requiring the lessee to remove them at lessee's expense. State leases have incorporated this provision since about the mid-1960s. GL S-4095 simply provides that at the expiration of the lease, title to the improvements vests in the State, leaving open the question whether the State is responsible for removing improvements that have outlived their useful lives. The lease extension period (and the Development Agreement) should include the current standard terms clarifying the State's options relating to ownership of improvements.

At this time, staff is recommending that these updated lease terms and conditions be limited to the 40-year extension period the Board may approve under Act 236 which would commence on May 4, 2032. Incorporating these substantive terms for the extension period is consistent with the legislative intent of Chapter 171, HRS, which allows the State to be paid its fair share of ancillary income arising from the tenant's leasehold interest. If the Board approves today's request, Land Division will order an appraisal report to determine the rent for the lease extension period and charge the cost of the appraisal to Lessee in accordance with Act 236.

There are no outstanding rental reopening issues. The Lessee is currently in compliance with the terms and conditions of the subject lease including rent, insurance and performance bond.

No agency comments were solicited on the request because it pertains to negotiation for a development agreement and not a new disposition.

RECOMMENDATION: That the Board, subject to the Applicant fulfilling the Applicant requirements listed above:

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. Authorize the Department of Land and Natural Resources, Land Division to negotiate a Development Agreement with Olomana Golf Links, Inc., for a 40-Year Extension of General Lease No. S-4095 covering the State owned parcel identified as Tax Map Key: (1) 4-1-013:010 pursuant to Act 236 (Session Laws of Hawaii 2021) and Sections 171-36 and -36.5, HRS, as amended, to incorporate the standard lease terms and conditions regarding lease assignment, sublease rent participation, and ownership of improvements used by the ATG with respect to the leasing of public lands, 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 specification for improvements submitted by the Lessee.
3. 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 premises in accordance with Act 236.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

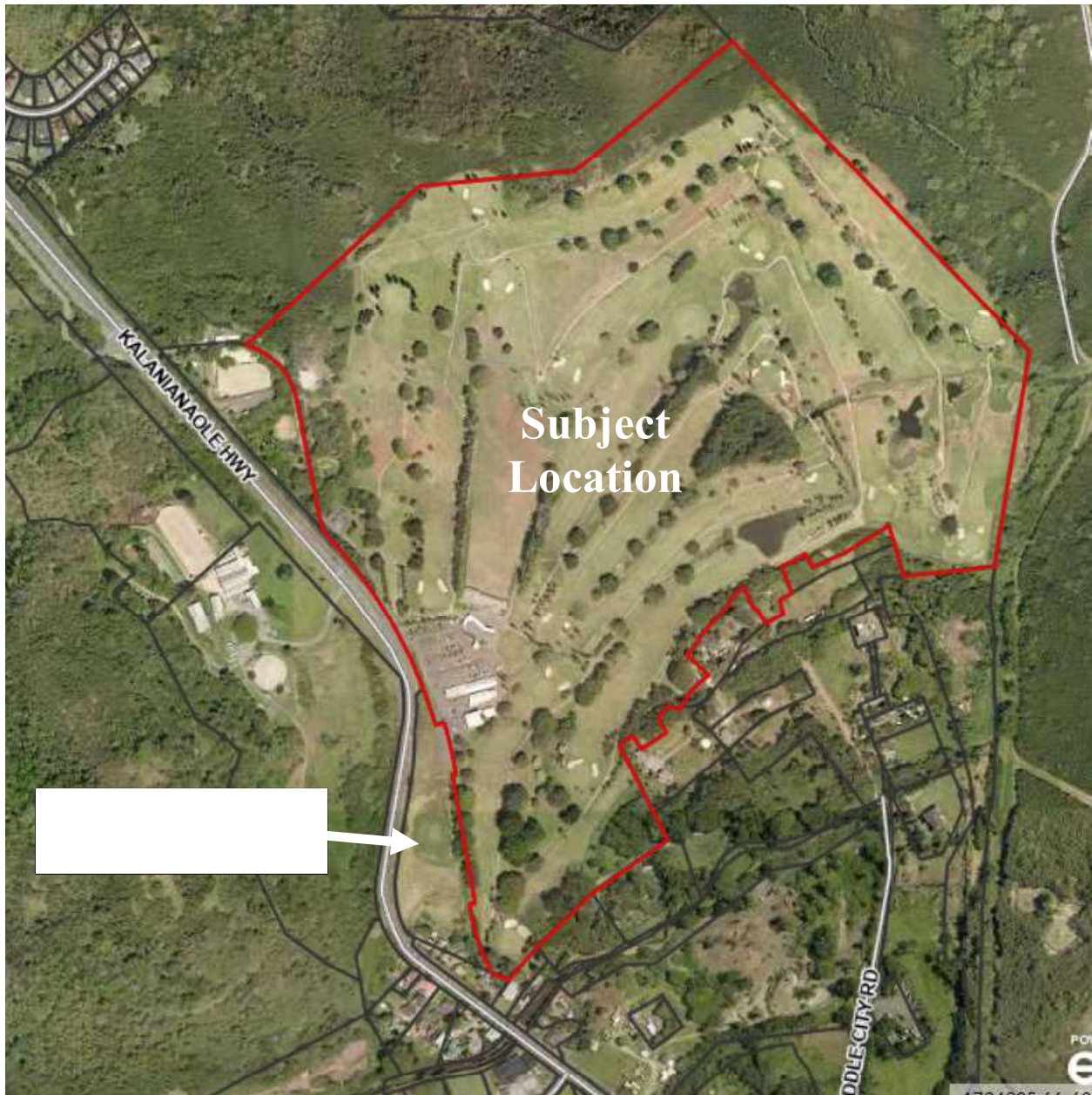
APPROVED FOR SUBMITTAL:



Dawn Chang, Chairperson

PCM

RT



TMK (1) 4-1-013:010

EXHIBIT A

PROJECT TRACKING								
PROJECT TITLE Olomana Golf Links Renovations				COMPANY NAME http://www.olomana.com/olomana-track/olomana-track-01-0127010-0341-007144-0001-00000100				
PROJECT MANAGER Rion Kim		DATE 11/11/2022						
Olomana Golf Links Renovations						COST		
STATUS	PRIORITY	DESCRIPTION	Contractor	Support	Start Date	% complete	FIXED COST	
#1 Flood Prevention							\$591,263	
a	Wastewater Treatment Plant Tank	In Progress	40K paid to purchase tanks	ACSI	Yes	2023	50%	\$84,420
b	Wastewater Tank Installation	Not Yet Started		First Quality	Yes	2023	10%	\$506,843
#2 Main Building Renovations - Club House /Restaurant							\$544,182	
a	Window Jalousie - 2nd Floor	Completed	Reframe window sills and install new plastic windows	Gyorgy Szendi	Yes	2022	100%	\$23,664
b	Flooring Restaurant -2nd Floor	Not Yet Started	Install new vinyl flooring on entire restaurant and private party	SYD Costruction	Yes	2023		\$45,000
c	Demo - Cashier / Hostess Station / Stairwell / Bar - 2nd	Not Yet Started		SYD Costruction	Yes	2023		\$30,000
d	Roofing	Completed	Removed old roof tiles and replace	PCI Roofing	Yes	2022	100%	\$75,518
e	Restroom renovations - 2nd Floor	Not Yet Started		SYD Costruction	Yes	2023		\$60,000
f	Electrical System / Fans - 2nd Floor	Not Yet Started	Replace outdated panels and electrical outlets	SYD Costruction	Yes	2023		\$30,000
g	Interior Painting and Wall Treatment 2nd- Floor	Not Yet Started		SYD Costruction	Yes	2023		\$25,000
h	Carpentry - 2nd Floor	Not Yet Started		SYD Costruction	Yes	2023		\$15,000
i	Window Film & AC 2nd Floor	Not Yet Started		SYD Costruction	Yes	2023		\$22,000
j	Demo 1st floor	Not Yet Started		SYD Costruction	Yes	2023		\$30,000
k	Restroom Renovations - 1st floor	Not Yet Started		SYD Costruction	Yes	2023		\$130,000
l	Partial Renovation for Pro Shop - 1st Floor	Not Yet Started		SYD Costruction	Yes	2023		\$10,000
m	Tiling for exterior walls - 1st Floor	Not Yet Started		SYD Costruction	Yes	2023		\$48,000
#3 Parking Lot							\$529,740	
a	Resurfacing Parking Lot / Cart Barn / Restripe Stalls	Not Yet Started	Expand parking lot to accomodate 100 more stalls	MP - Millerris Paving	Yes	2024		\$279,740
b	Underground Fuel Storage Tank	Not Yet Started	Relocate below ground fuel tank to an above ground tank	Neil Naki	no	2024		\$250,000
#4 Turf Management							\$956,634	
a	Tee Box Rejuvenation	Not Yet Started	Leveling	DHR Golf	Yes	2023		\$85,300
b	Sod Installation	Not Yet Started	Fairway	DHR Golf	Yes	2023		\$208,000
c	Cart Path Concrete Repairs	Not Yet Started	Identify worst areas in need of resurfing	DHR Golf	Yes	2023		\$594,000
d	Irrigation upgrades	Not Yet Started	Install new sprinklers and switches	Pacifi Pipe	Yes	2023		\$68,334
#5 Cart Barn							\$103,821	
a	Cart Barn Replacement	Not Yet Started	Reconfigure/ relocate building to allow for more customer parking	PCI Roofing	Yes	2023		\$103,821
							\$2,725,640	

EXHIBIT B



1003 Bishop Street, Suite 2140
Honolulu, Hawaii 96813
(808) 784-4320
(808) 784-4321

April 26, 2023

Mr. Russell Y. Tsuji
Land Division Administrator
State of Hawaii, Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Re: Appraisal Review of the Market Value of
Existing Improvements at Olomana Golf Links
41-1801 Kalanianaʻole Highway
Waimanalo, Hawaii 96795
Tax Map Key MK 1410130100000 and 1410130120000
General Lease No. S-4095

Purchase Order No. C30591

Dear Mr. Tsuji:

At your request and authorization, The Benavente Group, LLC has prepared a technical review of a revised appraisal report completed by Steven D. Chee, MAI of Leshar Chee Stadlbauer (“Appraiser”) dated April 22, 2023 with an effective date of value of August 1, 2022 (“Appraisal Report”). The subject property is the Olomana Golf Links situated at 41-1801 Kalanianaʻole Highway in Waimanalo, Island of Oahu, State of Hawaii.

There are two tax map parcels that comprise the golf course, which have a combined land area of 134.633 acres. Parcel 10 is zoned P-2 General Preservation District and Parcel 12, AG-2 General Agricultural District. Completed in 1967, Olomana Golf Links is an 18-hole, Par 72 layout that plays to lengths varying between 5,330 and 6,309 yards. Existing improvements include the 18-hole Olomana Golf Links, a two-level clubhouse, two-level driving range structure, cart barn, maintenance warehouses, and on course bathroom buildings. Also located on the property are accessory and non-permanent structures.

EXHIBIT C

Mr. Russell Y. Tsuji
April 26, 2023
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Review Conclusions as of an Effective Date of April 24, 2023

1. The appraisal report is compliant with the Uniform Standards of Professional Appraisal Practice (USPAP).
2. The market data contained in the appraisal report and our knowledge of the Hawaii golf course market generally supports the concluded market value.
3. The Appraisal Report is compliant with the valuation provisions of Hawaii State Legislature Act 149 SLH 2018 and Act 236 SLH 2021.

This review report has been prepared in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The intended use and user of our report are specifically identified in our review report as agreed upon in our contract for services and/or reliance language found in the report. No other use or user of the report is permitted by any other party for any other purpose. Dissemination of this report by any party to any non-intended user does not extend reliance to any such party, and The Benavente Group LLC will not be responsible for any unauthorized use of or reliance upon the report, its conclusions or contents (or any portion thereof).

It has been a pleasure to assist you in this assignment. Should you have any questions, or we can be of further service, do not hesitate to contact us.

Respectfully submitted,

The Benavente Group LLC



Fernando Benavente, MAI, SRA, MRICS
Manager
Hawaii CGA-663



Brian S. Goto, MAI, SRA
Hawaii CGA-62