

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

January 24, 2025

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

Ref.: RP S-7955

Hawaii

- A. Surrender of Revocable Permit No. S-7955, Banyan Drive Management LLC (BDM), Permittee; Waiver of Phase I Environmental Site Assessment; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.
- B. Discussion of whether the Board should consider the issuance of a development agreement and long-term lease for improved lands in Waiakea, South, Hilo, Hawaii, identified as Tax Map Key: (3) 2-1-005:020 to BDM, at a future meeting.

APPLICANT:

Banyan Drive Management LLC, a Hawaii limited liability company.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:020, as shown on the attached maps labeled Exhibit A.

AREA:

1.22 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Hotel and Resort (V-.75) / Open

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Revocable Permit (RP) No. S-7955, Banyan Drive Management LLC, Permittee, for apartment and hotel purposes.

EFFECTIVE DATE OF SURRENDER OF REVOCABLE PERMIT:

February 2, 2025.

BACKGROUND:

In 2014, Land Division procured an architectural consultant, Erskine Architects, Inc. (Erskine), to assess the condition of the structures at Country Club, as well as the former Uncle Billy's Hilo Bay Hotel (Uncle Billy's) and Reeds Bay Hotel (Reeds Bay), and provide recommendations as to whether the structures should be demolished or rehabilitated upon expiration of the long-term leases of the properties in March 2015.

Erskine's report was issued in June 2016 (Erskine Report) with a recommendation that Country Club should be demolished. The Erskine Report also noted health and safety issues at Country Club and the other properties as well. In the interest of public safety, Land Division provided a copy of the Erskine Report to each of the permittees for Country Club, Uncle Billy's and Reeds Bay. A copy of the letter dated July 15, 2016 from Land Division to the Country Club permittee transmitting the Erskine Report is attached as Exhibit B.

In addition, Land Division self-reported the condition of the properties to the County of Hawaii Planning Department. The letter states in part:

In the course of his work, the architect identified a number of life and safety issues, primarily at Uncle Billy's Hilo Bay Hotel and Country Club, that we would like to bring to your attention. Please feel free to forward the report to the County regulatory authorities with jurisdiction over the life and safety issues. We have also shared the report with our permittees for the three properties.

A copy of Land Division's letter dated July 15, 2016 to Planning Director Duane Kanuha is attached as Exhibit C.

In response to Land Division's July 15, 2016 letter, the County Department of Public Works (DPW), Building Division, and Fire Department conducted inspections of Country Club in 2017. DPW issued a Notice of Violation (NOV) dated August 14, 2017 to the

Country Club permittee and Land Division. The Fire Department issued a Fire Inspection Report around the same time to the Country Club permittee noting fire code violations.

The Department procured the planning firm, R.M. Towill Corporation, to prepare a preliminary demolition assessment for both Country Club and Uncle Billy's. R.M. Towill issued its report in February 2018. At that time, it was estimated the cost would be \$6,244,717 for Country Club and \$8,287,605 for Uncle Billy's. The Department sought an appropriation for the demolition of Uncle Billy's in the 2019 legislative session under Senate Bill 1252 and House Bill 1026, but neither bill passed. In the summer of 2019, the County and the Department met and agreed that the Department would request the Board to issue Requests for Qualifications/Requests for Proposals (RFQs/RFPs) for Country Club and Uncle Billy's as a way forward.

On June 30, 2022, Oceanfront 121, Inc. (Oceanfront 121), who held a revocable permit (RP) for the Country Club at the time, notified Land Division that it was unable to continue managing the apartment/hotel property under a month-to-month RP because the short-term nature of the disposition did not allow it to make necessary investments in the property. Oceanfront 121 advised the Land Division that it intended to surrender its RP at the end of December 2022. Staff therefore worked to expedite preparation of a submittal to the Board of Land and Natural Resources (Board) requesting authorization to publish a Request for Qualifications / Request for Proposals (RFQ/RFP) for interested parties to submit proposals for renovating the six-story building on the property under a development agreement and new long-term lease up to 65 years.

At its meeting of July 22, 2022, under agenda Item D-5, as later amended at its meeting of September 9, 2022, under agenda Item D-2, the Board approved the publication of the RFQ/RFP. Specifically, the Board delegated authority to the Chairperson to (i) issue an RFQ/RFP consistent with §171-59(a), Hawaii Revised Statutes (HRS), for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) make a preliminary determination and recommendation to the Board of the best applicant.¹

In the Board submittal for the July 22, 2022 meeting, Item D-5, staff explained that DPW, Building Division, and the Fire Department conducted inspections of Country Club in 2017 and that DPW issued a Notice of Violation (NOV) dated August 14, 2017 to the Country Club permittee and Land Division. See Exhibit D attached. Staff additionally advised the Board that the Fire Department issued a Fire Inspection Report around the same time to the Country Club permittee noting fire code violations. See Exhibit E attached. Staff also explained that Oceanfront 121 and its predecessor-in-interest worked with the County to address the violations to an extent that would allow the property to remain habitable.

¹ The Board's action of September 9, 2022, agenda Item D-2, which includes the Board action of July 22, 2022, agenda Item D-5, as an exhibit can be viewed online here: <https://dlnr.hawaii.gov/wp-content/uploads/2022/09/D-2.pdf>

In accordance with the Board's approval of July 22, 2022, the Chairperson appointed an evaluation committee on August 8, 2022 to review any statements of qualifications and proposals submitted in response to the RFQ/RFP. On September 1, 2022, the RFQ/RFP was published for Country Club² and Banyan Drive Management LLC (BDM) timely submitted its qualifications and proposal for renovating the property.

When BDM learned that Oceanfront 121 was surrendering its RP, BDM offered to step in and manage the property under an interim RP until a developer could be selected for the renovation project. At its meeting of December 8, 2022, under agenda Item D-5, the Board approved the issuance of an RP and interim right-of-entry permit to BDM and BDM assumed management of the property effective January 1, 2023.

In 2022, the Fire Department sent the Oceanfront 121 a letter following up on an August 30, 2022 inspection. The letter states in part:

It is clear from our discussions that Mr. Chritton [Oceanfront 121's representative at the time] is exhausting all resources to comply with safety recommendations. We will support his efforts going forward by following up in January as the BLNR has hearings as to the direction of the property. We will know by then who will be responsible for the site and can begin working with them.

See Exhibit F attached.

On March 30, 2023, DPW conducted another inspection of Country Club. Gordon Heit, District Land Agent at the Hawaii District Land Office (HDLO) and BDM principal Ryan Lee were present during the inspection. DPW identified various code violations and Mr. Heit explained that the violations all predated BDM's tenancy under its RP.

At its meeting of April 28, 2023, under agenda Item D-3, the Board approved the recommendation of the evaluation committee to select BDM's proposal under the RFQ/RFP.³ The approved Board action directed Land Division to negotiate a development agreement and long-term lease for the property with BDM and return to the

2 The published RFQ/RFP directed readers to Land Division's webpage where the 2017 DPW NOV and Fire Inspection Report were available in their entirety.

3 The Board had previously approved the selection of a different applicant, Savio SB Growth Venture LLC (SGV), at its meeting of March 24, 2023, under agenda Item D-1. However, SGV formally withdrew from further consideration under the RFQ/RFP selection process by its letter dated April 6, 2023. The RFQ/RFP was designed so that in the event the first-ranked applicant withdrew its proposal any time before or after Board approval, staff could present to the Board for consideration a recommendation that the Board select the second-ranked proposal/applicant, which in this case is BDM. The Board therefore rescinded its March 24, 2023 approval of the selection of SGV and approved the selection of BDM instead. The Board's action of April 28, 2023, agenda Item D-3, which includes the Board action of March 24, 2023, agenda Item D-1, as an exhibit can be viewed online here: <https://dlnr.hawaii.gov/wp-content/uploads/2023/04/D-3-1.pdf>

Board at later date for approval of those documents.

On June 30, 2023, DPW issued an NOV to Land Division based on the March 30, 2023 inspection that HDLO forwarded to BDM so that BDM could address the violations in its renovation proposal for the property. A copy of the 2023 NOV is attached as Exhibit G.

BDM required about eight months after the April 28, 2023 Board approval to consult with DPW on its proposed renovations to the building and settle on a revised renovation plan and budget for the project. The property is located in a special flood hazard area, specifically Flood Zones AE and V of the Flood Insurance Rate Maps. As a result, Chapter 27 of the Hawaii County Code, Floodplain Management (Flood Code), places additional restrictions on the value of renovations that can be made to the property. Renovations can be made to the property as long as their value does not exceed 50% of the building market value including a three-year lookback for total construction cost (the “50% Rule”). If renovations exceed the 50% Rule, then the structure must be brought up to the current Flood Code requirements, which could mean elevating it above the base flood elevation. In the case of the Country Club property, the concrete building cannot be elevated and abandoning the ground level would not be feasible because major components of the building, include the front desk/office, restaurant and restrooms exist at that level.

The Flood Code provides that, “property appraisals used for tax assessment purposes by the County Department of Finance, Real Property Tax Office” are an acceptable estimate of building market value. However, the County of Hawaii assigns no taxable value to the improvements on the Country Club property. In such cases, the Flood Code allows for an appraisal of the building value be submitted to the County. Because an appraisal would also have been required to determine the rent payable under a new lease to BDM, staff procured (at BDM’s expense) an appraisal report that covers fair market rent for land and improvements, as well as land value and the value of the building in its current condition. The appraiser determined that the fair market value of the building as of June 25, 2024 is \$1,500,000.

On July 2, 2024, the DPW issued a Notice of Order to Land Division at the Hawaii District Land Office (HDLO) based on its June 30, 2023 NOV. See Exhibit H attached. HDLO promptly forwarded the Notice of Order to Mr. Lee so that BDM could address outstanding code violations in its renovation proposal for the property.

BDM and its architect had intended to work closely with the DPW Building Division and Engineering Office to ensure that the work it conducted would be consistent with the constraints of the 50% Rule and address all outstanding code violations.

REMARKS:

In accordance with the Board approval of April 28, 2023, Item D-3, selecting BDM under the RFQ/RFP, staff prepared a submittal to present a proposed development agreement and long-term lease to BDM to the Board at its December 13, 2024 meeting. However,

in November 2024, the Chairperson advised staff that the matter would not be placed on the December or January Board agenda as certain legislators were proposing to introduce a bill in the 2025 legislative session to transfer Waiakea Peninsula, including the Country Club parcel, to the Hawaii Community Development Authority (HCDA). The Chairperson at that time explained that HCDA, DBEDT, and the BLNR Chairperson⁴ agreed to provide HDCA an opportunity to do initial due diligence on transferring Banyan Drive properties from DLNR to HCDA. All agreed that it would not be appropriate to enter into a long-term lease pending HCDA's due diligence. We would need to wait to see the outcome of that effort before bringing the development agreement and lease to the Board (and in the event the bill were to become law, HCDA would apparently have jurisdiction over the area instead of the Board). A copy of the draft submittal presenting the development agreement and proposed BDM lease is attached hereto as Exhibit I.

When Land Division informed BDM that the proposed development agreement and lease would not be presented to the Board in either December or January BDM, submitted a notice to Land Division on January 9, 2025 of its intent to surrender RP 7955. The cover email from BDM that transmitted the notice explains:

It's been two years since Banyan Drive Management officially operated 121 Banyan Drive building, and even with significant monetary loss every month, BDM managed the entire building on goodwill as our RFP/PFQ development agreement was going to be on BLNR's agenda for a vote. However, as discussed over the phone, we're surrendering our revocable permit as DLNR now doesn't even have a timeline when our submittal item will be put up for a vote.

In the notice itself, BDM states that it will vacate the premises on February 2, 2025. BDM further states:

We'll be giving a formal, written notice to vacate to everyone that's occupying the building (15 units), today. We'll help them as much as possible to find other housing and provide them with re-housing agencies' contact information, such as HOPE services and Catholic Charities.

A copy of the email and notice from BDM are attached hereto as Exhibit J.

In accordance with standard practice, HDLO will perform a final inspection of the premises prior to BDM's surrender of the permit. As explained above, the health and safety issues and the building studies Land Division procured predated BDM's tenure as the Country Club permittee. BDM's renovation of the building under a proposed

⁴ Land Division expressed concerns about potential delays in presenting the Development Agreement and Lease to the Board, noting that a postponement of the long-term disposition might impact the permittee's ability to continue operations. Staff indicated that the permittee had made significant investments—approximately \$3 million—in the building and operations but had only generated about \$500,000 in revenue, making a long-term disposition crucial to financing necessary improvements.

development agreement and lease was designed to address the code violations and health and safety issues. The existing improvements on the property are owned by the State and there is no requirement in the RP for BDM to remove them.

Staff intends to conduct an emergency procurement for a contractor to board up the accesses to the building as much as possible to deter trespassing, vandalism and squatting. Staff will also work with the Division of Conservation and Resources Enforcement (DOCARE) to secure the building once vacated, and will also solicit bids for proposals to erect a perimeter fence around the property. The cost of physically securing the building and fencing it will likely exceed \$100,000. Until the fence is completed, DOCARE anticipates that it will need to post three officers at the property for adequate security and to ensure officer safety. Projected overtime costs of maintaining DOCARE on the premises could be as high as \$60,000 per month.

BDM reports that it expended over \$3,200,000 to operate the property from January 1, 2023 to present under the short-term tenancy of RP 7955. This amount includes repairs to address health and safety issues, security enhancements, and attorneys' fees and costs incurred to evict squatters and to secure temporary restraining orders against returning squatters and other trespassers to protect BDM's staff. BDM's total income for the same period was about \$550,000.

RP 7955 includes a requirement that the permittee conduct a Phase I environmental site assessment prior to termination of the permit. Additional Condition, Section B, Item 13 of RP 7955 provides that:

Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.

As noted above, the Department procured the services for an architectural study completed in June 2016 by Erskine Architects, Inc. along with a remediation analysis report conducted by R.M. Towill Corp. in February 2018. Both reports fully analyzed the building's condition providing environmental, structural and mechanical assessments. BDM has maintained the property in its current condition while making some improvements such as installation of a backflow preventer that did not involve the introduction of hazardous materials to the site. While there are hazardous materials in the

building as shown in the Erskine/RM Towill reports, including asbestos and lead paint, these were on the property prior to the current permittee taking possession. Staff recommends the Board waive the Phase I environmental site assessment requirement as required by Additional Condition B.13 of the permit.

Staff is not recommending the affirmative waiver of any other conditions of RP 7955. Some have expressed the view that the surrender of the building would not present such challenges if BDM had complied with all laws and cured all code and health and safety violations as required under a literal reading of the permit. However, as explained above, BDM volunteered to take over management of this project when the prior permittee abandoned it and the first selected applicant under the RFQ/RFP walked away from the project. BDM was successful in evicting many squatters from the property and gaining a semblance of management control over it. After investing \$3.2 million in its operation and management, while receiving \$500,000 in revenue, staff believes it would be unfair to penalize BDM for returning the property to the State in its current condition.

Additionally, the Chairperson is interested in discussing whether the Board should consider the issuance of a development agreement and long-term lease to BDM at a future meeting; including whether the Board has any comments on the potential establishment of a Banyan Drive community development district under HCDA, and the potential transfer of all State properties in the community development district to HCDA.

RECOMMENDATION:

That the Board waive the Level One (1) Hazardous Waste Evaluation required under Section B.13 of Revocable Permit No. S-7955.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

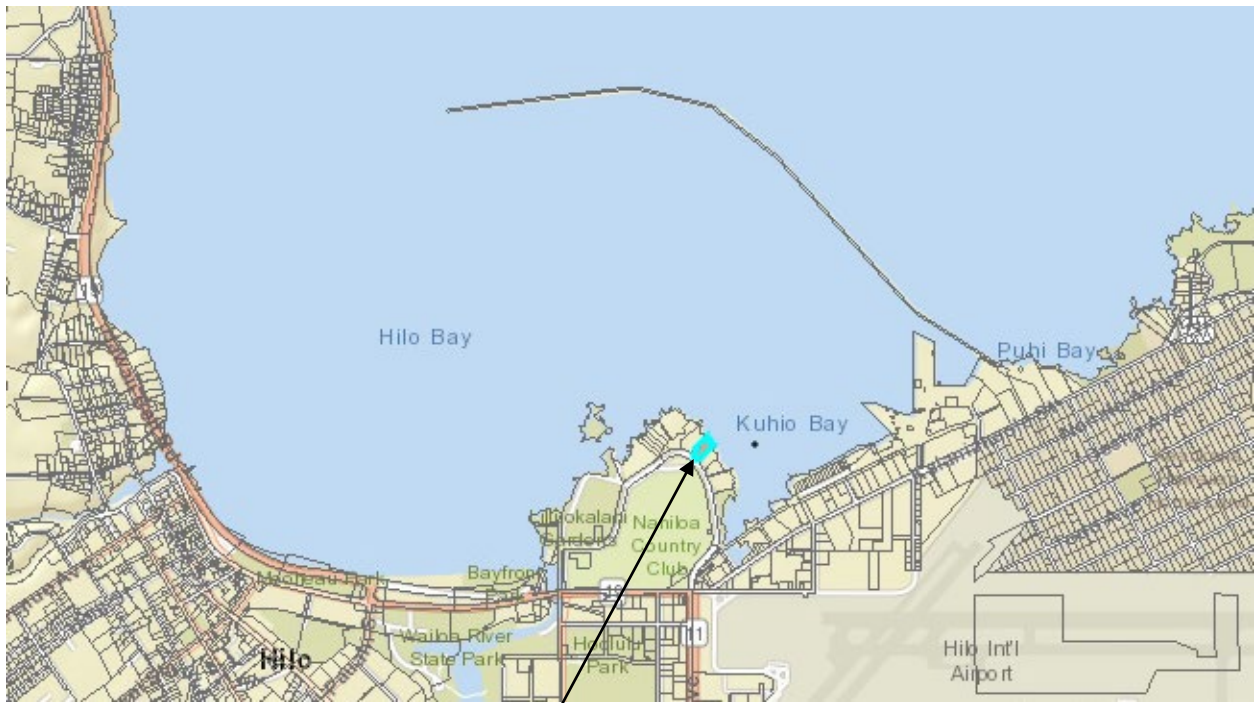
APPROVED FOR SUBMITTAL:

RT



Dawn N. S. Chang, Chairperson

EXHIBIT A



**Former Country Club Hawaii
Condominium and Hotel
TMK: (3) 2-1-005:020**



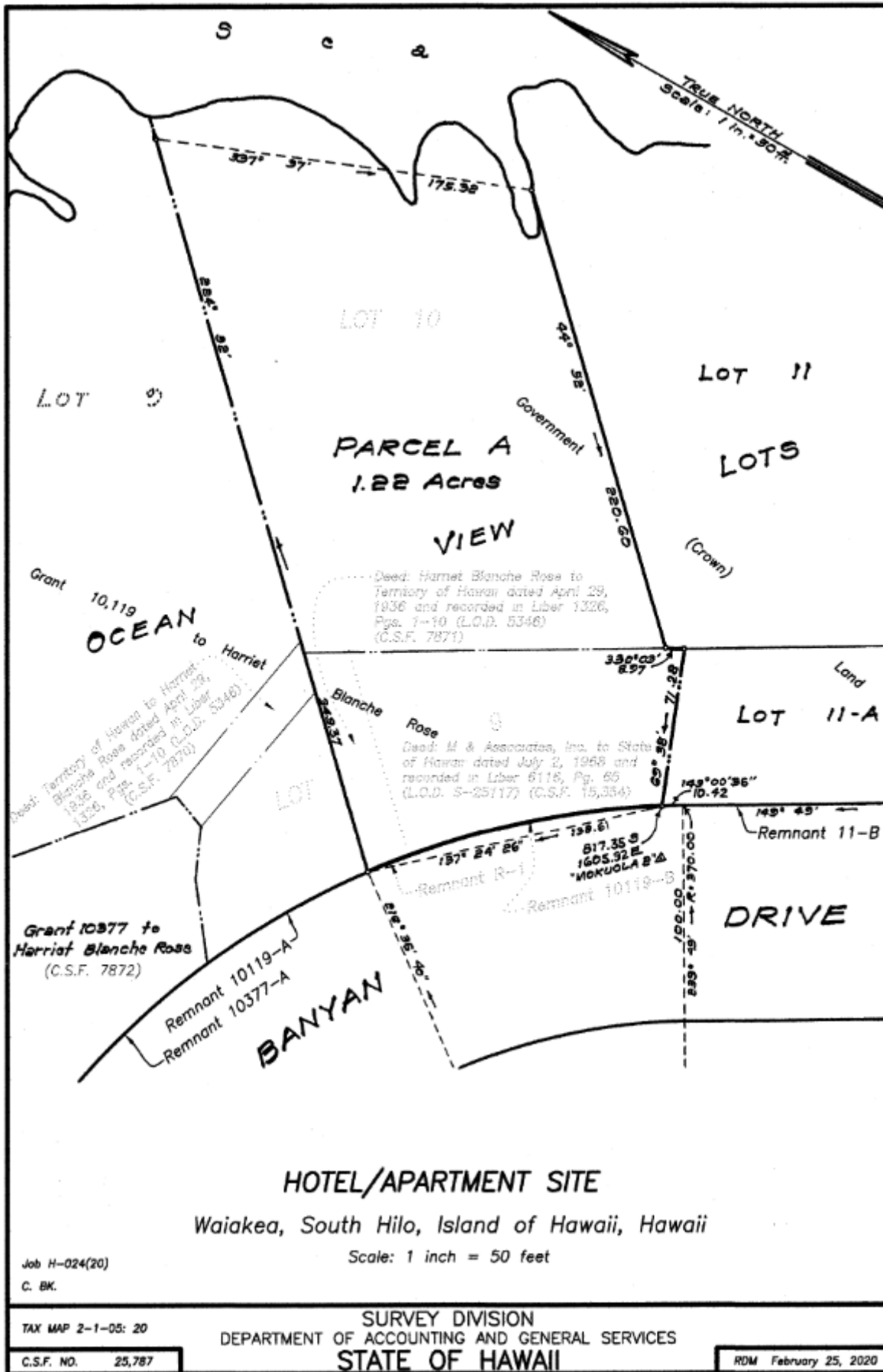


EXHIBIT A

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAII



KP7867
SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



2016 JUL 20 A 10:01
RECEIVED
LAND DIVISION
HILO, HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 15, 2016

Associa Hawaii, AAMC
Attention: Ms. Christy Hinds
75-169 Hualalai Road
Kailua-Kona, Hawaii 96740

Dear Ms. Hinds:

Subject: Revocable Permit No. S-7867 to Association of Apartment Owners of Country Club Hawaii, Inc., Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-1-005:020

We procured the services of an architect to study the condition of the improvements on the subject property, as well as two others on Banyan Drive. We are providing you with a copy of the architect's report dated June 29, 2016 on the enclosed compact disc. Please review the report, especially the findings at pages 119-120. The architect identified a number of life and safety issues at the property that should be evaluated more closely and addressed as necessary to ensure the safety of staff, residents, guests and other invitees. We are also providing a copy of the report to the County of Hawaii.

Please contact me at (808) 587-0422 if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Administrator

Enclosure
C: District File

EXHIBIT B

EXHIBIT C

DAVID Y. IGE
GOVERNOR OF HAWAII



KP 7842, KP 7867, KP 7879
Reeds Bay Country Club Savio
CHAIRPERSON
SUZANNE D. CASE
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

2016 JUL 20 AM 10:01

RECEIVED
LAND DIVISION
HILO, HAWAII

July 15, 2016

Duane Kanuha, Director
Planning Department
101 Pauahi Street
Aupuni Center, Suite 3
Hilo, HI 96720

Dear Director Kanuha:

Subject: Draft Assessment Report of Reed's Bay, Country Club and (former) Uncle Billy's Hilo Bay Hotel Properties at Banyan Drive, South Hilo

Enclosed for your review please find a CD containing a copy of the Final Assessment Report regarding the State's Banyan Drive properties known as Reeds Bay, Country Club and (formerly) Uncle Billy's Hilo Bay Hotel. As we have previously discussed, Land Division commissioned this study to determine whether to demolish or rehabilitate the existing structures on the properties. In the course of his work, the architect identified a number of life and safety issues, primarily at Uncle Billy's Hilo Bay Hotel and Country Club, that we would like to bring to your attention. Please feel free to forward the report to the County regulatory authorities with jurisdiction over the life and safety issues. We have also shared the report with our permittees for the three properties.

In the meantime, please contact me at (808) 587-0422 if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Administrator

Enclosures
C: District File

EXHIBIT C

EXHIBIT D



DEPARTMENT OF PUBLIC WORKS • BUILDING DIVISION

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720
74-5044 Ane Keohokālole Highway, Building E, Kailua-Kona, Hawai'i 96740

(808) 961-8331, Fax (808) 961-8410
(808) 323-4720, Fax (808) 327-3509

NOTICE OF VIOLATION

August 14, 2017

CERTIFIED MAIL

7015 1660 0000 6868 1115
AOAO COUNTRY CLUB HAWAII INC
75-169 Hualalai Road
Kailua-Kona, Hawaii 96740-1744

CERTIFIED MAIL

7014 2120 0001 3973 5957
State of Hawaii
Department of Land and Natural Resources Land Division
Attn: Gordon C. Heit
75 Aupuni Street Room 204
Hilo, Hawaii 96720

RE: Notice of Violation, Case CE2017-665H
121 Banyan Drive Hilo, Hawaii 96720
Tax Map Key (3) 2-1-005:020

To whom it may concern:

The County of Hawai'i, Department of Public Works - Building Division (DPW-BLDG") is sending you a Notice of Violation ("NOV") because DPW-BLDG inspected the structures and premises at 121 Banyan Drive Hilo, Hawaii 96720, Tax Map Key (3) 2-1-005:020 ("the site") and found violations of Sections 5-19, 5-40, 5-48, 5-49, 9-9, 9-10, 9-15, 9-26, 17-15, 17-24 and 17-37 of the Hawai'i County Code ("HCC").

You must commence corrective action on violations indicated in this NOV on or before **September 14, 2017**. Failure to commence corrective action within the specified time may result in an ORDER being issued that may impose administrative and/or civil fines and/or referral to the appropriate legal authorities for action.

I. BACKGROUND

On August 4, 2017, DPW-BLDG inspectors inspected the site to determine whether conditions were in compliance with applicable County codes and regulations. During the visit, DPW-BLDG inspectors observed numerous violations of HCC Chapter 5 – Building, Chapter 9 – Electrical, and Chapter 17 – Plumbing. The violations include, but are not limited to,

construction and renovation work that has been completed without the required permits and inspections as well as numerous substandard and unsafe conditions that exist on the site.

During the aforementioned site visit, DPW-BLDG inspectors observed inadequate exits. Lack of required fire separations between corridors, rooms and floors, structural hazards, unpermitted storage areas and renovation work done. Electrical inspectors observed nonconforming and defective electrical installations. Plumbing inspectors observed unpermitted gas piping and plumbing fixture installations.

Attached for your reference are Exhibit "B," which includes photographs of the unpermitted work.

II. NOTICE OF VIOLATION

Based upon the foregoing, a review of County records, and the observations of our inspectors, you are in violation as follows:

Code and/or Ordinance and Section(s)	Violations (s)
HCC Section 5-19. Permit required.	Construction and renovation work was performed without the required permits such as the laundry and storage areas, renovations and structural repairs.
HCC Section 5-40. Inspections.	Required inspections were not conducted on and approved for any of the aforementioned construction and renovation work.
HCC Section 5-48 (2)(B) Structural hazards.	Deteriorated concrete walkways and screen tiles used as guardrails.
HCC Section 5-48 (3)(B) Presence of a nuisance.	Unsound pool barrier.
HCC Section 5-48 (6) Inadequate Exits.	Inadequate exits. Openings in the exterior walls within 10 feet of the exterior exit stairways used as a required exit are not protected by a self-closing fire-rated assembly. Door stops used to keep the exit door in the open position. Required illuminated exit signs not posted at required exits. Dilapidated existing exit signs. Unprotected corridor walls used as required exits.
HCC Section 5-49 Unsafe buildings.	All substandard buildings which are not provided with adequate egress are unsafe buildings.
HCC Section 9-9. Inspections.	Electrical wiring was energized, used, and

	operated without required electrical inspections and approval of electrical work performed.
HCC Section 9-10. Nonconforming and defective installations.	Various nonconforming and defective installations throughout the entire hotel.
HCC Section 9-15. Compliance; standards of performance.	Various nonconforming and defective installations throughout the entire apartment/hotel that does not comply with the provisions of this chapter.
HCC Section 9-26. Permit required; exceptions.	Electrical work was performed without the required permits. Various electrical work throughout the entire hotel.
HCC Section 17-15. Permit required.	Plumbing work was performed without the required permits. Installation of gas piping and plumbing fixtures.
HCC Section 17-24. Inspection required.	Plumbing work was installed and is being used without the required inspections.

The relevant sections of the HCC cited above and other relevant sections are provided in Exhibit "A."

III. CORRECTIVE ACTIONS

To be in compliance with the above-mentioned section(s), the following corrective actions are required by the deadline date of **September 14, 2017**:

- (1) Obtain required permits and inspections in accordance with the HCC from the DPW-BLDG for the aforementioned violations; **OR**
- (2) Remove all unpermitted work and restore structures to comply with original permits, and obtain required permits and inspections for all structural hazards, defective electrical work and plumbing work.

YOUR DEADLINE FOR COMPLIANCE IS: September 14, 2017.

DPW-BLDG will consider corrective action commenced if you begin the corrective process as directed above. Additional time may be provided for completion of corrective actions if deemed reasonably necessary and a request is made in writing to DPW-BLDG. Upon commencement and completion of the corrective actions, please contact the DPW-BLDG inspectors so that the corrective actions can be verified. Contact information is listed below in the conclusion section.

IV. WARNING

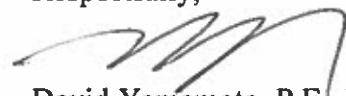
If corrective action is not commenced by the deadline date of **September 14, 2017**, then an ORDER will be issued that may impose administrative and/or civil fines and/or referral of the matter to the appropriate legal authorities for action.

V. CONCLUSION

Please do not hesitate to contact the DPW-BLDG immediately if you wish to further discuss this matter, or to request an extension of a deadline listed herein. Please contact the appropriate supervisors as follows:

Supervising Building Inspector, David Abelaye at 961-8471.
Supervising Electrical Inspector, Gary Kahooohanohano at 961- 8486.
Supervising Plumbing Inspector, Rodney Astrande at 961-8487.

Respectfully,



David Yamamoto, P.E., Building Chief

c: Frank DeMarco – Director
Allan Simeon – Deputy Director
Malia Hall – Deputy Corporation Counsel
Jai Ho Cheng – Deputy Building Chief
David Abelaye– Supervising Building Inspector
Gary Kahooohanohano – Supervising Electrical Inspector
Rodney Astrande – Supervising Plumbing Inspector

Exhibit "A"

HCC Section 5-19. Permit required.

- (a) No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.
- (b) Permits will be further required for, but not limited to, the following:
 - (1) All Television/Radio Communication Towers, etc., not regulated by the Public Utility Commission.
 - (2) Complete new installations of all solar water heating systems, or the complete replacement of existing system with all new components, or relocating of panels from roof to ground or vice versa, along with plumbing and electrical permits.
 - (3) Construction or renovation of Handicap Accessible routes from parking lot to building or from building to building on a lot.
 - (4) Water tanks or catchments intended for potable/household use, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see Chapter 26 of the Hawai'i County Code.
 - (5) Retaining walls four feet and higher. Stepped or terraced retaining walls 8'-0" of each other are considered to be one wall when determining wall height.

EXCEPTIONS: A permit is not required for:

- (1) Work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.
- (2) Temporary structures used during the construction of a permitted structure, temporary buildings, platforms, and fences used during construction or for props for films, television or live plays and performances.
- (3) Re-roofing work with like material and installation of siding to existing exterior walls which will not affect the structural components of the walls for Groups R-3 and U Occupancies.
- (4) Temporary tents or other coverings used for private family parties or for camping on approved campgrounds.
- (5) Television and radio equipment (i.e. antennas, dishes) accessory to R-1 and R-3 Occupancies.
Supports or towers for television and radio equipment 6'-0" or less in height.
- (6) Awnings projecting up to 4 feet and attached to the exterior walls of buildings of Group R-3 or U Occupancy; provided that the awnings do not violate the provisions for "yards" in Chapter 25 (Zoning) of the Hawai'i County Code.
- (7) Standard electroliers not over 35 feet in height above finish grade.
- (8) Installation of wallpaper or wall covering which are exempted under the provisions of Section 801.1, Interior Finishes, Chapter 8, IBC.
- (9) Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$4,000 in valuation in any twelve-month period, and do not affect any electrical or mechanical installations.
- (10) Painting and decorating.
- (11) Installation of floor covering.

- (12) Cabinet work for R-3 Occupancy and individual units of R-1 and U Occupancies which are not regulated (under Section 310.3.12 Cooking Unit Clearances of this code). Wall mounted shelving not affecting fire resistance or structural members of wall. This is dealing with clearances to cabinets and range clearance to combustible.
- (13) Work performed under the jurisdiction of Federal Government and/or located in Federal property.
- (14) Swimming pools for one and two-family dwelling units less than 24" in depth
- (15) Department of Transportation, Harbors, - section 266-2, Hawai'i Revised Statutes.
- (16) Fences 6'-0" or less in height.
- (17) Detached structures for animal shelters, storage sheds, towers, and similar uses not more than 6'-0" in height.
- (18) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed a) 120 square feet (11 m²); b) does not exceed 600 square feet for agricultural zoned lands. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
- (19) Detached decks or platforms less than 30" in height above grade. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
- (20) Playground equipment, excluding assembly or similar waiting areas.
- (21) Replacement of solar water heating components (i.e. panels, tanks) in the same location and of the same type, however; plumbing and/or electrical permits required.
- (22) Wells and Reservoirs – Hawai'i Revised Statutes, chapter 178. Check requirements of other governmental agencies.
- (23) Work performed under the jurisdiction or control of the State Department of Accounting and General Services (DAGS).
- (24) Water tanks or catchment systems 5,000 gallons or less in size with a height to width ratio of not more than 2:1, to be used strictly for non-potable/household purposes such as agriculture, irrigation or stock, and that are independent of the potable/household system.

HCC Section 5-40. Inspections.

- (a) All construction or work for which a permit is required shall be subject to inspection by the building official. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of any other ordinance. Inspections presuming to give authority to violate or cancel the provisions of this code or of any other ordinances shall not be valid.
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.
- (c) A survey of the lot may be required by the building official to verify that the structure is located in accordance with the approved plans.

HCC, Chapter 5, Section 5-48. Substandard buildings.

Any building or portion thereof in which there exists any of the following listed conditions to an extent that it endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a "substandard building:"

- (1) Inadequate sanitation shall include but not limited to the following:
 - (A) Lack of, or improper water closet, lavatory, bathtub or shower in a dwelling unit.

- (B) Lack of, or improper water closets, lavatories, and bathtubs or showers in a hotel.
 - (C) Lack of, or improper kitchen sink in a habitable building.
 - (D) Lack of hot and cold water to basins, sinks, tubs and showers in R-1 Occupancies.
 - (E) Lack of hot and cold water to basins, sinks, tubs and showers in a dwelling unit or efficiency living unit.
 - (F) Lack of, or improper operation of required ventilating equipment.
 - (G) Lack of minimum amounts of natural light and ventilation required by this code.
 - (H) Room area or space dimensions less than the minimum required by this code.
 - (I) Lack of required lighting.
 - (J) Dampness of habitable rooms as determined by the Health Department.
 - (K) Infestations of insects, vermin or rodents as determined by the health officer.
 - (L) General dilapidation or improper maintenance.
 - (M) Lack of connection to required sewage disposal system.
 - (N) Lack of adequate garbage and rubbish storage and removal facilities as determined by the health officer.
- (2) Structural hazards shall include but not be limited to the following:
- (A) Deteriorated or inadequate foundations.
 - (B) Defective or deteriorating flooring or floor supports.
 - (C) Flooring or floor supports of insufficient size to carry imposed loads with safety.
 - (D) Members of walls, partitions or other vertical supports that split, lean, or buckle due to defective material or deterioration.
 - (E) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
 - (F) Members of ceiling, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
 - (G) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads safely.
 - (H) Fireplaces or chimneys that separate, bulge or settle due to defective material or deterioration.
 - (I) Fire places or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- (3) Presence of a nuisance including:
- (A) Any public nuisance known at common law or in equity jurisprudence.
 - (B) Any attractive nuisance which may prove detrimental to children whether in a building or on the premises of a building. This includes any unfenced man-made swimming pools, abandoned wells, shafts, or basements; any structurally unsound fences; and any debris or vegetation affecting the structural stability of structures.
 - (C) Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.
 - (D) Overcrowding a room with occupants.
 - (E) Insufficient ventilation or illumination.
 - (F) Inadequate or unsanitary sewage or plumbing facilities.
 - (G) Uncleanliness, as determined by the health officer.
 - (H) Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.
- (4) Faulty weather protection, which shall include but not be limited to, the following:
- (A) Deteriorating, crumbling or loose plaster.
 - (B) Deteriorating or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors.
 - (C) Defective or lack of weather protection for exterior wall covering, including lack of paint, weathering due to lack of paint or other approved protective covering.

- (D) Broken, rotted, split or buckled exterior wall covering or roof coverings.
 - (5) Inadequate Maintenance. Any building or portion thereof which is determined to be an unsafe building in accordance with this code.
 - (6) Inadequate Exits. All buildings or portions thereof not provided with adequate exit facilities as required by this code except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of its construction and which have been adequately maintained. When an unsafe condition exists through lack of, or improper location of exits, additional exits may be required to be installed.
 - (7) Any building or portion thereof that is not being occupied or used as intended or permitted.
- (2012, Ord. No. 12-27, sec. 2.)

HCC, Chapter 5, Section 5-49. Unsafe buildings.

All substandard buildings which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard or abandonment, as specified in this code or any other effective ordinance are, for the purpose of this chapter, "unsafe buildings."

(2012, Ord. No. 12-27, sec. 2.)

HCC Chapter 5, Section 5-51. Buildings found to be unsafe; Notice to owner.

- (a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:
 - (1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building;
 - (2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;
 - (3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and
 - (4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII."
- (b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.
- (c) The notice required by subsection (a)(4) above shall remain posted until the required repairs, demolition or removal are completed. Such notice shall not be removed without written permission of the building official, and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

(2012, Ord. No. 12-27, sec. 2.)

HCC Section 9-9. Inspections.

- (a) All electrical wiring, for which a permit is required, shall be inspected and approved by the authority having jurisdiction before being concealed, energized, or used. All fees required by this chapter shall be paid by the permit applicant prior to the energizing or use of such wiring.
- (b) No person shall use, operate, or maintain, or cause or permit to be used, operated, or maintained, any electric wiring until it is approved.

- (c) No serving agency shall supply or cause or permit to be supplied, permanent electric energy to any electric service until the service has been inspected and approved by the authority having jurisdiction.
- (d) No person shall conceal, enclose, or cover, or cause or permit to be concealed, enclosed, or covered, any portion of any electric wiring or equipment in any manner which will interfere with or prevent the inspection and approval thereof.
- (e) Fixtures, appliances, devices, or equipment shall not be connected to any electric wiring until the rough electric wiring, including conductors, have been inspected and approved by the authority having jurisdiction.
- (f) All obstructions, covers, plates, tapes, light fixtures, etc., which make impracticable the making of a thorough inspection of electric wiring shall be removed upon notice (either verbal or in writing) to do so, and shall be kept removed until the electric wiring has been inspected and approved.
- (g) The supervising electrician or electrical contractor shall be present on the job site upon request of the authority having jurisdiction.

HCC Section 9-10. Nonconforming and defective installations.

Whenever any electrical installation is found to have been installed, altered, changed, or reconstructed contrary to the provisions of this chapter or any other law, whenever any electrical installation is found to be in use contrary to the provisions of this chapter or any other law, or whenever any electrical installation, which complied with the existing laws, ordinances, and regulations in effect when the electrical work therein was performed, is found to be unsafe or dangerous to persons or property, the administrative authority shall give the owner or the person in control of that installation a written notice stating the findings with respect to that installation and order the owner or other person in control to make the corrections to be set forth in the written notice. When found to be unsafe or dangerous to persons or property, the defective installation shall be disconnected from the power source and tagged as unsafe to operate until corrective action is made, inspected, and approved.

Section 9-15. Compliance; standards of performance.

- (a) No person shall do or cause to be done any electrical work which does not comply with the provisions of this chapter.
- (b) No person shall perform any work covered by this chapter in violation of the provisions of chapter 448E, Hawai'i Revised Statutes.

HCC Section 9-26. Permit required; exceptions.

No person shall perform any electrical work or cause or permit the same to be done, unless a permit therefor has been obtained from the authority having jurisdiction with the following exceptions:

- (1) Electric work and installations to which the provisions of this chapter are expressly declared to be not applicable.
- (2) Installation of any portable motor or other portable appliance energized by means of a cord or cable having an attachment plug, and if such cord or cable is permitted by this chapter.
- (3) Repair of any fixed motor, water heater, air conditioning controls or other appliance, or replacement of any fixed motor with another having the same horsepower rating and situated at the same location.
- (4) Replacement of receptacles and switches.
- (5) Maintenance work by a licensed electrician per chapter 448E, Hawai'i Revised Statutes.

- (6) Emergency electrical work by a person to whom a permit may be issued (see sections 9-28 and 9-41 of this chapter).
- (7) The provisions of the foregoing exceptions shall not apply to any repairs or replacement of electrical devices, apparatus, or appliances which were originally installed without a permit, when such permit is required for the original installation, or when energized by or a part of any hazardous or illegal wiring system.
- (8) The foregoing exceptions from permit requirements shall not be deemed to allow any electrical wiring to be done in a manner contrary to other provisions of this chapter.

HCC Section 17-15. Permit required.

- (a) It shall be unlawful for any person to install, remove, alter, repair or replace or cause to be installed, removed, altered, repaired or replaced any plumbing, gas or drainage piping work or any fixture or water heating or treating equipment in a building or premises without first obtaining a permit to do such work from the authority having jurisdiction.
- (b) A separate permit shall be obtained for each building or structure.
- (c) No person shall allow any other person to do or cause to be done any work under a permit secured by a permittee except individuals in such permittee's employ.
- (d) Plumbing permits shall be posted in a conspicuous place on the job site. Permits shall remain posted until the plumbing work has passed a final inspection by the authority having jurisdiction. Failure to comply with this provision shall subject the violator to a \$25 fine.

HCC Section 17-24. Inspection required.

- (a) All plumbing, gas, and drainage systems shall be inspected by the authority having jurisdiction to ensure compliance with all the requirements of this code. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of any other ordinance. Inspections presuming to give authority to violate or cancel the provisions of this code or of any other ordinance shall not be valid.
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the authority having jurisdiction nor the County shall be liable for any expense entailed in the removal or replacement of any material required to perform the inspection.

Section 17-37. Dangerous and insanitary construction.

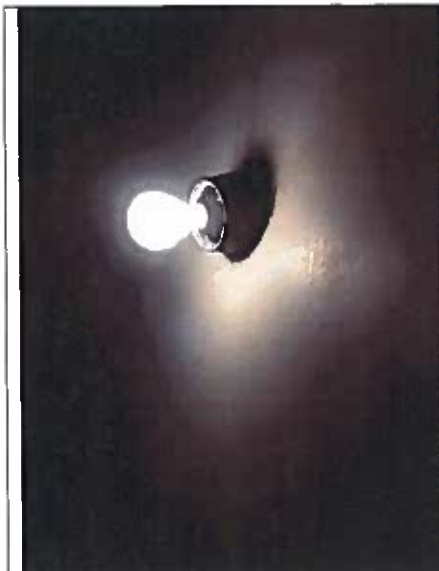


- (a) Any portion of a plumbing system found by the authority having jurisdiction to be insanitary as defined herein is hereby declared to be a nuisance. "Insanitary" means a condition which is contrary to sanitary principles or is injurious to health. Conditions to which "insanitary" shall apply include, but are not limited to, the following:
 - (1) Any trap which does not maintain a proper trap seal.
 - (2) Any opening in a drainage system, except where lawful, which is not provided with an approved water-sealed trap.
 - (3) Any plumbing fixture or other waste discharging receptacle or device, which is not supplied with water sufficient to flush it and maintain it in a clean condition.

EXHIBIT "B"

 <p>Country Club Resort</p>	 <p>Lobby area receptacle cover missing.</p>	 <p>Lobby area in proper installation of light fixture over another light fixture.</p>
	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.3(B) equipment must be labeled and listed for use.</p>



<p>Ground level pool pump room receptacle cover corroded</p>	<p>Ground level pool pump room receptacle cover installed over another device.</p>	<p>Ground level area receptacle for laundry washer next elevators receptacle cover corroded and missing</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface</p>

		
<p>All stairwells numerous light fixtures missing protective lenses</p>	<p>Roof top of building unpermitted electrical wiring for exhaust fans.</p>	<p>Roof top of building unpermitted electrical wiring for exhaust fans.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 410.22 fixtures to be covered by means of a luminaire canopy.</p>	<p>Per HCC Section 9-26. Permit required</p>	<p>Per HCC Section 9-26. Permit required</p>



<p>Chiller AC unit and its associated equipment on roof now abandoned all electrical equipment corroded.</p>	<p>Chiller AC unit and its associated equipment on Roof now abandoned all electrical equipment corroded.</p>	<p>Rooftop electrical room this load center installed without proper permits.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations. NEC article 110.11 Deteriorating agents.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations. NEC article 110.11 Deteriorating agents.</p>	<p>Per HCC Section 9-26. Permit required</p>



Rooftop electrical room receptacles on data com board requires covers

Rooftop electrical room this equipment used for chill unit (not in operation) should be disconnected and locked out or removed.

Rooftop electrical room this equipment used for chill unit (not in operation) should be disconnected and locked out or removed.

Per HCC Section 9-10. Nonconforming and defective installations.

NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface

Per HCC Section 9-10. Nonconforming and defective installations.

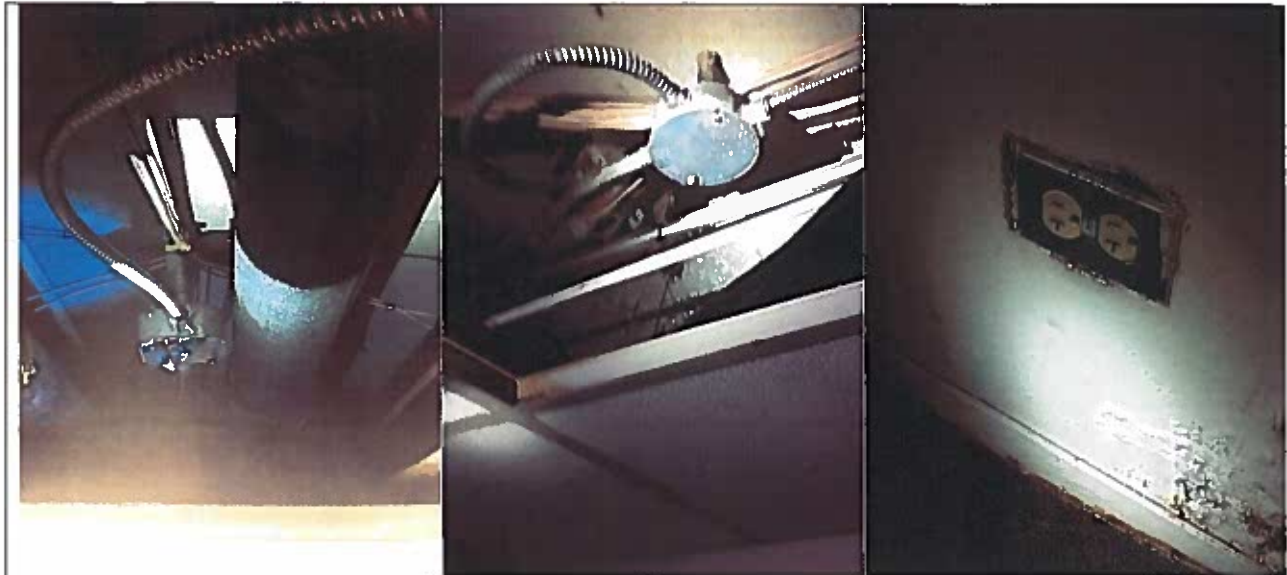
Per HCC Section 9-10. Nonconforming and defective installations.



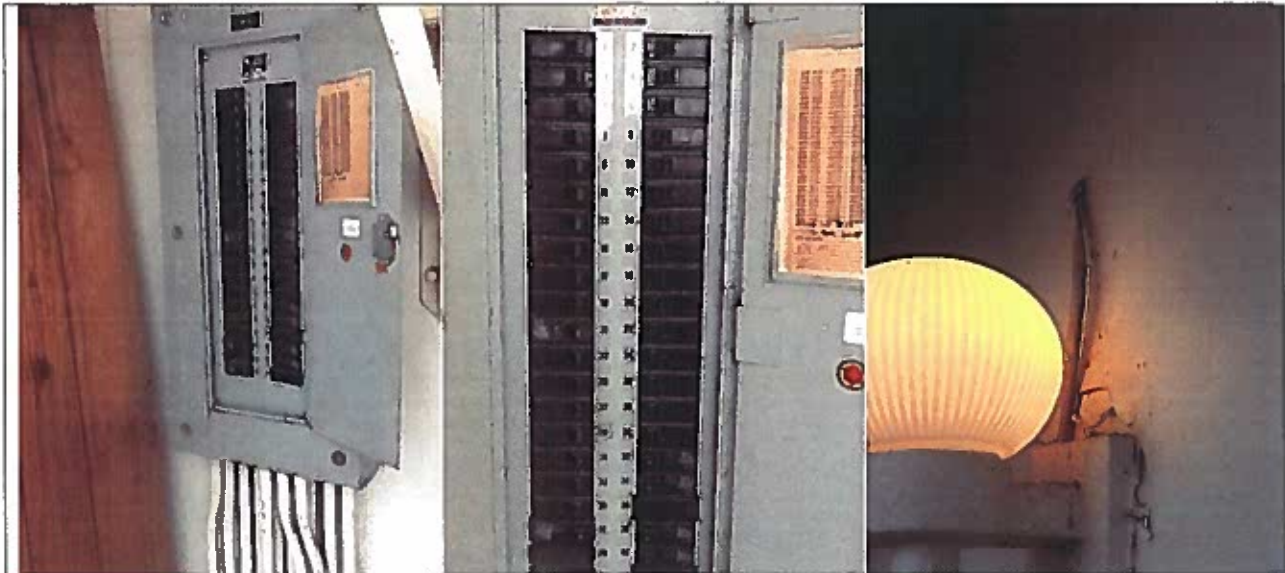
<p>Rooftop electrical room this equipment used for chill unit (not in operation) should be disconnected and locked out or removed.</p>	<p>Rooftop electrical equipment used for chill unit(not in operation) should be disconnected and locked out or removed.(corroded)</p>	<p>Rooftop electrical room this equipment used for chill unit(not in operation) should be disconnected and locked out or removed.(corroded)</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations. NEC article 110.11 Deteriorating agents.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations. NEC article 110.11 Deteriorating agents.</p>



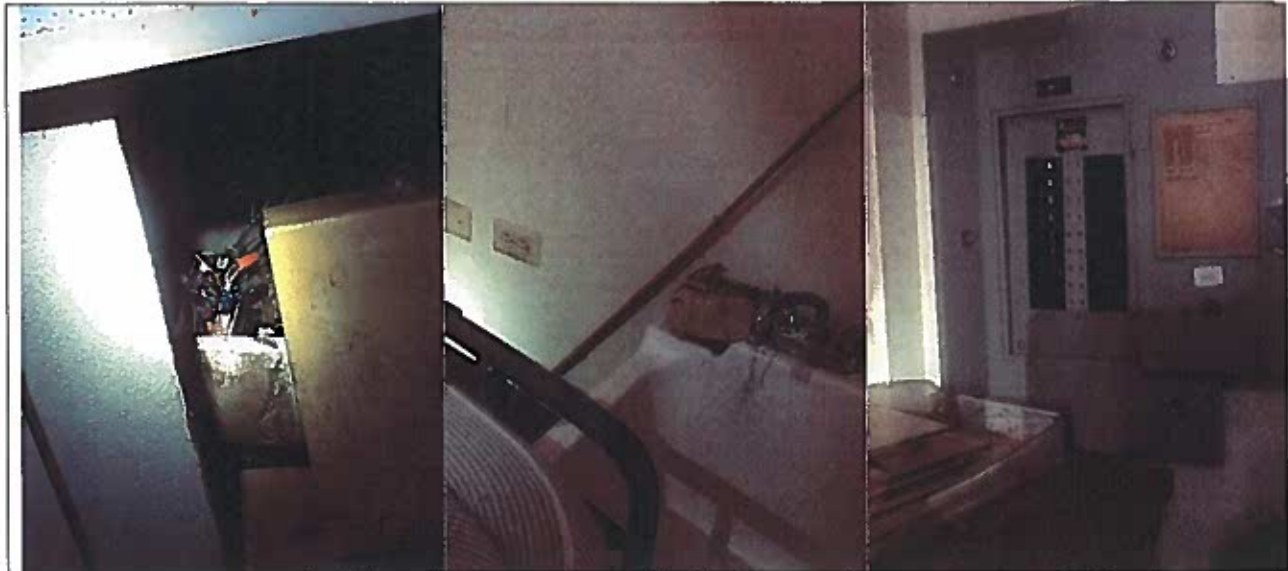
<p>Light fixture in elevator equipment room on roof. Not a proper installation of a light fixture over another light fixture.</p>	<p>Guestroom corridors (All floors) the use of NMB cable in suspended ceilings not approved in these areas.</p>	<p>Guestroom corridors (All floors)Emergency lighting not working and damaged and must to be replaced.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.3(B) equipment must be labeled and listed for use.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 334.12(A)(2) Type NMB cable uses not permitted</p> <p>Exposed in dropped or suspended ceilings in other than one and two family and multifamily dwellings.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p>



<p>Guestroom corridors</p> <p>(All floors) junction boxes in ceilings covers required</p>	<p>Guestroom corridors</p> <p>(All floors) junction boxes in ceilings covers required</p>	<p>Guestroom corridors</p> <p>(All floors)Check receptacle covers to see if properly seated.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per article NEC 314.28(3) (C) Covers. All pull boxes, junction boxes, and conduit, bodies shall be provided with covers</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per article NEC 314.28(3) (C) Covers. All pull boxes, junction boxes, and conduit, bodies shall be provided with covers</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface</p>









<p>Guestroom corridors</p> <p>(All floors)Electrical room load centers require seals for unused openings.</p>	<p>Guestroom corridors</p> <p>(All floors)Electrical room load centers require seals for unused openings.</p>	<p>Guestroom corridors</p> <p>(All floors)Light fixtures above entry doors wired with NMB cable. Protection required</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 110.12(A) Mechanical Execution of Work. Electrical equipment shall be installed in a neat and workmanlike manner. (A) Unused Openings. Unused openings to be sealed off.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 110.12(A) Mechanical Execution of Work. Electrical equipment shall be installed in a neat and workmanlike manner. (A) Unused Openings. Unused</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC Article 334.15 Exposed work. In exposed work, except as provided in 300.11(A), cable shall be installed as specified in 334.15(A) through (C). Cable shall be protected from physical damage</p>






<p>Storage rooms (all floors)</p> <p>Junction boxes in ceilings for air handling units no covers.</p>	<p>Storage rooms (all floors)</p> <p>Receptacles next to wash tubs require GFCI protection</p>	<p>Storage rooms (all floors)</p> <p>Work clearance in front of this electrical panel required.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per article NEC 314.28(3) (C) Covers. All pull boxes, junction boxes, and conduit, bodies shall be provided with covers</p>	<p>HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 210.8 GFCI protection required</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient</p> <p>Access and working space shall be provided and maintained</p> <p>About all electrical equipment to permit ready and safe operation</p> <p>And maintenance of such equipment.</p> <p>(1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>

<p>3rd floor guestroom corridors electric room load center overcurrent protective devices too high 6'-7" max height. (7'-3") in field</p>	<p>3rd floor guestroom corridors electric room load center overcurrent protective devices too high 6'-7" max height</p>	<p>3rd floor guestroom corridors conduits pictured in ceiling not properly supported.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 240.24(A) Location in or on premises</p> <p>(Accessibility)Overcurrent devices shall be readily accessible and should be installed so that center of the grip of the operating handle of switch or circuit breaker ,when in its highest position, is not more than 6'-7" above the floor or working platform.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 240.24(A) Location in or on premises</p> <p>(Accessibility)Overcurrent devices shall be readily accessible and should be installed so that center of the grip of the operating handle of switch or circuit breaker ,when in its highest position, is not more than 6'-7" above the floor or working platform.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 358.30 Securing and Supporting. (A) Securely Fastened. EMT shall be securely fastened in Place at least every 3 m (10 ft.).</p>

		
<p>2nd floor data/com room work clearance in front of electrical equipment.</p>	<p>2nd floor data/com room work AC unit disconnecting means required. Unsupported flexible conduit.</p>	<p>2nd floor guest room 210 Receptacle next to bath sink GFCI protection required</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient</p> <p>Access and working space shall be provided and maintained</p> <p>About all electrical equipment to permit ready and safe operation</p> <p>And maintenance of such equipment.</p> <p>(1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>		<p>HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 210.8 GFCI protection required</p>

		
<p>2nd floor guest room 210 Light fixture over shower sealed lens required.</p>	<p>2nd floor guest room 210 Receptacle next to wet bar sink GFCI protection required</p>	<p>2nd floor housekeeping room 209 Junction boxes in ceilings for air handling units no covers.</p>
<p>HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 410.10(A)</p> <p>Luminaires installed in wet or damp locations shall be installed such that water cannot enter or accumulate in wiring compartments, lamp holders, Or other electrical parts.</p>	<p>HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 210.8 GFCI protection required</p>	<p>HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per article NEC 314.28(3) (C) Covers. All pull boxes, junction boxes, and conduit, bodies shall be provided with covers</p>

		
<p>2nd floor housekeeping room 209 work clearance in front of this electrical panel required.</p>	<p>2nd floor housekeeping room 209 Receptacle behind dryer missing faceplate.</p>	<p>Exterior electrical equipment behind former restaurant deteriorated by means of corrosion. Required to be upgrade</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient</p> <p>Access and working space shall be provided and maintained</p> <p>About all electrical equipment to permit ready and safe operation</p> <p>And maintenance of such equipment.</p> <p>(1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>NEC article 110.27(A) Live parts of electrical equipment operating at 50 volts or more shall be guarded against accidental contact.</p>



<p>Pool side receptacle deteriorated conduits are rotten claims to be de energized. Advised to remove entire installation conductors and circuit breaker.</p>	<p>Pool side receptacle deteriorated conduits are rotten claims to be de energized. Advised to remove entire installation conductors and circuit breaker.</p>	<p>Main electric room roof vent rotted out water leaking. roof must be repaired (Electrical Hazard)Wet floors around energized electrical equipment.</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations. NEC article 110.11 Deteriorating Agents. Unless identified for use in the operating environment, no conductors or equipment shall be located in damp or wet locations; where exposed to gases, fumes, vapors, liquids, or other agents that have a deteriorating effect on the conductors or equipment; or where exposed to excessive temperatures.</p>



<p>Work clearance in front of this electrical panel required.</p> <p>Beds in the way</p>	<p>Main electric room lights do not work.</p> <p>Lighting required</p>	<p>Work clearance in front of this electrical panel required. Beds in the way</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient</p> <p>Access and working space shall be provided and maintained</p> <p>About all electrical equipment to permit ready and safe operation</p> <p>And maintenance of such equipment.</p> <p>(1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.26 (D) Illumination. Illumination shall be provided for all Working spaces about service equipment, switchboards, panelboards, or motor control centers installed indoors.</p>	<p>Per HCC Section 9-10. Nonconforming and defective installations.</p> <p>Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient</p> <p>Access and working space shall be provided and maintained</p> <p>About all electrical equipment to permit ready and safe operation</p> <p>And maintenance of such equipment.</p> <p>(1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>



Depicts front of County Club



Depicts front entry to former shooters night club.



Depicts dilapidated screen tile at the rear of County Club.



Depicts close up of dilapidated screen tile at the rear of County Club.



Depicts entry to machine room and dryer vents venting into a bucket.



Depicts laundry area adjacent to elevators.



Depicts concrete spalling in the interior of the rear exit stairs.



Depicts pipes penetrating 2 hour floor/ceiling fire assembly. (annular space around pipes not protected)



Depicts pipes penetrating 2 hour floor/ceiling fire assembly. (annular space around pipes not protected)



Depicts dead end corridor on the Makai wing on floors 2 thru 6.



Depicts top of corridor wall on the 6th floor. (Continuity of wall must go to the floor or ceiling above)



Depicts opening in corridor wall from unit 608. (fire tape or drywall tape around opening required)



Depicts pipes penetrating 1 hour corridor wall fire assembly. (annular space around pipes not protected)



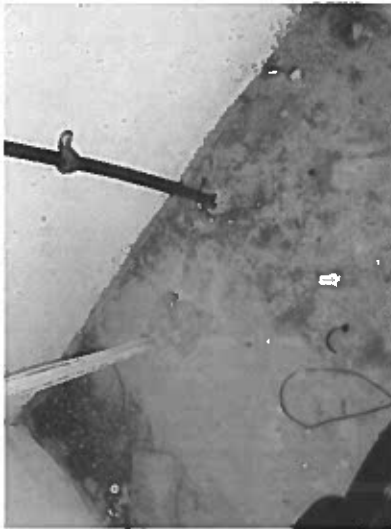
Depicts duct penetrating 1 hour corridor wall fire assembly. (fire/smoke damper required, annular space around duct not protected)



Depicts laundry shoot door open. (door is required to be self-closing)



Depicts duct penetrating 2 hour floor/ceiling fire assembly. (fire/smoke damper required)



Depicts penetration thru 2 hour floor/ceiling fire assembly. (annular space around penetrating items must be filled with an approved material.)



Depicts duct penetrating 1 hour corridor wall fire assembly. (annular space around duct not protected)



Depicts pipes penetrating 1 hour corridor wall fire assembly. (annular space around pipes not protected)



Depicts door removed and Mauka end of corridor. (floors 2 thru 6)



Depicts guardrail openings greater than 4 inches when walking surface is above 30 inches from the grade or roof below.



Depicts guardrail openings greater than 4 inches when walking surface is above 30 inches from the grade or roof below.



Depicts guardrail openings greater than 4 inches when walking surface is above 30 inches from the grade or roof below.



Depicts wood structural member supporting walkway above. (wood material used in type IB construction must be heavy timber and have a fire-resistance rating of 2 hours)



Depicts deteriorating concrete walkway supported by wood structural members. (wood material used in type IB construction must be heavy timber and have a fire-resistance rating of 2 hours)



Depicts deteriorating concrete walkway supported by wood structural members. (wood material used in type IB construction must be heavy timber and have a fire-resistance rating of 2 hours)



Depicts deteriorating concrete walkway supported by wood structural members. (wood material used in type IB construction must be heavy timber and have a fire-resistance rating of 2 hours)



Depicts widow openings greater than 4 inches and the grade below is over 72 inches from the bottom of the opening.



Depicts widow openings greater than 4 inches and the grade below is over 72 inches from the bottom of the opening.



Depicts non-illuminated exit sign on the 5th floor.



Depicts exit door. (illuminated exit sign above or adjacent to exit door required)



Depicts two exit doors in series. (when two exit doors are in series, space between the two doors = 48 inches plus the width of the door)



Depicts defective wired glass in a fire-rated door.



Depicts door stops used to keep exit door from self-closing.



Depicts exit door at bottom of Makai stair enclosure. (illuminated exit sign required above or adjacent to the door)



Depicts exit door at bottom of Makai stair enclosure. (illuminated exit sign required above or adjacent to the door)



Depicts defective illuminated exit sign.



Depicts spacing between the exit stairs and landing.



Depicts open exit stairway. (all openings, windows and doors, within 10 feet of an exterior exit stairway shall be protected)



Depicts exterior exit stairway.



Depicts bottom of exit stairway. (directional illuminated exit sign required)



Depicts exit sign with two directional arrows on second floor. (one arrow points to an area with no exit)



Depicts louvered door on second floor to telephone room.



Depicts louvered door on ground floor to store room.



Depicts louvered door on ground floor to store room.



Depicts guardrail openings greater than 4 inches when walking surface is above 30 inches from the grade or roof below on the Mauka wing.



Depicts emergency exit lighting installed below 80 inches. (a barrier shall be provided were the vertical clearance is less than 80 inches)



Depicts unpermitted room adjacent to the Mauka stairway on the ground floor.



Depicts entrance to pool area.



Depicts gate to pool area not closed. (gate should be self-closing and self-latching. Release mechanism located below 54 inches)



Depicts guardrail openings greater than 4 inches when walking surface is above 30 inches from the grade below at the pool area.



Depicts opening in pool barrier greater than 4 inches.



Depicts guardrail openings greater than 4 inches when walking surface is above 30 inches from the grade below at the pool area.



Depicts guardrail fasten to pool barrier with nylon rope.



Photo of Laundry Area located on ground floor ocean side of building, next to elevator.



2nd Photo of Laundry Area located on ground floor ocean side of building next to elevator.



Photo of inside of Machinery/Equipment room, showing Plumbing pipe that has been installed for Laundry Area next to elevator.



Photo of laundry waste pipe connection to sanitary drain pipe.



Photo of Room 210, Interior renovation performed with no record of Building Permit's. Newer Wash Basin.



Photo of Room 210, Interior renovation performed with no record of Building Permit's. Newer Shower Unit.



Photo of Room 210, Interior renovation performed with no record of Building Permit's. Newer Water Closet/Toilet.



Photo of Room 210, Interior renovation performed with no record of Building Permit's. Newer Bar Sink.



Photo of Hotel Laundry Room.



Another photo of Hotel Laundry Room.



Photo of Gas Piping for Gas Dryer, in Hotel Laundry Room.

EXHIBIT E



HAWAII FIRE DEPARTMENT
FIRE PREVENTION BUREAU

HILO: 25 Aupuni St. Suite 2501, Hilo, HI 96720 (808) 932-2911
KONA: 74-5044 Ane Keohokalole Hwy, Bldg E. Kailua-Kona, HI 96740 (808) 323-4760

RE-INSPECTION DATE
9/7/17

Fire Inspection Record

Pass Fail N/A

GENERAL INFORMATION

Occupancy Name: Country Club Condos
Location: 121 Banyan Drive
Mailing Address: Same
City: Hilo State: HI Zip Code: 96720
Primary Contact: Verda Arriaga
E-Mail Address: Cchrentals@gmail.com

INSPECTION SUMMARY:

Inspection Type: Annual Re-inspection
Exits, Egress, Lighting, and Signs: Fail

Comments: Exit signs shall be illuminated [HCBC 1011.2]
Means of Egress shall be continuously maintained free of all obstructions. [HSFC 14.4.1]
PLEASE REFER TO PHOTOS FOR DETAILS

Electrical Use: Fail
Comments: Electrical junction boxes shall have faceplates [02 NEC 314.25]
PLEASE REFER TO PHOTOS FOR DETAILS

Fire Extinguishers: Fail Date Inspected: 08/17
Comments: Fire extinguishers shall be in a visible accessible location [HSFC 13.6.3.3]
PLEASE REFER TO PHOTOS FOR DETAILS

Fire Alarm / Smoke Detectors: Fail Date Inspected:
Comments: Smoke alarms shall be in every room and operational
PLEASE REFER TO PHOTOS FOR DETAILS

Automatic Sprinkler / Standpipe: Fail Date Inspected:
Comments: Fire Sprinklers/Standpipes shall be serviced annually [HSFC 13.3.3.2 & 13.2.3.3]
Standpipes shall be compliant with NFPA 14 [HSFC 13.2.1]

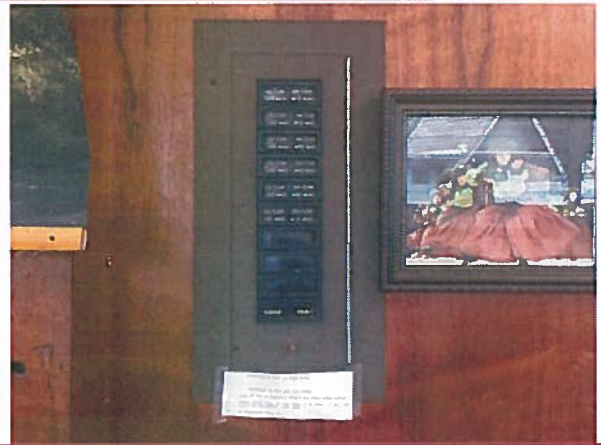
Hood Suppression System: Fail Date Inspected:
Comments: Restaurant is no longer open
SERVICING HAS NOT BEEN KEPT UP TO DATE

Kitchen Hood & Ducting: Fail Date Cleaned:
Comments: Restaurant is no longer open
SERVICING HAS NOT BEEN KEPT UP TO DATE

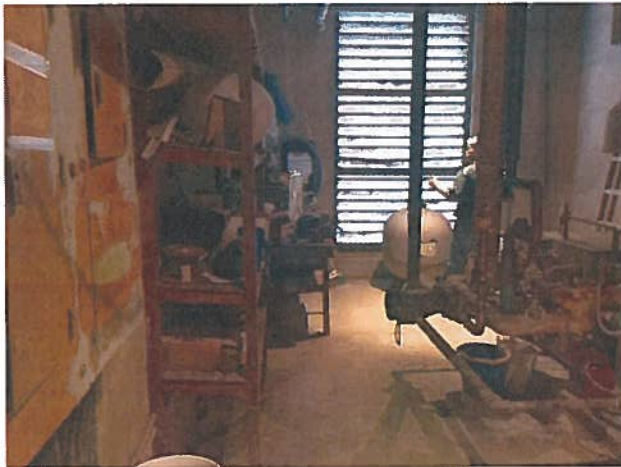
Photo Documentation:



For reference only



Fire Alarm panel in front office shall be serviced annually



Please remove combustible storage from boiler room



Pull station on elevator wall near rear of building blocked and painted *MANY PULL STATIONS WERE PAINTED*



Please ensure all Fire Department Connections are in working order, as many are not in operational order at this time



Please remove combustible storage from transformer room

Photo Documentation:



Please ensure all emergency lighting is fully operational



Junction boxes need to be covered to assist in Fire Prevention



Electrical panels need to have open circuits covered



Please ensure exit signs are in proper working order



Please ensure Fire Department Standpipes are properly secured, as bracing has not been maintained



Fire extinguisher and hoses are not accessible, as glass does not have tool to break glass available

Photo Documentation:



No smoke detectors in guest rooms as required by code



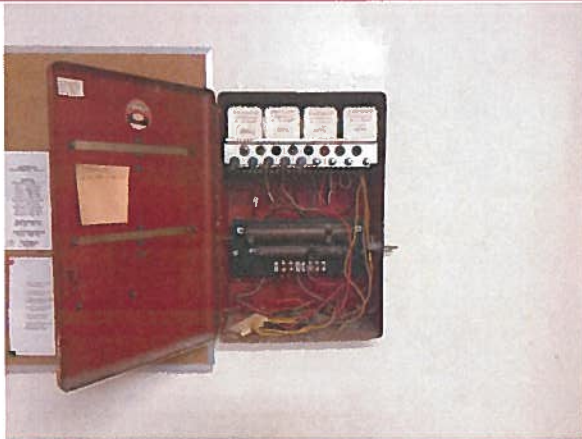
Ensure all self closing hardware on property is properly installed



Self closing doors cannot be propped open, hardware not essential to door operation cannot be used



Fire Department connection does not have signage or annual inspection tag



Fire Alarm panel has no service tag and needs to be in working order immediately



Remove cardboard from rated fire doors

Photo Documentation:



Remove cardboard from rated fire doors



Ensure that laundry equipment is properly installed and has adequate venting, as ceiling shows signs of heat damage



Dryers have open Pilot light and uncleaned piles of flammable lint near Pilot light



All hardware for doors shall be working and in good operational condition



The door on the ground floor facing the ocean in rear stairwell needs to be fully operational. ***DOOR HAS BEEN INTENTIONALLY DISABLED***



Storage on bottom has non Fire rated door, which may not be able to protect room and contents

Photo Documentation:



Dryer ducting is not to code, ducting runs through makeshift wall



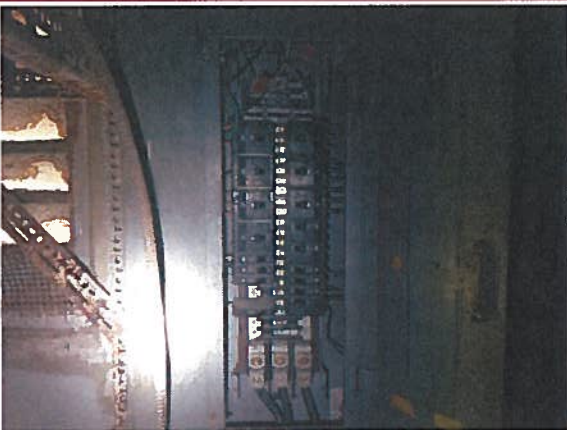
Banquet room: Doors are not to code, storage needs to be removed, doors on ocean side need to be unblocked



Remove combustibles from main electrical room, such as beds, and other flammables



Remove combustible liquid and related equipment from main electrical room



Electrical panel needs cover

Fire Inspection Summary & Legal Notice

INSPECTION NOTES

Please contact Inspector Royd Henderson with any questions or concerns regarding your recent Fire Inspection at 937-7867

-Numerous Building, Electrical, and Plumbing code violations have been found. Please refer to the department specific reports for details.

- Due to the Fire Alarm not being in service at this time, a Fire Department approved Fire Watch shall be put in place to protect occupants and staff.

This is to advise you that the Hawaii Fire Department's Fire Prevention Bureau conducted a fire inspection of your business on 8/7/17, in accordance with the Hawaii State Fire Code. The Hawaii Fire Department is authorized to conduct these inspections in accordance with Hawaii Revised Statutes §132-6(a). This report shows areas that do not comply with the Hawaii State Fire Code and shall be corrected.

At the date of this inspection the occupancy above listed has met the requirements of the Hawaii State Fire Code.

All above-described deficiencies shall be corrected within 30 days. Failure to comply may result in an order or notice of evacuation or stop-use to any premises, building or vehicle or portion thereof which has or is a fire hazard. Upon completion or if you have any questions, call the fire prevention bureau as referenced above. Photos of minor corrections maybe submitted for re-inspection by email at royd.henderson@hawaiicounty.gov

Due to the clear and immediate fire risk violations noted above, this report serves as a formal order of 'STOP-USE' for this occupancy by **ORDER OF THE HAWAII COUNTY FIRE CHIEF** per Hawaii Revised Statutes §132-6(e) until the above noted fire safety issues have been resolved and the occupancy has been re-inspected by the Hawaii Fire Department's Fire Prevention Bureau. Be advised that failure to comply with this order may lead to penalties. Pursuant to HRS 132-13 Any owner, occupant, or other person having control over or charge of any building, structure, or other premises who violates any provision of this chapter or any law, ordinance, or rule relating to protection from fire loss or who fails or refuses to comply with any order of the county fire chief shall be fined not more than \$500 or imprisoned not more than thirty days, or both.

The next inspection for fire code compliance has been scheduled on 9/7/17.

INSPECTOR: Royd Henderson BUSINESS REP: Verda Arriaga

BUSINESS REP SIGNATURE:  DATE: 8/7/17

INSPECTOR SIGNATURE:  DATE: 8/7/17

EXHIBIT F

HAWAII FIRE DEPARTMENT
FIRE PREVENTION BUREAU

HILO. 25 Aupuni St Suite 2501, Hilo, HI 96720 (808) 932-2913 or (808) 932-2914
KONA 74-5044 Ane Keohokalole Hwy, Bldg E, Kailua-Kona, HI 96740 (808) 323-4760

Fire Report

Fire Prevention Site visit

Oceanfront 121 LLC
121 Banyan Drive Hilo, HI 9672

Manager Scott Chritton
Hiloscott yahoo.com
(808) 657-1360

A site visit was conducted on 08 30/2022 at the above mentioned site. Our main focus was to assist Mr. Chritton with suggestions for improving the safety of the residents. The findings of our site visit are as follows:

1. We would like Mr. Chritton to remove or reduce the fuel load in the rear storage of the old Shooters Bar and Grill.
2. Ensure all Standpipes and Fire Department connections are operational.
Update Hilo Fire Extinguisher is scheduled to complete all testing as soon as the new pump is received.
3. Ensure all Fire hose cabinets are operational and glass shards are removed from existing cabinets.

It is clear from our discussions that Mr. Chritton is exhausting all resources to comply with safety recommendations. We will support his efforts going forward by following up in January as the BLNR has hearings as to the direction of the property. We will know by then who will be responsible for the site and can begin working with them.

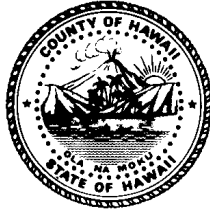
Submitted,



Royd Henderson
Fire Prevention Captain
Fire Prevention Branch
Cell 808-937-7867

EXHIBIT G

Mitchell D. Roth
Mayor



Stephen M. Pause, P.E.
Director

Lee E. Lord
Managing Director

Malia A. Kekai
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 · Hilo, Hawai'i 96720-4224
(808) 961-8321 · Fax (808) 961-8630
public_works@hawaiicounty.gov

NOTICE OF VIOLATION

June 30, 2023

CERTIFIED MAIL- 9589 0710 5270 0625 5226 01

State of Hawai'i
Department of Land & Natural Resources Land Division
Attn: Gordon C. Heit
75 Aupuni Street Room 204
Hilo, Hawaii 96720

RE: NOTICE OF VIOLATION
PW.BLG_CE.2023-00028, DPW23-249
121 Banyan Drive
Hilo, Hawai'i 96720
TMK: (3) 2-1-005:020

Dear Gordon C. Heit,

The County of Hawai'i, Department of Public Works - Building Division ("DPW") is serving the State of Hawai'i, Department of Land & Natural Resources, Land Division ("DLNR") with a Notice of Violation ("NOV") for violations of the Hawai'i County Code ("HCC"), Chapter 5, at a property owned by DLNR. The violations described in this NOV are located at 121 Banyan Drive, Hilo, Hawai'i, 96720, further identified as Tax Map Key No.: (3) 2-1-005:020 ("the site"). The violations were revealed during an inspection of the site that took place on March 30, 2023.

I. BACKGROUND

On March 30, 2023, DPW inspected the site, which revealed numerous violations of the construction code. Pursuant to HCC Section 5-10-2(b)(4), the nature of the violations is:

(1) unpermitted construction work that did not receive the required inspections; (2) unpermitted electrical work; (3) numerous electrical violations (4) unpermitted plumbing work. The violations include but are not limited to: 4x4 bracing that was installed to support the alternative walkway to the main walkway to the Banyan Drive side units at failed connection, and several second 4x4 bracing have been installed to the 3rd, 4th and 5th floors without the required permit(Exhibit A, photos 1-3); (1) the end wall partitions on each floor have large openings, which present fall concerns(Exhibit A, photo 4); and (3) The elevator on the Banyan Drive side of the site has not worked for at least 3 years and work performed on the elevator was done without the required permit.

Attached for your reference is Exhibit “A,” which includes photographs of the violations.

II. NOTICE OF VIOLATION

Based upon a review of County records and the inspection of the site that took place on March 30, 2023, the violations are as follows:

Code and/or Ordinance and Section(s)	Violations (s)
HCC Section 5-10-1. Violations. HCC Section 5-3-1. Permit required; generally.	Alterations were done without a permit, as required by HCC, Section 5-3-1(a)(1), which constitutes a violation under HCC 5-10-1.
HCC Section 5-10-1. Violations. HCC Section 5-8-1. General requirements.	Alterations were not inspected by DPW, as required by HCC Section 5-8-1(a), which constitutes a violations under HCC Section 5-10-1..

The relevant sections of the HCC cited above are provided in Exhibit “B.”

III. CORRECTIVE ACTIONS

To be in compliance with the above-mentioned sections, the following corrective actions are required by the deadlines specified below:

- (1) Submit to DPW, by **July 31, 2023**, a progress report that details: (1) the measures undertaken to correct the violations; and (2) a corrective action plan and schedule to correct all outstanding violations listed in this NOV; and
- (2) Correct all violations, which includes obtaining the required permits and inspections; apply for all necessary permits by **August 31, 2023**.

State of Hawai'i
Department of Land & Natural Resources Land Division
NOTICE OF VIOLATION - PW.BLG_CE.2023-00028, DPW23-249
June 30, 2023

Additional time may be provided for completion of corrective actions if deemed reasonably necessary and a written request is made to DPW. Upon commencement and completion of the corrective actions, please contact DPW inspectors so that the corrective actions can be verified. Contact information is listed below in the conclusion section.

IV. CONCLUSION

Please do not hesitate to contact DPW immediately if you wish to further discuss this matter, or to request an extension of the deadline listed above. Please contact the appropriate supervisors as follows:

Supervising Building Inspector, David Abelaye at 961-8471.
Supervising Electrical Inspector, Gary Kaho'ohanohano at 961- 8486.
Acting Supervising Plumbing Inspector, Todd Spencer, at 961-8301.

Very truly yours,



Stephen M. Pause, P.E.
Director

Attachments: Exhibit A
Exhibit B

cc: Malia Kekai – Deputy Director of Public Works
Julann Sonomura, P.E. – Building Chief
Sinclair Salas-Ferguson – Deputy Corporation Counsel
David Abelaye – Supervising Building Inspector
Gary Kaho'ohanohano – Supervising Electrical Inspector
Todd Spencer – Acting Supervising Plumbing Inspector

Exhibit "A"



Photo 1) Depicts old walkway support and added 2nd floor support.

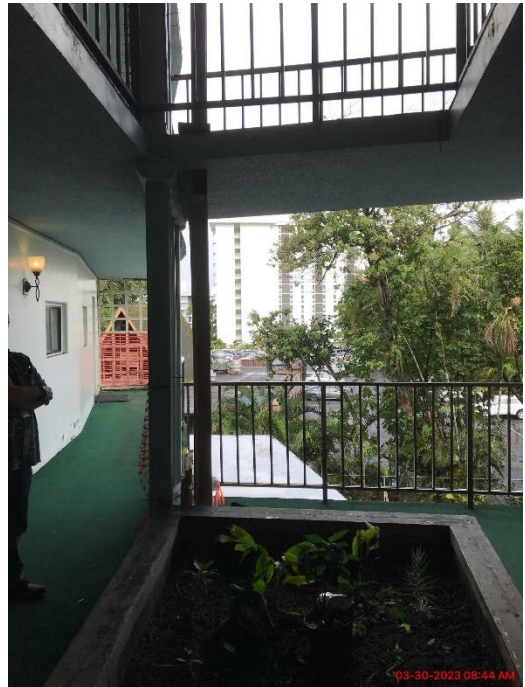


Photo 2) Depicts added walkway support on 3rd floor.

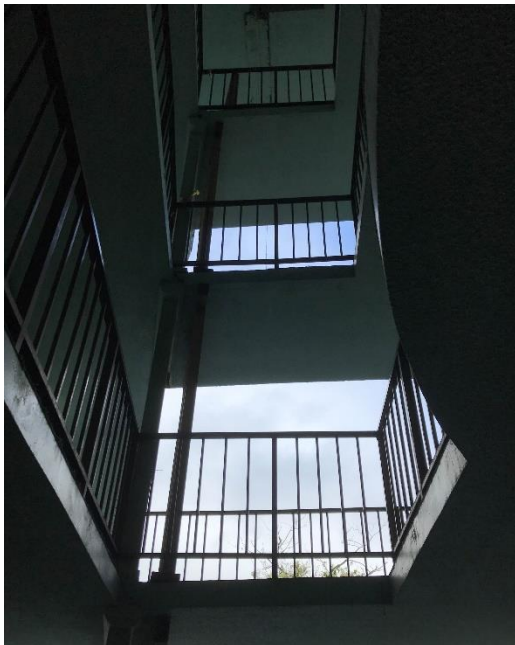


Photo 3) Depicts added walkway supports from 3rd floor to walkway on 6th floor.



Photo 4) Depicts end wall partition on each floor with large openings present fall concerns.

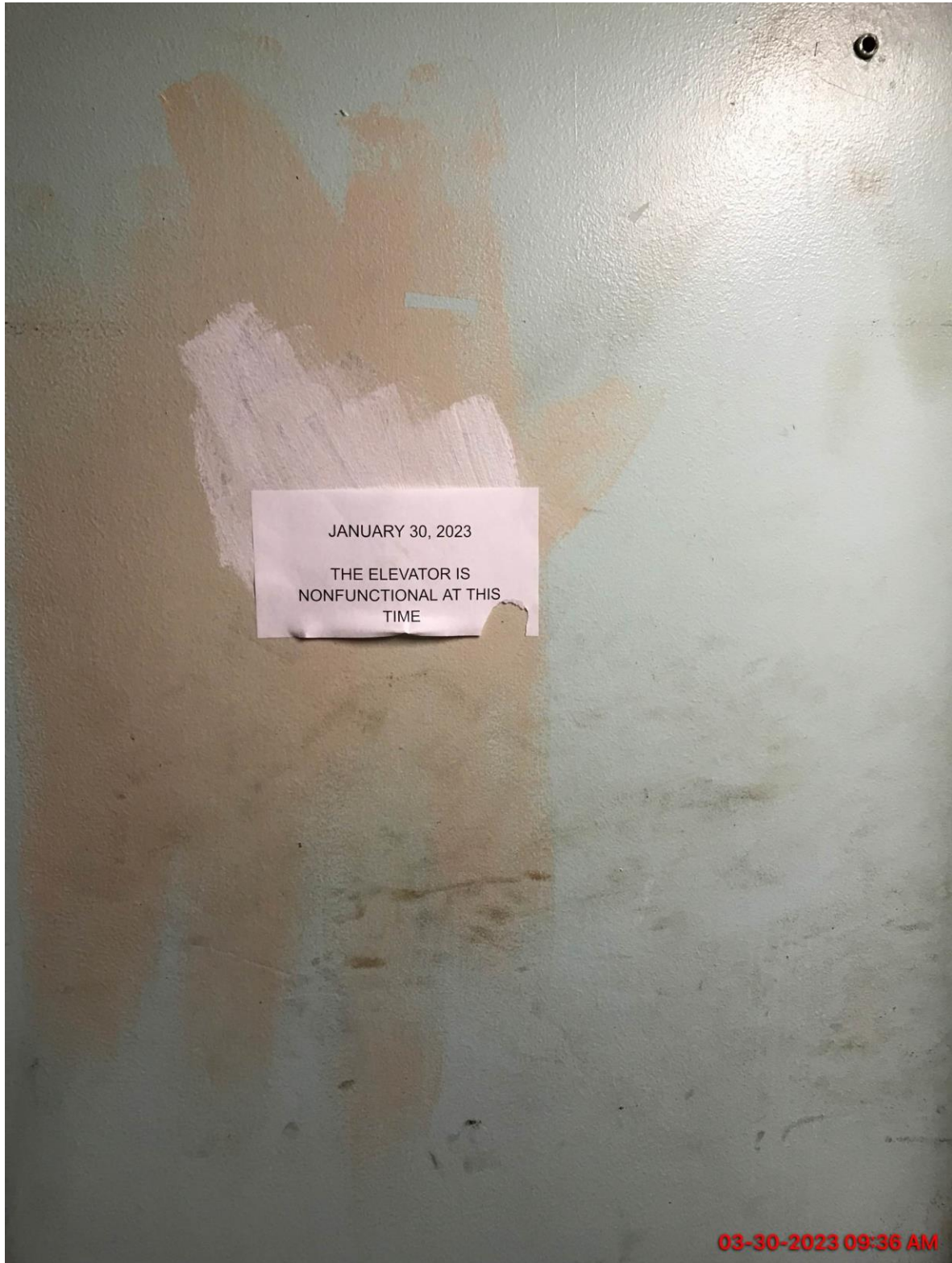


Photo 5) The elevator is non-functional. Elevator needs to be properly maintained to ensure ADA access.



Light fixture in elevator equipment room on roof. Not a proper installation of a light fixture over another light fixture.

Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 110.3(B) equipment must be labeled and listed for use.



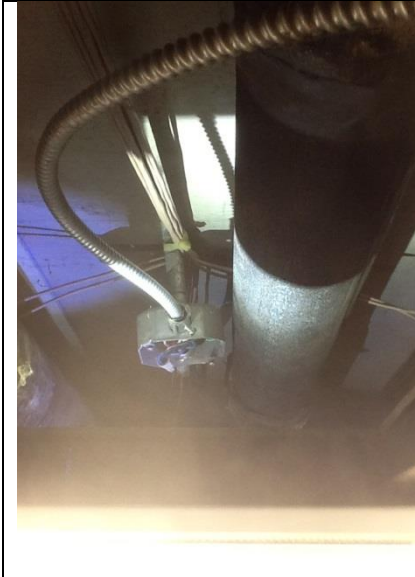
Guestroom corridors (All floors) the use of NMB cable in suspended ceilings not approved in these areas.

Per HCC Section. 5-9-6 Nonconforming and defective installations. Per NEC article 334.12(A)(2) Type NMB cable uses not permitted Exposed in dropped or suspended ceilings in other than one and two family and multifamily dwellings.



Guestroom corridors (All floors) Emergency lighting not working and damaged and must be replaced.

Per HCC Section. 5-9-6 Nonconforming and defective installations.



Guestroom corridors
(All floors) junction boxes
in ceilings covers required



Guestroom corridors
(All floors) junction boxes
in ceilings covers required



Guestroom corridors
(All floors) Check
receptacle covers to see if
properly seated.

Per HCC Section 5-9-6.
Nonconforming and
defective installations.
Per article NEC 314.28(3)
(C) Covers. All pull boxes,
junction boxes, and
conduit, bodies shall be
provided with covers

Per HCC Section 5-9-6.
Nonconforming and
defective installations.
Per article NEC 314.28(3)
(C) Covers. All pull boxes,
junction boxes, and
conduit, bodies shall be
provided with covers

Per HCC Section 5-9-6.
Nonconforming and
defective installations.
NEC article 406.5
Receptacle faceplates
shall be installed as to
completely cover the
opening and seat against
the mounting surface



Guestroom corridors
(All floors) Electrical room load centers require seals for unused openings.



Guestroom corridors
(All floors) Electrical room load centers require seals for unused openings.

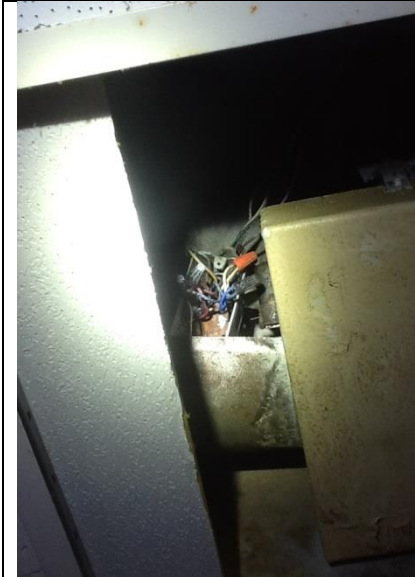


Guestroom corridors
(All floors) Light fixtures above entry doors wired with NMB cable. Protection required.

Per HCC Section. 5-9-6. Nonconforming and defective installations. NEC article 110.12(A) Mechanical Execution of Work. Electrical equipment shall be installed in a neat and workmanlike manner. (A) Unused Openings. Unused openings to be sealed off.

Per HCC Section. 5-9-6. Nonconforming and defective installations. NEC article 110.12(A) Mechanical Execution of Work. Electrical equipment shall be installed in a neat and workmanlike manner. (A) Unused Openings. Unused

Per HCC Section. 5-9-6 Nonconforming and defective installations. NEC Article 334.15 Exposed work. In exposed work, except as provided in 300.11(A), cable shall be installed as specified in 334.15(A) through (C). Cable shall be protected from physical damage



Storage rooms (all floors)
Junction boxes in ceilings for air handling units no covers.

Per HCC Section 5-9-6. Nonconforming and defective installations. Per article NEC 314.28(3) (C) Covers. All pull boxes, junction boxes, and conduit, bodies shall be provided with covers



Storage rooms (all floors)
Receptacles next to wash tubs require GFCI protection.

HCC Section 5-9-6. Nonconforming and defective installations.
Per NEC article 210.8 GFCI protection required



Storage rooms (all floors)
Work clearance in front of this electrical panel required.

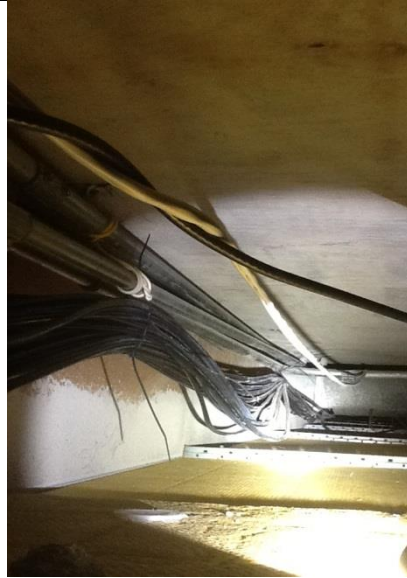
Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient Access and working space shall be provided and maintained. About all electrical equipment to permit ready and safe operation And maintenance of such equipment. (1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).



3rd floor guestroom corridors electric room load center overcurrent protective devices too high 6'-7" max height. (7'-3") in field



3rd floor guestroom corridors electric room load center overcurrent protective devices too high 6'-7" max height



3rd floor guestroom corridors conduits pictured in ceiling not properly supported.

Per HCC Section. 5-9-6 Nonconforming and defective installations. Per NEC article 240.24(A) Location in or on premises (Accessibility) Overcurrent devices shall be readily accessible and should be installed so that center of the grip of the operating handle of switch or circuit breaker, when in its highest position, is not more than 6'-7" above the floor or working platform.

Per HCC Section. 5-9-6 Nonconforming and defective installations. Per NEC article 240.24(A) Location in or on premises (Accessibility) Overcurrent devices shall be readily accessible and should be installed so that center of the grip of the operating handle of switch or circuit breaker, when in its highest position, is not more than 6'-7" above the floor or working platform.

Per HCC Section. 5-9-6 Nonconforming and defective installations. Per NEC article 358.30 Securing and Supporting. (A) Securely Fastened. EMT shall be securely fastened in Place at least every 3 m (10 ft.).



2nd floor data/com room
work clearance in front of
electrical equipment.



2nd floor data/com room
work
AC unit disconnecting
means required.
Unsupported flexible
conduit.





2nd floor guest room 210
Receptacle next to bath
sink GFCI protection
required

Per HCC Section 5-9-6.
Nonconforming and defective
installations.
Per NEC article 110.26
Spaces about Electrical
Equipment. Sufficient
Access and working space
shall be provided and
maintained.
About all electrical equipment
to permit ready and safe
operation
And maintenance of such
equipment.
(1) Indoor. Indoor
installations shall comply with
110.26(F) (1) (a) through (F)
(1) (d).

Per HCC Section 5-9-6.
Nonconforming and
defective installations.
Per NEC article 110.25
Disconnect means required

Per HCC Section 5-9-6.
Nonconforming and
defective installations.

Per NEC article 210.8
GFCI protection required

<p>2nd floor guest room 210 Light fixture over shower sealed lens required.</p>	 <p>2nd floor guest room 210 Receptacle next to wet bar sink GFCI protection required</p>	 <p>2nd floor housekeeping room 209 Junction boxes in ceilings for air handling units no covers.</p>
<p>Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 410.10(A) Luminaires installed in wet or damp locations shall be installed such that water cannot enter or accumulate in wiring compartments, lamp holders, Or other electrical parts.</p>	<p>Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 210.8 GFCI protection required</p>	<p>Per HCC Section 5-9-6. Nonconforming and defective installations. Per article NEC 314.28(3) (C) Covers. All pull boxes, junction boxes, and conduit, bodies shall be provided with covers</p>



2nd floor housekeeping room 209 work clearance in front of this electrical panel required.



2nd floor housekeeping room 209 Receptacle behind dryer missing faceplate.



Exterior electrical equipment behind former restaurant deteriorated by means of corrosion. Required to be upgrade

Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient Access and working space shall be provided and maintained. About all electrical equipment to permit ready and safe operation And maintenance of such equipment. (1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).

Per HCC Section 5-9-6. Nonconforming and defective installations. NEC article 406.5 Receptacle faceplates shall be installed as to completely cover the opening and seat against the mounting surface.

Per HCC Section 5-9-6. Nonconforming and defective installations. NEC article 110.27(A) Live parts of electrical equipment operating at 50 volts or more shall be guarded against accidental contact.



Pool side receptacle deteriorated conduits are rotten claims to be de energized. Advised to remove entire installation conductors and circuit breaker.

Per HCC Section 5-9-6. Nonconforming and defective installations.






Pool side receptacle deteriorated conduits are rotten claims to be de energized. Advised to remove entire installation conductors and circuit breaker.

Per HCC Section 5-9-6. Nonconforming and defective installations.



Main electric room roof vent rotted out water leaking. roof must be repaired. (Electrical Hazard) Wet floors around energized electrical equipment. **(CORRECTED)**

Per HCC Section 5-9-6. Nonconforming and defective installations. NEC article 110.11 Deteriorating Agents. Unless identified for use in the operating environment, no conductors or equipment shall be located in damp or wet locations; where exposed to gases, fumes, vapors, liquids, or other agents that have a deteriorating effect on the conductors or equipment; or were exposed to excessive temperatures.

		
<p>Work clearance in front of this electrical panel is required. Beds in the way</p>	<p>Main electric room lights do not work. Lighting required</p>	<p>Work clearance in front of this electrical panel is required. Beds in the way</p>
<p>Per HCC Section 9-10. Nonconforming and defective installations. Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient Access and working space shall be provided and maintained. About all electrical equipment to permit ready and safe operation And maintenance of such equipment. (1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>	<p>Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 110.26 (D) Illumination. Illumination shall be provided for all. working spaces about service equipment, switchboards, panelboards, or motor control centers installed indoors.</p>	<p>Per HCC Section 5-9-6. Nonconforming and defective installations. Per NEC article 110.26 Spaces about Electrical Equipment. Sufficient Access and working space shall be provided and maintained. About all electrical equipment to permit ready and safe operation And maintenance of such equipment. (1) Indoor. Indoor installations shall comply with 110.26(F) (1) (a) through (F) (1) (d).</p>



Installation of 4" x 2" ABS Combination Fitting, according to Maintenance Personal serves as an overflow point in the event of a wastewater back-up.



Another angle of that 4" ABS Pipe rough-in, 2" ABS Pipe receiving wastewater from Washer Machine Standpipe.



Section 5-3-1 Permit required.



Photo of One of the Apartment Unit, where a Kitchen Sink had been installed.



Up close photo of that wash basin where water and waste piping were installed to accommodate for kitchen sink



Photo of Kitchen Sink installed opposite side of wash basin.

Exhibit "B"

HCC Section 5-3-1. Permit required; generally.

- (a) Except as provided in division 2, no person shall perform any of the following work or cause or permit the same to be done on any building or structure in the County, without first obtaining a permit for this work from the authority having jurisdiction:
- (1) Erect, construct, enlarge, alter, repair, relocate, improve, remove, convert, or demolish any building or structure;
 - (2) Erect, install, enlarge, alter, repair, remove, convert, or replace any electrical work;
or
 - (3) Erect, install, enlarge, alter, repair, remove, convert, or replace any plumbing, fire sprinkler, gas, or drainage piping work, or any fixture, gas appliance, water heating, or water treating equipment.
- (b) A permit shall be required for, but not limited to, the following:
- (1) Gas tanks and piping.
Installation, removal, alteration, repair, or replacement of all gas tanks and piping on private property.
 - (2) Handicap accessible routes.
Construction or renovation of handicap accessible routes from parking lot to building or from building to building on a lot.
 - (3) Retaining walls.
Erection, construction, enlargement, alteration, repair, moving, conversion, or demolition of retaining walls four feet and higher. Stepped or terraced retaining wall within eight feet of each other are considered to be one wall when determining wall height.
 - (4) Solar photovoltaic systems.
Complete new installations of all solar photovoltaic residential and nonresidential systems, or the replacement of an existing system with all new components, or relocation of panels from roof to ground or vice versa.
 - (5) Solar water heating systems or components.
Complete new installations of all solar water heating systems, the complete replacement of existing system with all new components, or relocation of panels from roof to ground or vice versa.
 - (6) Television or radio communication towers.
Erect, construct, enlarge, alter, repair, relocate, convert, or demolish any television or radio communication tower that is not regulated by the public utilities commission.
 - (7) Water tanks or catchments.
Installation, removal, alteration, repair, or replacement of water tanks or catchments intended for potable use, household use, or fire protection, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see chapter 26, Hawai'i County Code.
 - (8) Air conditioning systems. Installation, removal, alteration, repair, or conversion of any heating, ventilation, or air conditioning system.

HCC Section 5-8-1. General requirements.

(a) All construction or work for which a permit is required shall be inspected by the authority having jurisdiction to ensure compliance with the requirements of the construction code. Approval as a result of an inspection shall not be construed to approve violations of the provisions of the construction code, or of any other laws. Inspections that either presume to authorize violations of or to nullify the provisions of the construction code or of other laws shall not be valid.

(b) It shall be the duty of the permit holder or their agent, to cause the work to remain accessible and exposed for inspection purposes. Neither the authority having jurisdiction, nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection of construction or work, or to survey a lot.

(c) The authority having jurisdiction may require a survey of the lot to verify that the approved plans accurately reflect the location of the structure.

HCC Section 5-10-1. Violations.

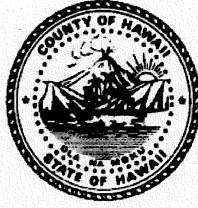
It shall constitute a violation of the construction code for any person to cause or authorize the following to be done:

- (1) Violate any provision of the construction code or permit or variance issued pursuant to the construction code;
- (2) Erect, construct, enlarge, alter, repair, relocate, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure, or cause or authorize the same to be done in violation of the construction code, including but not limited to chapter 5A, the building code;
- (3) Perform any electrical work or authorize the same to be done in violation of the construction code, including but not limited to chapter 5D, the electrical code;
- (4) Perform any plumbing work or authorize the same to be done in violation of the construction code, including but not limited to chapter 5F, the plumbing code; or
- (5) Perform any work covered by the construction code or authorize the same to be done in violation of the provisions of Chapter 448E, Hawaii Revised Statutes, relating to the licensing of electricians and plumbers.

EXHIBIT H

Mitchell D. Roth
Mayor

Deanna S. Sako
Managing Director



Stephen M. Pause, P.E.
Director

Malia A. Kekai
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 · Hilo, Hawai'i 96720-4224
(808) 961-8321 · Fax (808) 961-8630
public_works@hawaiicounty.gov

NOTICE OF ORDER

July 2, 2024

CERTIFIED MAIL-7021 0950 0000 1596 2360

State of Hawai'i
Department of Land & Natural Resources Land Division
Attn: Gordon C. Heit
75 Aupuni Street Room 204
Hilo, Hawai'i 96720

SUBJECT: Notice of Order
PW.BLD_CE.2023-00028, DPW23-249
121 Banyan Drive
Hilo, Hawaii 96720
Tax Map Key (3) 2-1-005:020

Dear Gordon C. Heit,

On **June 13, 2023**, The County of Hawai'i, Department of Public Works - Building Division ("DPW-BLDG") issued a Notice of Violation ("NOV"), a copy of which is attached, requesting that action be taken to correct the violations listed in the NOV.

Our files indicate that, as of today's date, June 28, 2024, **no actions have been taken to correct the violations.**

You are hereby ordered to:

- (1) Submit a permit application for the unpermitted work within ten (10) days of receiving this Order to obtain a building permit and the required inspections for the work done without the required permits.

Please contact DPW-BLD if you would like to discuss the "Work done without a permit" permit process or if you are unable to meet either of the deadlines set forth above.

Further, pursuant to the authority granted by the Hawai'i County Code Chapter 5, Section 5-10-2(c)(4), and (5), you are hereby ordered to:

- (1) Pay a civil fine of \$ 1,000 within 5 business days of this receipt; **and**
- (2) Pay a civil fine of \$ 1,000 per violation, for each day the violation persists. The violations are listed below:
 - a. Violation 1: violation of HCC § 5- 3- 1, alterations completed without a permit;
 - b. Violation 2: violation of HCC § 5- 8- 1, alterations completed without required inspections;

Checks must be made payable to the County Director of Finance and should be sent to DPW-BLDG referencing the Notice of Order on your check.

This Order shall become final thirty (30) calendar days after the date of receipt.

You may appeal this order to the County of Hawai'i Board of Appeals. The petition of appeal must be submitted through the Electronic Processing and Information Center (EPIC) System before the date the order becomes final, which is thirty (30) days from receipt of this Order, as mentioned above. (Form attached)

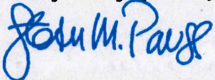
An appeal to the Board of Appeals will not stay the levying of fines or any other provision of this order.

If the fine is not paid and/or violations are not corrected, this matter may be referred to (1) the Office of the Corporation Counsel to institute a civil action in any court of competent jurisdiction for the enforcement of this order and/or (2) the Prosecuting Attorney's Office for criminal prosecution.

If this order is issued to more than one person, each person shall be jointly and severally liable for the full amount of any fine imposed by this order.

Please contact the office at (808) 961-8321 if you have any questions regarding this matter.

Very truly yours,



Stephen Pause, P.E. – Director

Cc: Sinclair Salas-Ferguson – Deputy Corporation Counsel
Julann Sonomura, P.E. – Building Chief
Kelly Wilson – Deputy Building Chief
David Abelaya – Supervisor Building Inspector
Gary Kaho'ohanohano – Supervisor Electrical Inspector
Robert Lum Jr. – Supervisor Plumbing Inspector

EXHIBIT I

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

December 13, 2024

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

PSF No.: 19HD-078

Hawaii

Approve Development Agreement with Banyan Drive Management LLC, Developer, for Renovation of Former Country Club Condominium Hotel Property; Approve Issuance of New Direct, Long-term Lease to Banyan Drive Management LLC, Lessee, for Hotel and Apartment Purposes; Require Personal Guaranty from Ryan Lee for Obligations of Banyan Drive Management LLC under the Development Agreement and Lease, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.

BACKGROUND:

At its meeting of July 22, 2022, under agenda Item D-5, as later amended at its meeting of September 9, 2022, under agenda Item D-2, the Board of Land and Natural Resources (Board) approved the publication of a Request for Qualifications / Request for Proposals (RFQ/RFP) for interested parties to submit proposals for renovating the former Country Club Condominium Hotel under a new long-term lease up to 65 years. Specifically, the Board delegated authority to the Chairperson to (i) issue an RFQ/RFP consistent with Hawaii §171-59(a), Revised Statutes (HRS), for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) make a preliminary determination and recommendation to the Board of the best applicant.¹

In accordance with the Board's approval, the Chairperson appointed an evaluation committee on August 8, 2022 to review any statements of qualifications and proposals submitted in response to the RFQ/RFP. At its meeting of April 28, 2023, under agenda Item D-3, the Board approved the recommendation of the evaluation committee to select the proposal of Banyan Drive Management LLC (BDM).²

1 The Board's action of September 9, 2022, agenda Item D-2, which includes the Board action of July 22, 2022, agenda Item D-5, as an exhibit can be viewed online here: <https://dlnr.hawaii.gov/wp-content/uploads/2022/09/D-2.pdf>

2 The Board had previously approved the selection of a different applicant, Savio SB Growth Venture LLC (SGV), at its meeting of March 24, 2023, under agenda Item D-1. However, SGV formally withdrew from further consideration under the RFQ/RFP selection process by its letter dated April 6, 2023. The RFQ/RFP was designed so that in the event the first-ranked applicant withdrew its proposal

As explained in the staff submittal of April 28, 2023, agenda Item D-3, BDM’s initial proposal was to invest approximately \$20 million in the design and renovation of the property, including the 152 residential units, lobby, restaurant space, elevators and swimming pool. The renovations would have been completed over about a 3-4-year period. However, due to Hawaii County Department of Public Works, Building Division and Engineering Office restrictions applicable to renovations of older buildings, BDM’s latest proposal reduces the amount of its investment and extends the time for making them as explained further below.

LEGAL REFERENCE:

Sections 171-6, 16, 18, 17, 19, 35, 36, 41, 59, and other applicable sections of Chapter 171, Hawaii Revised Statutes (HRS), as amended.

LEASE CHARACTER OF USE:

Hotel and apartment purposes and uses accessory and incidental thereto and customarily conducted within hotel and apartment properties.

LEASE TERM:

Sixty-five (65) years.

LEASE COMMENCEMENT DATE:

To be determined by Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,” and Item 40 that states, “Leases of state land involving negligible or no expansion or change of use beyond that previously existing.” See Exemption Notification included as Exhibit C to Board action of July 22, 2022, agenda Item D-5 (attached hereto as Exhibit 1).

any time before or after Board approval, staff could present to the Board for consideration a recommendation that the Board select the second-ranked proposal/applicant, which in this case is BDM. The Board therefore rescinded its March 24, 2023 approval of the selection of SGV and approved the selection of BDM instead. The Board’s action of April 28, 2023, agenda Item D-3, which includes the Board action of March 24, 2023, agenda Item D-1, as an exhibit can be viewed online here: <https://dlnr.hawaii.gov/wp-content/uploads/2023/04/D-3-1.pdf>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for the costs of public notice pursuant to section 171-16, HRS.

REMARKS:

The Board action of July 22, 2022, agenda Item D-5, discussed some of the challenges of renovating the subject property.³ The staff report noted that the property has 65 parking spaces while the current Hawaii Zoning Code requires 286. The small size of the property (1.22 acres) will not accommodate additional parking spaces within the parcel boundaries. However, due to the age of the existing improvements, they are considered non-conforming and permitted to operate with 65 parking spaces as long as any building renovations are completed in accordance with the requirements of the applicable building codes.

The property is also located in a special flood hazard area, specifically Flood Zones AE and V of the Flood Insurance Rate Maps. As a result, Chapter 27 of the Hawaii County Code, Floodplain Management (Flood Code), places additional restrictions on the value of renovations that can be made to the property. Renovations can be made the property as long as their value does not exceed 50% of the building market value including a three-year lookback for total construction cost (the “50% Rule”).⁴ If renovations exceed the 50% Rule, then the structure must be brought up to the current Flood Code requirements, which could mean elevating it above the base flood elevation. In the case of the Country Club property, the concrete building cannot be elevated and abandoning the ground level would not be feasible because major components of the building, include the front desk/office, restaurant and restrooms exist at that level.

The Flood Code provides that, “property appraisals used for tax assessment purposes by the County Department of Finance, Real Property Tax Office” are an acceptable estimate of building market value. However, the County of Hawaii assigns no taxable value to the improvements on the Country Club property. In such cases, the Flood Code allows for an appraisal of the building value be submitted to the County. Because an appraisal is also required to determine the rent payable under a new lease to BDM, staff procured (at BDM’s expense) an appraisal report that covers fair market rent for land and improvements, as well as land value and the value of the building in its current condition. The appraiser determined that the fair market value of the building as of June 25, 2024 is \$1,500,000.

³ The published RFQ/RFP for the project included a copy of the Board action of July 22, 2022, agenda Item D-5, as Attachment 1.

⁴ See Chapter 27, Hawaii County Code, Floodplain Management, Section 27-12, definition of “Substantial improvement.”

Accordingly, in order to avoid the consequences of exceeding the 50% Rule, BDM would have to spend no more than \$750,000 on renovations in the first three-year lookback period. As each year of renovations is completed, however, the tax assessed or appraised building market value would likely increase, which should in turn result in an increase in allowed renovation cost under the 50% Rule. There are many health and safety violations at the property that can be addressed without a permit. To the extent these violations can be cured without pulling a permit, BDM explains that the money spent to address them will not be counted toward expenditures under the 50% Rule. Accordingly, BDM plans to invest about \$1,095,000 in renovations in the first year as indicated in the table below.

BDM and its architect will have to work closely with the County of Hawaii, Department of Public Works, Building Division and Engineering Office, to ensure that the work it conducts is consistent with the constraints of the 50% Rule. As each year of renovations is completed in compliance with the rule, the taxable or appraised value of the property is expected to increase, which will, in turn, allow BDM to invest more money in renovations each succeeding year. BDM now proposes to invest approximately \$10 million over a seven-year period in the design and renovation of the property, including the 152 residential units, lobby, restaurant space, elevators and swimming pool. All parking and driveway areas will be re-paved and new landscaping planted. The following table shows the anticipated investments over the seven-year period of renovations:

Phase	Description	Cost
Year 1	Design and permitting for repairs and renovations; address Building/Electric Code violations and life safety concerns; improve building security.	\$1,095,000
Year 2	Americans with Disabilities Act compliance; roof work (coating, flashing, gutter system, downspouts, skylights); restaurant space demolition and plumbing repairs; construct code compliant elevator (makai wing); painting interior of 58 units; landscaping; plumbing repairs in parking lot.	\$1,070,500
Year 3	Renovate all entrances and guestroom doors; increase ceiling height in common areas; demo CMU walls and install new enclosures with railings on all floors; repair concrete spalling and exposed rebar around windows, slabs, exterior walls, stairs, columns and roof area; replace all rusted conduits and junction boxes; paint building exterior, interior common areas; drywall repair and paint interior of 90 units.	\$1,343,600
Year 4	Design and permits for installation of fire sprinkler system, fire stopping seal; restaurant renovation including kitchen, bar area, electrical and lighting system, plumbing, sound system, fixtures, flooring, trims and finishes, and	\$1,536,000

Phase	Description	Cost
	bathrooms.	
Year 5	Design and permits for renovation work to office, banquet and lobby reception area; new doors and windows, new wall and ceiling finishes, new flooring, new fixtures and other finishes, mechanical, hardware, electrical; install new light fixtures in hallways and new lighting in units; replace flooring in all common areas and units; construct code compliant elevator in mauka wing.	\$1,712,500
Year 6	Design and permits for refinish of parking and driveway areas, reconstruct AC pavement, new pavement markings, new signs, new concrete curb; bathroom renovation for 148 units including shower stall, tile, plumbing, carpentry, flooring, mirrors and hardware.	\$1,654,800
Year 7	Design and permits for replacement of roof exhaust fans; rebuild trash enclosure pad and structure; repair and replace existing railings throughout building; install new railing guardrail system on rooftop, replace/repair roof access stair; replace swimming pool fence gate and hardware, replaster pool, renovate pool restrooms; replace pool pump system; new refrigerators for all units; build new ramp for lobby area.	\$1,653,600
	Total:	\$10,066,000

In the event the 50% Rule or other County codes, ordinances, rules or regulations applicable to the renovation, or the agency interpretation of them, changes in a way that allows the renovations to proceed more expeditiously than set forth above, staff is including language in the Development Agreement proposed for the project to permit the expedited schedule.

In addition to the \$10,066,000 investment proposed above, BDM reports that it has already expended over \$3,200,000 to operate the property from January 1, 2023 to November 8, 2024 under the short-term tenancy of Revocable Permit No. S-7955. This amount includes repairs to address health and safety issues, security enhancements, and attorneys' fees and costs incurred to evict squatters and to secure temporary restraining orders against returning squatters and other trespassers to protect BDM's staff. BDM's total income for the same period was about \$549,000.

While BDM is not requesting that its operating expenses be counted toward the cost of the renovation project, the expenditures nevertheless exemplify BDM's commitment to the revitalization of the property and the Banyan Drive area in general. Once the renovations are completed, BDM reports that the economic life of the improvements will be in excess of 70 years with regular maintenance conducted over the lease term. See letter dated November 12 2024 from BDM's architect attached as Exhibit 2.

BDM initially proposed to devote about 20% of the rooms at the property to hotel operations. But after meeting and discussing with various community leaders, BDM decided to renovate and operate the building more as a midterm, extended-stay model that would support workforce housing, such as traveling teachers, nurses, hospital workers, emergency medical technicians, professors, radiologists and so forth. This revised plan also affects BDM's projected revenues and operating expenses for the property. Attached as Exhibit 3 is BDM's revised pro forma showing projected revenues and expenses for the first 10 years of the lease. Attached as Exhibit 4 are BDM's renderings of how the property will look once renovations are completed.

As stated in the staff submittal for the Board's action of April 28, 2023, Item D-3, BDM intends to finance the renovations to the property in part with equity financing (20-40%) with net operating income from the existing operations of its affiliates and in part with lender financing. BDM's principal, Ryan Lee, remains willing to furnish a personal guaranty for the project.

Development Agreement

Staff drafted a proposed Development Agreement (DA) between the Board and BDM that is attached as Exhibit 5, and BDM's detailed scope of work and construction schedule outlined in the table above is included as an attachment to the DA (see Exhibit B attached to Exhibit 5). Land Division's development agreements generally require the developer to post a completion bond in an amount equal to the total project cost. In this case, however, that would mean BDM would have to post a bond in the amount of \$10,066,000 for the entire seven years of the project. BDM has therefore requested that it be allowed to post seven separate completion bonds, one for each phase, and to post them at the beginning of each phase. The bond for the prior phase would be released before a new bond would be posted for the succeeding phase. The proposed DA for the project has been drafted to accommodate this request. BDM will be required to publish a notice of completion at the end of each phase without any mechanics' or materialmen's liens being filed against the property in the 45-day claims period under applicable law. Once that is established, DLNR will release the bond for the prior phase and require posting of a bond in the amount of the succeeding phase, and so forth until completion. See Exhibit 5 at page 5, paragraph 7.

In accordance with the published RFQ/RFP, the DA also includes a requirement that BDM reimburse the prior revocable permit holder for this property, Oceanfront 121, Inc. (Oceanfront), \$158,622.16 within 30 days of execution of a new lease for the property. BDM reports that Oceanfront ended its occupancy at the end of 2022 with unpaid utility bills that BDM had to pay in order to continue utility service to the property. BDM explains the total amount of the bills it had to cover is \$89,742. BDM inquired with staff whether its payment of Oceanfront's bills could be offset from the amount of the reimbursement due under the RFQ/RFP. Staff consulted with the Department of the Attorney General on the matter. Unfortunately, because the reimbursement was a requirement of the published RFQ/RFP in the specific amount of \$158,622.16, the only

way to reduce or eliminate the reimbursement would be to cancel the current RFQ/RFP and start the process all over again. BDM has agreed to proceed as required by the published RFQ/RFP. BDM will be required to deliver to staff a check payable to Oceanfront in the amount specified in the RFQ/RFP within 30 days after the new lease to BDM has been signed by BDM and the State.

Direct Lease

Attached as Exhibit 6 is the form of the proposed 65-year lease for the property. The fair market rent to be paid under the new lease was determined by independent appraisal procured by the State but paid for by BDM. The appraisal determined the fair market rent for land and improvements payable for the first 30 years of the lease is as follows:

<u>Lease Years</u>	<u>Annual Rent</u>
1-10	\$147,600
11-20	\$188,940
21-30	\$241,860

The appraiser determined that percentage rent is not typically correlated with multi-family apartment properties and therefore did not include a percentage rent provision in its appraised rent values. In the draft lease attached as Exhibit 6, staff has indicated the percentage rent for the first thirty years of the lease at zero, but is retaining the percentage rent framework in the lease in case a future rent reopening determines that charging percentage rent is appropriate.

In the proposal it submitted in response to the RFQ/RFP, BDM requested a one-year rent waiver. However, under current law, the Board has authority to waive rent up beyond the previous one-year cap pursuant to the recently amended Subsection 171-6(7), HRS, when demolition and infrastructure costs are required for a property:

§171-6 Powers. [Repeal and reenactment on June 30, 2026.^[5] L 2021, c 222, §4.] Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may: . . .

- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that the reduction or waiver shall not exceed two years for land to be used for any agricultural or

⁵ Act 219 Session Laws of Hawaii 2024 eliminated the sunset provision of Act 222 Session Laws of Hawaii 2021. As a result, the current rent credit language of Subsection 171-6(7), HRS (cited here) now has no sunset date.

pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use. When a lease for resort, commercial, industrial, or other business or residential purposes requires a lessee to demolish existing improvements or provide basic infrastructure, including drainage, sewer, water, electricity, and other utilities, before the lessee can make productive use of the land, the board may approve a reduction or waiver of lease rental for a period of up to twenty years; provided that the aggregate amount of the reduced or waived lease rental shall not exceed the amount of the lessee's total expenditures for demolition or provision of the infrastructure;

Emphasis added.

Under Section 171-6(7), HRS, the Board has authority to approve two different kinds of rent waivers. The first is a waiver capped at one year's rent where land being leased for resort, commercial or other business purposes requires substantial improvements to be placed thereon. The second waiver is capped at 20 years' rent and is equal to lessee's total expenditures for demolition or provision of basic infrastructure. Staff believes that rent waivers are not mutually exclusive under the statute and that BDM is eligible for both.

In this case, BDM estimates a total planned renovation cost of \$10,066,000, which far exceeds the one-year substantial improvement waiver under the first part of Section 171-6(7), HRS. As noted above, the first year's rent under the lease will be \$147,600, representing about 1.6% of the total renovation cost. As to the second part of Section 171-6(7), HRS, BDM plans to spend \$1,822,424 on demolition and basic infrastructure improvements required to return the property to productive use. The infrastructure basic improvements include a backflow preventer installed in 2024 as a plumbing code requirement and a fire sprinkler system that will be installed during the renovations as a fire code requirement. Demolition and provision of basic infrastructure in the amount of \$1,822,424 represents about 18% of the total renovation cost. Staff therefore drafted the lease to allow for a rent credit up to the combined amount of the two waivers, or \$1,970,024, or about 19.6% of the total projected renovation cost. See Exhibit 6, page 5, paragraph D.

The mechanics of the rent waiver are also detailed in the lease. BDM will be required to pay the first semi-annual installment of rent in the amount of \$73,800 upon execution of the lease. As it submits receipts for qualifying expenditures under Section 171-6(7), HRS, that are approved by the Department, BDM will be credited for the rent waiver. As long as the value of the approved expenditures exceeds the rent that would otherwise be due under the lease from time to time during the rent waiver period, BDM would not resume rent payment until the waiver is exhausted. See Exhibit 6, page 5, paragraph D.

The lease includes a new approach to bonding the removal of improvements upon the

expiration or earlier termination of the lease. The standard lease form has long provided that the State has the option to accept the improvements or require their removal at lessee's expense when the lease expires or is terminated. In this case, we know the demolition of the improvements will be expensive. The demolition cost was estimated at \$6,244,717 in 2018 and construction/labor costs have only increased since. If the lessee declines to remove the improvements, the State will have to pursue its rights in litigation and run the risk of paying for the demolition itself if there is no bond or security to cover the demolition at lessee's expense.

Accordingly, the proposed lease requires BDM to pay for an engineering study in year 39 of lease to determine the remaining useful life of the improvements. If the report from the study shows that the improvements will exhaust their remaining useful life at lease expiration or earlier, the lease provides that the State can require BDM to fund a demolition reserve account at an escrow company or bank approved by the Department for the eventual demolition and removal of the improvements. BDM will not be required to make any payments into this fund until year 41 of the lease. Beginning that year, based on an updated professional estimate of the demolition cost at lease expiration, BDM will be required to make annual payments into the reserve account so that sufficient funds are available for demolition at lease expiration. Additionally, at the 56th year of the lease term, BDM would be required to post a surety bond for the removal of the improvements in an amount equal to the difference between the then estimated cost of demolition at lease expiration and the fund balance in the reserve account. BDM will be required to post the removal bond in year 56 even if the State has not required the funding of the demolition reserve account under the lease.

The inclusion of the demolition reserve account and removal bond provisions in the lease should help protect from a repeat of the Uncle Billy's situation where the State was saddled with the demolition cost of the structures anticipated to be in excess of \$13 million. Since there is a possibility the Board will receive one or more requests to assign the lease over the 65-year term, the lease clarifies that any assignment the Board consents to shall also be deemed an assignment of the lessee's interest in the funds in the demolition reserve account to the approved assignee. See Exhibit 6, page 29, paragraph 44.

Personal Guaranty

As explained above, BDM and its principal, Ryan Lee, remain committed to renovating the subject property even after the challenging experience of managing daily operations there under Revocable Permit No. S-7955 since January 1, 2023. Mr. Lee has agreed to sign a personal guaranty of BDM obligations under the DA and lease. Staff has therefore included a recommendation below to require the personal guaranty from Mr. Lee as part of the project.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Find that:
 - a. The Development Plan proposed in this Development Agreement is of sufficient worth and value to justify the issuance of a new 65-year lease to Banyan Drive Management LLC for hotel and apartment purposes, that the public interest demands the issuance of a direct lease to Banyan Drive Management LLC for hotel and apartment purposes, and the issuance of the lease is in the best interests of the State;
 - b. The estimated period of time to complete the Development Plan proposed in the Development Agreement shall be seven years, which is reasonable in view of the County of Hawaii, Department of Public Works, Building Division/ Engineering Office rule providing that if the cost of renovations to an existing structure equals or exceeds 50% of the building market value of the improvements on property in any given year (with a three-year lookback for total construction costs), full compliance with the Flood Code would be required;
 - c. The lease rent to be paid by Banyan Drive Management LLC shall be based on the fair market value of the land and improvements comprising the subject property to be developed. The annual lease rent for the first 30 years of the lease shall be as follows:

<u>Lease Years</u>	<u>Annual Rent</u>
1-10	\$147,600
11-20	\$188,940
21-30	\$241,860

and;

- d. The economic life of the Improvements after the completion of the repairs and renovations included in the Development Plan is in excess of 65 years;
3. Approve the Development Agreement between the State and Banyan Drive Management LLC, as Developer, substantially in the form of Exhibit 5 attached hereto, subject to 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 form, modified as necessary to conform substantially to Exhibit 5 attached, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Subject to the Banyan Drive Management LLC fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Banyan Drive Management LLC covering the subject area, substantially in the form of Exhibit 6 attached hereto, 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 commercial lease document form for hotel and apartment use, modified as necessary to conform substantially to Exhibit 6 attached, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Require a personal guaranty from Ryan Lee guaranteeing the performance of the obligations of Banyan Drive Management LLC under the Development agreement and the lease, 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 personal guaranty form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

Dawn N.S. Chang, Chairperson

EXHIBIT 1

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 22, 2022

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, Hawaii Administrative Rules (HAR).

Project Title: Authorize the Issuance of a Request for Qualifications / Request for Proposals for Lease of Public Lands.

Project / Reference No.: PSF No. 19HD-078.

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.

Project Description: The subject property is currently improved with a 152-room hotel under month-to-month Revocable Permit No. S-7914 to Oceanfront 121, Inc. for apartment and hotel purposes. The Department of Land and Natural Resources intends to issue a Request for Qualifications / Request for Proposals for a new long-term lease of the property for apartment and hotel purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No. and Description: In accordance with 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 and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Part 1, Item 40 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

Cumulative Impact of Planned Successive Actions in Same Place Significant?: No. The use of the land for apartment and hotel purposes is compliant with county zoning requirements, and such use has existed since 1969. Staff believes there are no cumulative impacts involved.

EXHIBIT C

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?:**

No. There are no particularly sensitive environmental issues involved with the proposed use of the property. The property has been used for hotel and apartment purposes since 1969. The property is located on the shoreline, but a sea level rise study commissioned in 2014 showed that a three-foot sea level rise would not have a significant impact on the use of the property.

Analysis:

The subject land has been improved with a 152-room hotel and used for hotel and apartment purposes since 1969. A new lease for hotel and/or apartment purposes will involve negligible or no expansion or change of use beyond that previously existing.

Consulted Parties:

Agencies listed in the attached submittal.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT 2



DESIGN ASSOCIATES

660 Kilauea Ave Suite 204, Hilo, HI 96720
tel. (215) 833-9256

November 12, 2024

Re: **121 Banyan Drive**

To Ryan Lee,

We conducted a visual inspection at 121 Banyan Drive and have not found any major structural deficiencies. The current structure is constructed predominantly of reinforced concrete which is in stable condition and will allow the multi-story structure to be renovated and repaired in phases. The existing columns and slab at the garage level appear to have been properly maintained and in stable condition.

The structure will require some remediation during the renovations to bring the structure up to required life safety and accessibility requirements while leaving in place permitted and grandfathered exceptions. We will work with local building and code officials to ensure the building meets and exceeds all required code standards, including but not limited to fire ratings, egress requirements and sprinklers if required.

Primary areas of concern are as follows:

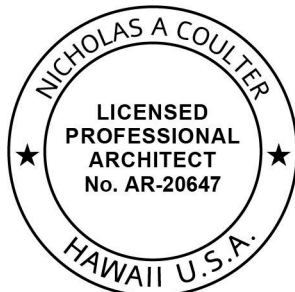
- Decks / patio / railings
- Cornices
- Façade
- Slab edges and connections

The majority of the issues are cosmetic and with proper repair and maintenance, the building's life span will easily exceed 70 years.

Please call the above with any questions or concerns.

Warm regards,

A handwritten signature in black ink that reads "Nicholas A. Coulter".



Nicholas Alun Coulter
KCA Design Associates

EXHIBIT 3

Proforma

10 Year Cashflow - Project Address: 121 Banyan Drive Hilo, HI 96720 (145 Units)

End of Year	1	2	3	4	5	6	7	8	9	10
	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034
Tenants - 2nd floor	\$157,500	\$165,375	\$173,644	\$182,326	\$218,791	\$251,610	\$289,351	\$347,222	\$416,666	\$499,999
Tenants - 3rd floor	\$0	\$118,800	\$124,740	\$130,977	\$137,526	\$144,402	\$194,943	\$263,173	\$355,283	\$479,633
Tenants - 4th floor	\$0	\$0	\$122,100	\$146,520	\$175,824	\$210,989	\$253,187	\$303,824	\$364,589	\$437,506
Tenants - 5th floor	\$0	\$0	\$0	\$288,600	\$317,460	\$349,206	\$384,127	\$422,539	\$464,793	\$488,033
POTENTIAL RENTAL INCOME	\$157,500	\$284,175	\$420,484	\$748,423	\$849,601	\$956,207	\$1,121,607	\$1,336,758	\$1,601,331	\$1,905,171
TOTAL POTENTIAL RENTAL INCOME	\$157,500	\$284,175	\$420,484	\$748,423	\$849,601	\$956,207	\$1,121,607	\$1,336,758	\$1,601,331	\$1,905,171
General Vacancy	(\$4,725)	(\$8,525)	(\$12,615)	(\$22,453)	(\$25,488)	(\$28,686)	(\$33,648)	(\$40,103)	(\$48,040)	(\$57,155)
EFFECTIVE RENTAL INCOME	\$152,775	\$275,650	\$407,869	\$725,970	\$824,113	\$927,520	\$1,087,959	\$1,296,655	\$1,553,291	\$1,848,016
Parking	\$18,000	\$18,360	\$18,727	\$19,102	\$19,484	\$19,873	\$20,271	\$20,676	\$21,090	\$21,512
Restaurant	\$0	\$0	\$0	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000	\$144,000
Banquet rental	\$0	\$0	\$0	\$0	\$51,957	\$52,996	\$54,056	\$55,137	\$56,240	\$57,364
Laundry	\$0	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171
GROSS OPERATING INCOME	\$170,775	\$300,130	\$432,839	\$895,439	\$1,046,048	\$1,151,014	\$1,313,043	\$1,523,360	\$1,781,651	\$2,078,062
Marketing	\$0	(\$12,240)	(\$12,485)	(\$12,734)	(\$12,989)	(\$13,249)	(\$13,514)	(\$13,784)	(\$14,060)	(\$14,341)
Payroll	(\$180,000)	(\$183,600)	(\$187,272)	(\$191,017)	(\$194,838)	(\$198,735)	(\$202,709)	(\$206,763)	(\$210,899)	(\$215,117)
Trash Removal	(\$30,000)	(\$30,600)	(\$31,212)	(\$31,836)	(\$32,473)	(\$33,122)	(\$33,785)	(\$34,461)	(\$35,150)	(\$35,853)
Electric	(\$187,200)	(\$190,944)	(\$194,763)	(\$198,658)	(\$202,631)	(\$206,684)	(\$210,818)	(\$215,034)	(\$219,335)	(\$223,721)
Gas	(\$24,000)	(\$24,480)	(\$24,970)	(\$25,469)	(\$25,978)	(\$26,498)	(\$27,028)	(\$27,568)	(\$28,120)	(\$28,682)
Water	(\$99,432)	(\$101,421)	(\$103,449)	(\$105,518)	(\$107,628)	(\$109,781)	(\$111,977)	(\$114,216)	(\$116,500)	(\$118,830)
Waster Water	(\$95,700)	(\$97,614)	(\$99,566)	(\$101,558)	(\$103,589)	(\$105,661)	(\$107,774)	(\$109,929)	(\$112,128)	(\$114,370)
Insurance	(\$26,400)	(\$26,928)	(\$27,467)	(\$28,016)	(\$28,576)	(\$29,148)	(\$29,731)	(\$30,325)	(\$30,932)	(\$31,550)
Legal	(\$12,000)	(\$12,240)	(\$12,485)	(\$12,734)	(\$12,989)	(\$13,249)	(\$13,514)	(\$13,784)	(\$14,060)	(\$14,341)
Security	(\$18,000)	(\$18,360)	(\$18,727)	(\$19,102)	(\$19,484)	(\$19,873)	(\$20,271)	(\$20,676)	(\$21,090)	(\$21,512)

Proforma

10 Year Cashflow - Project Address: 121 Banyan Drive Hilo, HI 96720 (145 Units)

End of Year	1	2	3	4	5	6	7	8	9	10
	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034
Administrative	(\$15,278)	(\$27,565)	(\$40,787)	(\$72,597)	(\$82,411)	(\$92,752)	(\$108,796)	(\$129,665)	(\$155,329)	(\$184,802)
Maintenance	(\$10,694)	(\$19,295)	(\$28,551)	(\$50,818)	(\$57,688)	(\$64,926)	(\$76,157)	(\$90,766)	(\$108,730)	(\$129,361)
Management Fee	(\$11,458)	(\$20,674)	(\$30,590)	(\$54,448)	(\$61,808)	(\$69,564)	(\$81,597)	(\$97,249)	(\$116,497)	(\$138,601)
Property tax	(\$7,639)	(\$13,782)	(\$20,393)	(\$36,299)	(\$41,206)	(\$46,376)	(\$54,398)	(\$64,833)	(\$77,665)	(\$92,401)
Total Expenses	(\$717,801)	(\$779,743)	(\$832,717)	(\$940,804)	(\$984,289)	(\$1,029,618)	(\$1,092,067)	(\$1,169,055)	(\$1,260,494)	(\$1,363,483)
NET OPERATING INCOME	(\$547,026)	(\$479,614)	(\$399,878)	(\$45,365)	\$61,759	\$121,396	\$220,975	\$354,305	\$521,157	\$714,579
Building Violations 8/14/2017	(\$310,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Building Violations 3/30/2023	(\$125,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Safety Issue correction	(\$240,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Security - Fence & Gate system, Cameras, Wayfinding signage	(\$270,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ADA guardrails in stairway/egress	\$0	(\$61,200)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Roofing system	\$0	(\$275,400)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Elevator	\$0	(\$350,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Staris repair and refinish	\$0	(\$51,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Prime & Paint 58 units	\$0	(\$133,110)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Landscaping, lobby area	\$0	(\$10,200)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Replace all leaking pipes, parking area	\$0	(\$30,600)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Replace all guestroom doors	\$0	\$0	(\$107,785)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Increase ceiling height, common areas	\$0	\$0	(\$100,000)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CMU wall enclosure, all floors	\$0	\$0	(\$156,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Repair Concrete cracks, spalls	\$0	\$0	(\$312,120)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Roof area, replace all rusted conduits	\$0	\$0	(\$31,212)	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Proforma

10 Year Cashflow - Project Address: 121 Banyan Drive Hilo, HI 96720 (145 Units)

End of Year	1	2	3	4	5	6	7	8	9	10
	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034
Repair drywall, paint 90 units	\$0	\$0	(\$187,272)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Repair, prime & paint common area, all floors	\$0	\$0	(\$156,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Prime & Paint building exterior, complete	\$0	\$0	(\$260,100)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New fire sprinkler, all floors	\$0	\$0	\$0	(\$382,035)	\$0	\$0	\$0	\$0	\$0	\$0
Restaurant renovation, complete	\$0	\$0	\$0	(\$1,141,860)	\$0	\$0	\$0	\$0	\$0	\$0
Renovate Banquet and Lobby office, complete	\$0	\$0	\$0	\$0	(\$638,635)	\$0	\$0	\$0	\$0	\$0
New light fixtures, hallway, all floors	\$0	\$0	\$0	\$0	(\$129,892)	\$0	\$0	\$0	\$0	\$0
New light fixtures, all units	\$0	\$0	\$0	\$0	(\$194,838)	\$0	\$0	\$0	\$0	\$0
Replace flooring in common area, all floors	\$0	\$0	\$0	\$0	(\$162,365)	\$0	\$0	\$0	\$0	\$0
New flooring, all units	\$0	\$0	\$0	\$0	(\$194,838)	\$0	\$0	\$0	\$0	\$0
New elevator (Mauka wing)	\$0	\$0	\$0	\$0	(\$378,851)	\$0	\$0	\$0	\$0	\$0
Refinish Parking & driveway, new signs, complete	\$0	\$0	\$0	\$0	\$0	(\$623,806)	\$0	\$0	\$0	\$0
Bathroom renovation, complete, all units	\$0	\$0	\$0	\$0	\$0	(\$1,148,023)	\$0	\$0	\$0	\$0
Rebuild trash enclosure	\$0	\$0	\$0	\$0	\$0	\$0	(\$67,570)	\$0	\$0	\$0
New railings, entire building	\$0	\$0	\$0	\$0	\$0	\$0	(\$394,157)	\$0	\$0	\$0
New rooftop guardrail and roof exhaust fan	\$0	\$0	\$0	\$0	\$0	\$0	(\$281,541)	\$0	\$0	\$0
Replace roof access stair	\$0	\$0	\$0	\$0	\$0	\$0	(\$56,308)	\$0	\$0	\$0
New pool plaster, fence, gate, pump system, restrooms	\$0	\$0	\$0	\$0	\$0	\$0	(\$337,849)	\$0	\$0	\$0
New ramp for lobby area	\$0	\$0	\$0	\$0	\$0	\$0	(\$33,785)	\$0	\$0	\$0

Proforma

10 Year Cashflow - Project Address: 121 Banyan Drive Hilo, HI 96720 (145 Units)

End of Year	1	2	3	4	5	6	7	8	9	10
	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034
New facade cladding system, complete exterior	\$0	\$0	\$0	\$0	\$0	\$0	(\$506,773)	\$0	\$0	\$0
Design & Permits	(\$93,000)	(\$93,000)	(\$93,000)	(\$93,000)	(\$93,000)	(\$93,000)	(\$62,000)	\$0	\$0	\$0
CASH FLOW BEFORE TAX	(\$1,585,026)	(\$1,484,124)	(\$1,803,487)	(\$1,662,260)	(\$1,730,660)	(\$1,743,433)	(\$1,519,007)	\$354,305	\$521,157	\$714,579

Proforma Summary

10 Year Cashflow - Project Address: 121 Banyan Drive Hilo, HI 96720

End of Year	1	2	3	4	5	6	7	8	9	10
	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034
TOTAL POTENTIAL RENTAL INCOME	\$157,500	\$284,175	\$420,484	\$748,423	\$849,601	\$956,207	\$1,121,607	\$1,336,758	\$1,601,331	\$1,905,171
General Vacancy	(\$4,725)	(\$8,525)	(\$12,615)	(\$22,453)	(\$25,488)	(\$28,686)	(\$33,648)	(\$40,103)	(\$48,040)	(\$57,155)
EFFECTIVE RENTAL INCOME	\$152,775	\$275,650	\$407,869	\$725,970	\$824,113	\$927,520	\$1,087,959	\$1,296,655	\$1,553,291	\$1,848,016
GROSS OPERATING INCOME	\$170,775	\$300,130	\$432,839	\$895,439	\$1,046,048	\$1,151,014	\$1,313,043	\$1,523,360	\$1,781,651	\$2,078,062
NET OPERATING INCOME	(\$547,026)	(\$479,614)	(\$399,878)	(\$45,365)	\$61,759	\$121,396	\$220,975	\$354,305	\$521,157	\$714,579
CASH FLOW BEFORE TAX	(\$1,585,026)	(\$1,484,124)	(\$1,803,487)	(\$1,662,260)	(\$1,730,660)	(\$1,743,433)	(\$1,519,007)	\$354,305	\$521,157	\$714,579

EXHIBIT 4













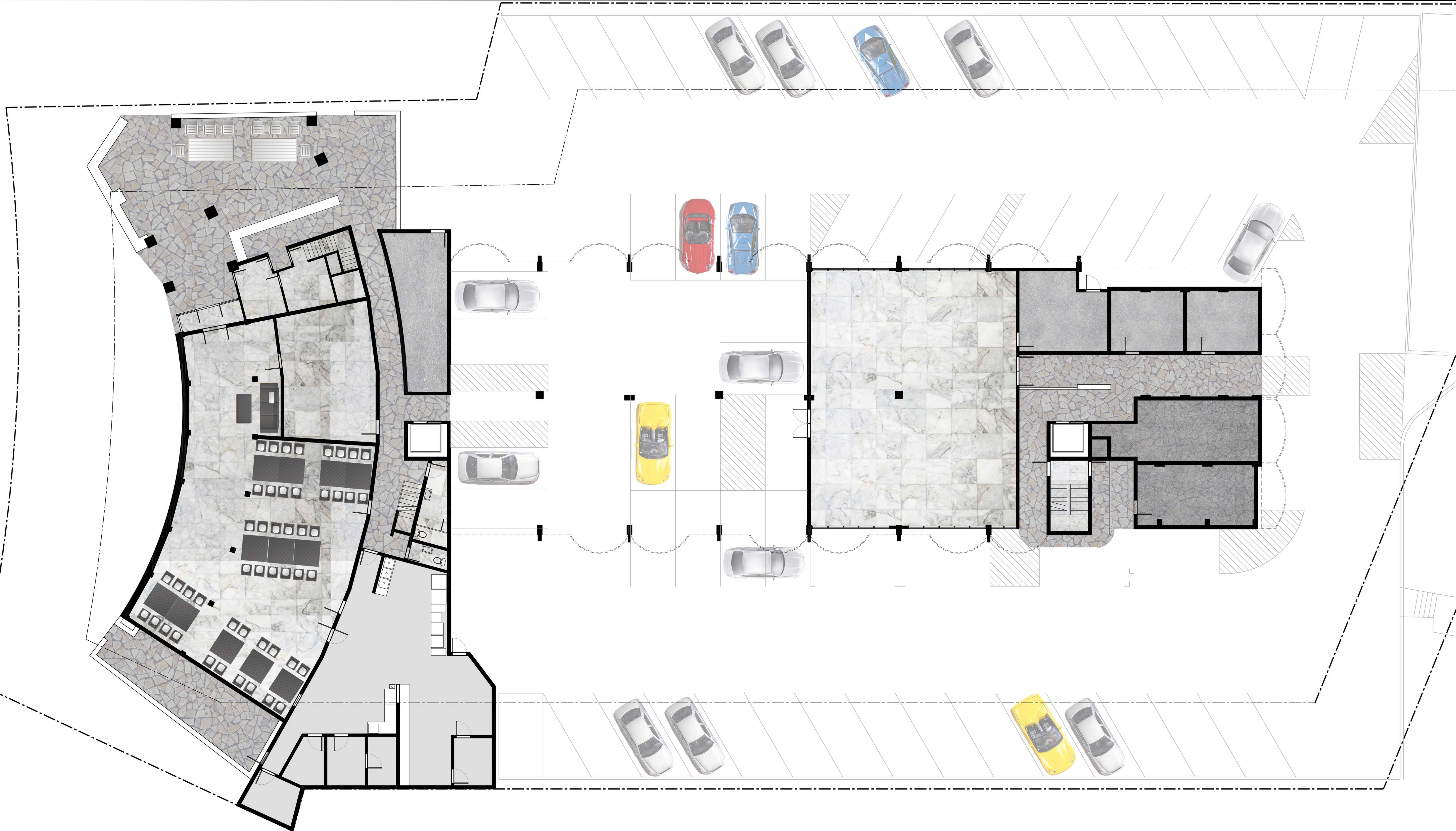


121 BANYAN DRIVE

GROUND FLOOR PLAN



DESIGN ASSOCIATES

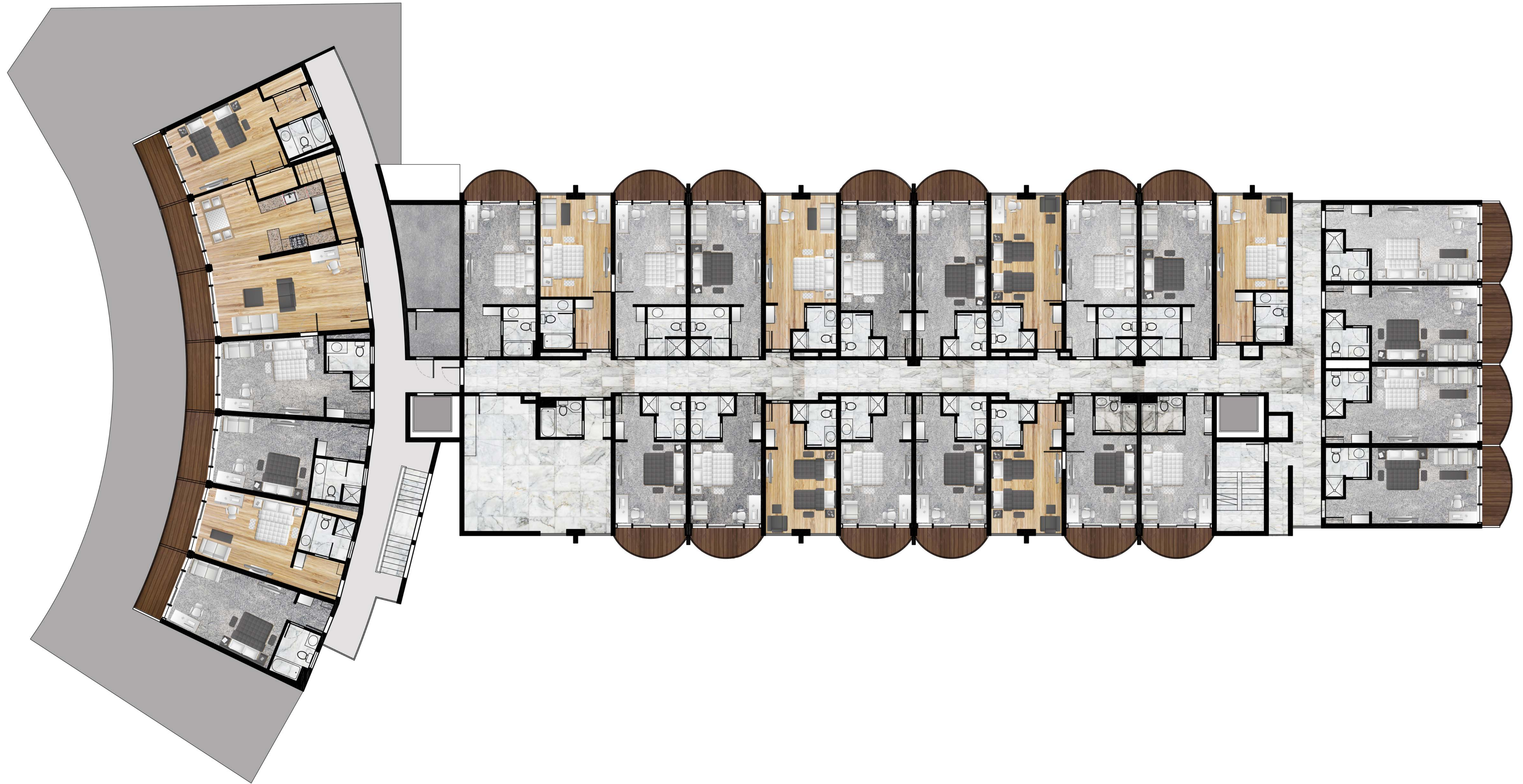


121 BANYAN DRIVE

SECOND FLOOR PLAN



DESIGN ASSOCIATES

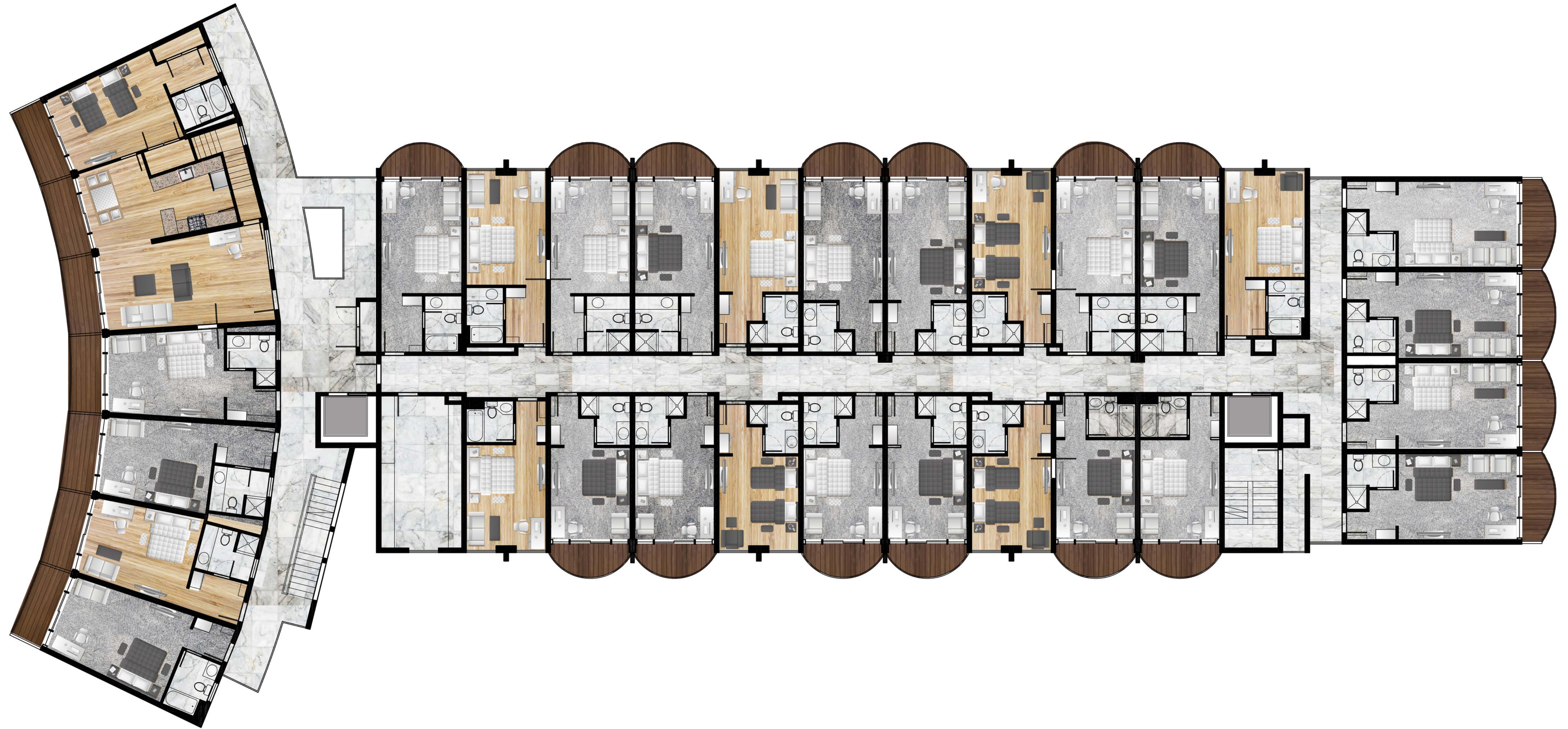


121 BANYAN DRIVE

TYPICAL FLOOR PLAN (3RD THRU 6TH)



DESIGN ASSOCIATES



121 BANYAN DRIVE

TYPICAL UNIT LAYOUT



DESIGN ASSOCIATES



EXHIBIT 5

DEVELOPMENT AGREEMENT

FOR

BANYAN DRIVE MANAGEMENT LLC

* * *

**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 _____, 20____ (“**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 April 28, 2023, Item D-3, and _____, 20____, 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 **BANYAN DRIVE MANAGEMENT LLC**, a Hawaii limited liability company, whose business address is _____ Hilo, Hawaii 96720 (“**Developer**”).

RECITALS:

- A. The State owns in fee simple that certain parcel of land, a portion of government lands, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key No. (3) 2-1-005:020 (“**Parcel 20**”) and shown as the shaded area on **Exhibit A** attached hereto, incorporated herein and made a part hereof. Parcel 20 comprises approximately 1.22 acres, is improved with a six-story, 152-room hotel built in 1969 (the “**Improvements**”). Parcel 20 and the Improvements are hereinafter referred to collectively as the “**Subject Property**”.
- B. The Subject Property is currently managed by Developer under Revocable Permit No. S-7995 issued on February 17, 2023 on a month-to-month basis, subject to annual renewal by the Board (“**RP7995**”).
- C. Section 171-59, Hawaii Revised Statutes (HRS), as amended, provides that a lease of public land may be disposed of through negotiation upon a finding by the Board that the public interest demands it, and provides a competitive process under which the Board may select the lessee.
- D. At its meeting of July 22, 2022, under agenda Item D-5, as later amended at its meeting of September 9, 2022, under agenda Item D-2, the Board authorized the issuance of a Request for Qualifications/Request for Proposals (“**RFQ/RFP**”) to select a lessee of the Subject Property and authorized the Chairperson to solicit proposals and make a recommendation to the Board of the best applicant. The Chairperson, in turn, delegated this function to an evaluation committee she appointed.
- E. At its meeting of March 24, 2023, under agenda Item D-1, the Board approved the evaluation committee’s recommendation to select applicant Savio SB Growth Venture LLC (“**SGV**”) under the RFQ/RFP, however, SGV later withdrew from consideration by its letter dated April 6, 2023.
- F. At its meeting of April 28, 2023, under agenda Item D-3, the Board rescinded its action of March 24, 2023, under agenda Item D-1, and approved the evaluation committee’s recommendation to select Developer under the RFQ/RFP, and

further authorized the negotiation of this Agreement and a proposed lease form for the Subject Property, subject to Board approval prior to execution.

- G. Developer proposes to renovate the Improvements at a cost of approximately \$10,066,000 and requests the issuance of a 65-year lease of the Subject Property (“Lease”) to Developer to amortize this cost.
- H. This Agreement sets forth the terms and conditions that Developer must satisfy and successfully perform in order for the requested Lease to be issued, and for Developer to retain the benefit of the Lease.

AGREEMENT:

In consideration of the recitals and the mutual covenants, obligations and conditions set forth in this Agreement, the State and Developer 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 Rental under RP7955. Developer shall continue to pay to the State, throughout the term of this Agreement, all rent and other charges due by Developer under the RP7995 pursuant to its terms and conditions as may be amended from time to time. Upon the execution of the Lease, RP7995 shall terminate and Developer shall pay to the State the rent and other charges due by Developer under the Lease pursuant to its terms and conditions.

3. Development Plan.

A. Developer has prepared its plans and specifications for the repair and renovation of the Improvements, 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 _____, 20____, Item D-___, and determined that:

- (i) The Development Plan proposed in this Agreement is of sufficient worth and value to justify the issuance of a new 65-year lease to Developer for hotel and apartment purposes and the issuance of the lease is in the best interests of the State;
- (ii) The estimated period of time to complete the Development Plan shall be seven years, which is reasonable in view of the County of Hawaii, Floodplain Management Code, which provides that if the cost of renovations to an existing

structure equals or exceeds 50% of the taxable or appraised value of the property in any given year including a three-year lookback, full compliance with the Floodplain Management Code would be required (“**50% Rule**”);

(iii) The lease rent to be paid by Developer shall be based on the fair market value of the land and improvements comprising the Subject Property to be developed, and was determined by independent appraisal procured by the State and paid for by Developer as follows for the first 30 years of the lease:

<u>Lease Year</u>	<u>Annual Rent</u>
Years 1-10:	\$147,600
Years 11-20:	\$188,940
Years 21-30:	\$241,860

(iv) The economic life of the Improvements after the completion of the repairs and renovations included in the Development Plan is in excess of _____ years;

B. The Board granted final approval of the Development Plan and this Agreement at its meeting held on _____, 20____, Item D-____.

C. Developer shall have submitted evidence reasonably satisfactory to the Chairperson that Developer 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) Developer will be able to obtain all necessary federal, state and county entitlements, permits or other approvals required to enable Developer 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 repairs and renovations of the Improvements 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 for the approved Development Plan. Developer shall, at its sole cost and expense, be responsible for conducting its own investigations and due diligence regarding 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. Developer acknowledges and agrees that it assumes all risks of repair and renovation of the Improvements.

5. Construction Period. Developer shall have seven (7) years from the Effective Date to complete the repairs and renovations of the Improvements in accordance with the approved Development Plan (“**Construction Period**”). The Construction Period comprises seven phases (years) as follows:

Phase	Description	Cost
Year 1	Design and permitting for repairs and renovations; address Building/Electric Code violations and life safety concerns; improve building security.	\$1,095,000
Year 2	Americans with Disabilities Act compliance; roof work (coating, flashing, gutter system, downspouts, skylights); restaurant space demolition and plumbing repairs; construct code compliant elevator (makai wing); painting interior of 58 units; landscaping; plumbing repairs in parking lot.	\$1,070,500
Year 3	Renovate all entrances and guestroom doors; increase ceiling height in common areas; demo CMU walls and install new enclosures with railings on all floors; repair concrete spalling and exposed rebar around windows, slabs, exterior walls, stairs, columns and roof area; replace all rusted conduits and junction boxes; paint building exterior, interior common areas; drywall repair and paint interior of 90 units.	\$1,343,600
Year 4	Design and permits for installation of fire sprinkler system, fire stopping seal; restaurant renovation including kitchen, bar area, electrical and lighting system, plumbing, sound system, fixtures, flooring, trims and finishes, and bathrooms.	\$1,536,000
Year 5	Design and permits for renovation work to office, banquet and lobby reception area; new doors and windows, new wall and ceiling finishes, new flooring, new fixtures and other finishes, mechanical, hardware, electrical; install new light fixtures in hallways and new lighting in units; replace flooring in all common areas and units; construct code compliant elevator in mauka wing.	\$1,712,500
Year 6	Design and permits for refinish of parking and driveway areas, reconstruct AC pavement, new pavement markings, new signs, new concrete curb; bathroom renovation for 148 units including shower stall, tile, plumbing, carpentry, flooring, mirrors and hardware.	\$1,654,800
Year 7	Design and permits for replacement of roof exhaust fans; rebuild trash enclosure pad and structure; repair and replace existing railings throughout building; install new railing guardrail system on rooftop, replace/repair roof access stair; replace swimming pool fence gate and hardware, replaster pool, renovate pool restrooms; replace pool pump system; new refrigerators for all units; build new ramp for lobby area.	\$1,653,600
	Total:	\$10,066,000

Developer shall, at Developer'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 Developer to complete the repairs and renovations of the Improvements in accordance with the approved Development Plan. Developer 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. In the event the 50% Rule or other County codes, ordinances, rules or regulations applicable to the renovation, or the agency interpretation of them, changes in a way that allows the renovations to proceed more expeditiously than set forth above, Developer may proceed with expedited schedule after providing written notice to the State. The parties understand and agree that Developer will apply for separate building permits from the County for each phase shown in the table above due to the constraints of the 50% Rule.

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

Developer 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 Developer is in possession, or elsewhere if caused by the Developer or persons acting under the Developer. 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. Developer shall not commence repair and renovation work for any phase of the Development Plan until Developer has filed with the State sufficient bonds conditioned upon the full and faithful performance of all the terms and conditions of this Agreement with respect to such phase, including a completion bond for the full, faithful and timely completion of

such phase of the Development Plan, free from all liens and claims, including the completion of the repairs and renovations of the Improvements described in such phase, and a labor and materialmen's bond in the dollar amount of such phase, in such form and upon such terms and conditions as may be approved by the State. The Developer shall, at its own cost and expense, within sixty (60) days from the Effective Date of this Agreement, procure and deposit with the State the first of such bonds and thereafter keep in full force and effect during the term of this Agreement, such bonds acceptable to the State as aforesaid, which bonds shall name the State as obligee, conditioned upon the full and faithful observance and performance by Developer of all the terms, conditions and covenants of this Agreement, including, but not limited to, the completion of the repair and renovation requirement in accordance with the approved Development Plan at the Subject Property on or before the date of completion of each phase, free from all liens and claims, pursuant to the approved Development Plan. If the Developer elects to expedite the renovation schedule pursuant to Paragraph 5 above, it shall increase the amount of any bond required under this Paragraph 7 resulting from such expedited schedule. Developer 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 for each phase pursuant to the repair and renovation 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 Developer's completion of each phase of the repair and renovation of the Subject Property in accordance with the approved Development Plan, Developer shall provide written notice to the State acknowledging and confirming the same. Representatives of the State and Developer shall then conduct a final inspection and walk through of each phase of the Development Plan for Subject Property within fourteen (14) days of such written notice for each phase, and a "punch list" shall be mutually prepared and agreed upon by representatives of the State and Developer within seven (7) days of such inspection and walk through of the portion of the Subject Property pertaining to such phase. Such punch list 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. Developer, at Developer's sole cost and expense, shall immediately repair all deficiencies identified as potential safety hazards on the punch list, 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 relevant phase of the repair and renovation of the Subject Property has been performed in accordance with the approved Development Plan by Developer, 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 Developer for such phase without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such repair or renovation work, being filed against the Subject Property, then the State shall confirm and notify Developer of the same in writing ("**Completion Date**"), at which time Developer shall have the right to terminate the bonds posted by Developer pursuant to Paragraph 7 hereof as to such completed phase.

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 Developer 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 Developer 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 Developer, 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 Developer 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 repairs and renovations 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 Developer without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such repairs and renovations, being filed against the Subject Property, and upon substantial compliance by the Developer 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 Developer 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. Developer 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) Developer 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 Developer under the 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 Developer. Developer 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 Developer under the 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 Lease. Upon execution of this Agreement, the State will request the Department of the Attorney General to prepare the Lease document. The Lease shall reflect a term of sixty-five (65) years and shall contain the Department's and the Department of the Attorney General's most current lease terms and conditions for hotel apartment leases to for-profit entities. The Lease document will provide that in the event that the Developer 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 Lease will be rescinded. The State and Developer will promptly sign the Lease document when the form thereof is approved by the Department of the Attorney General and Developer.

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

A. If Developer 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 Developer under the 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 Developer that the same is past due;

B. If Developer 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 (v) herein, or the Lease on the Developer'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 Developer 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 Developer shall within said period commence such cure and thereafter diligently prosecute the same to completion within sixty (60) days thereafter;

(i) If Developer fails to deliver to the State at the address provided in Section 20 below a check payable to Oceanfront 121, Inc. within thirty (30) days after the full

execution of the lease described in Section 12 above for the reimbursement required by the RFQ/RFP;

(ii) If Developer's principal, Ryan Lee, fails to deliver a duly executed personal guaranty of Developer's obligations under this Agreement of the Lease at the time Developer executes this Agreement;

(iii) If Developer 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;

(iv) If Developer 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 Developer's rights hereunder for the benefit of creditors; or

(v) If the Subject Property or any part of the Subject Property, including the Improvements, are used, or intended to be used in any manner to commit or to facilitate the commission of a crime.

Any default under this Agreement or the Lease by the Developer shall be cause by the State to terminate this Agreement and rescind the Lease, and the State shall have all other rights and remedies provided herein, in the Lease, as applicable, or as otherwise provided by law with respect to a default by the Developer under this Agreement or the Lease. Provided further, a default under this Agreement shall cause the 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 Lease shall be rescinded and Developer shall not be entitled to further use or occupancy of the Subject Property. 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 Developer 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 Developer for any damages, costs, or expenses, suffered or incurred by the State, which obligations shall survive termination of this Agreement and the Lease.

14. Non-Waiver. The waiver by the State of any breach by the Developer of any term, covenant, or condition of this Agreement or the Lease, or of the State's right of re-entry for breach of covenant, or of the State's right to declare and enforce a forfeiture for any breach, or 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. Developer will not commit or suffer any act or neglect whereby the Subject Property, including 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 Developer is filed against the Subject Property, Developer 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 Developer shall survive expiration or any early termination of this Agreement.

16. Expenses to be Paid by Developer. Developer shall pay all costs and expenses incurred by the State in connection with the processing, analyzing and negotiating this Agreement and the Lease, including but not limited document fees for preparation of the Development Agreement and Lease, fee for preparation of the survey maps and descriptions, publication fees for the RFP, appraisal fees, conveyance taxes, and recordation fees.

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. Developer, 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 Developer, 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 Developer 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 Developer, 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 Division
Kekuanaoa Building
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Fax No.: (808) 587-2999

If to Developer: Banyan Drive Management LLC

Hilo, Hawaii 96720
Attention: Ryan Lee
Fax No.: (808) _____

And a copy to: _____

Hilo, Hawaii 96720
Fax No.: (808) _____

21. Status Reports; Developer Cooperation. Developer 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 Developer's progress of the approved Development Plan incorporated in this Agreement. Developer 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. Developer 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 Developer 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 Developer 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 Developer; provided however, this Agreement may only be amended or modified with the approval of the Chairperson. The State and Developer 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 Developer must satisfy and successfully perform in order for it to be issued the Lease by the State for the Subject Property.

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 Developer may not be sold, assigned, conveyed or transferred in any manner by Developer to any other person or entity. Notwithstanding the foregoing, however, Developer 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 Lease issued or to be issued under this Agreement. Upon any such assignment, Developer 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 Developer in connection with Developer's efforts relating to the proposed repairs and renovations to be made to the Improvements or under this Agreement shall, to the extent owned by and/or assignable by Developer, vest with and become a part of the Subject Property of the State. At the request of the State, Developer 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. Developer 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: Developer'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 April 28, 2023 and _____, 20__

STATE OF HAWAII

By _____
DAWN N. S. CHANG
Chairperson of the Board of Land and Natural Resources

APPROVED AS TO FORM:

Name: _____
Deputy Attorney General

Dated: _____

BANYAN DRIVE MANAGEMENT LLC
a Hawaii limited liability company

By _____
Name: _____
Title:

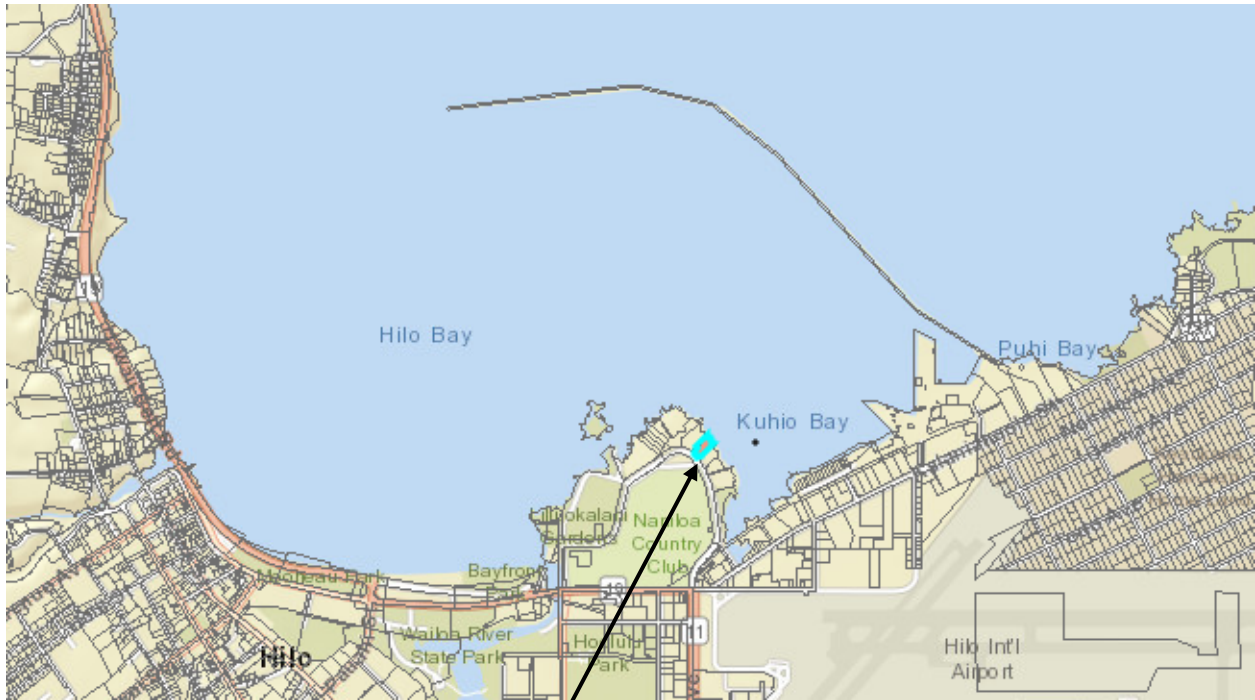
Developer

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 **BANYAN DRIVE MANAMGENET LLC** a Hawaii limited liability company, 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: _____



**Former Country Club Hawaii
Condominium and Hotel
TMK: (3) 2-1-005:020**



EXHIBIT A

TMK: (3) 2-1-005:020

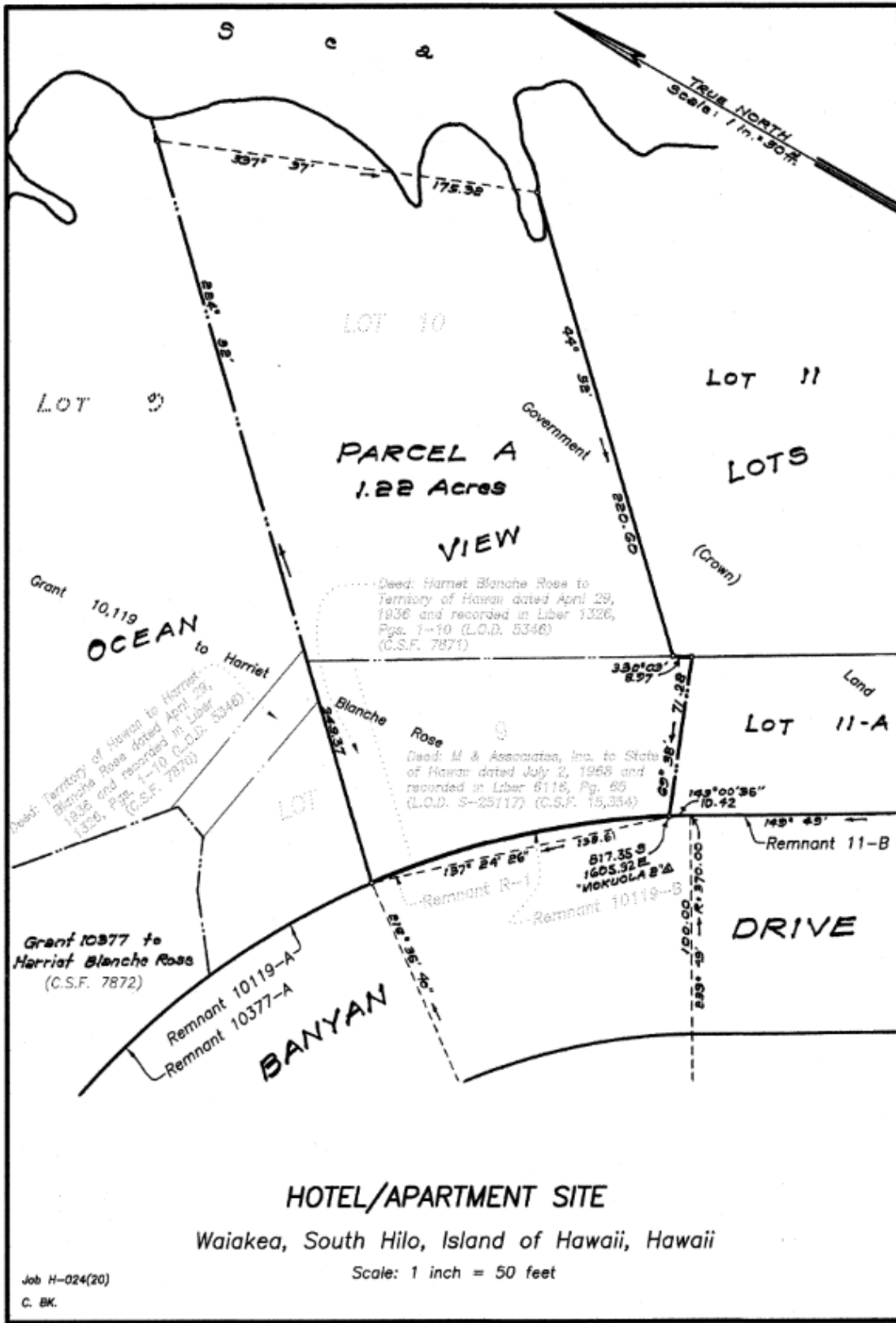


EXHIBIT B
LESSEE'S DEVELOPMENT PLAN DATED _____

Banyan Drive Management LLC**Project location: 121 Banyan Drive Hilo****Building Area: 69,703 sf ±**

Renovation Scope of Work	Cost	Total	Schedule
Year 1			
Get necessary permits and address all building violations			
Design & Permits	\$150,000	\$150,000	6 months
Building Violations dated August 14, 2017			
Unpermitted work that did not receive the required inspections for electrical, plumbing, and building		\$310,000	
Numerous electrical violations, total of 46	\$100,000		2 months
Numerous plumbing violations, total of 16	\$60,000		2 months
Building violation, total of 37	\$150,000		2 months
Building Violations dated March 30, 2023			
Unpermitted work that did not receive the required inspections for electrical, plumbing, and building, along with		\$125,000	
Numerous electrical violations, total of 28	\$30,000		1 month
Numerous plumbing violations, total of 11	\$20,000		1 month
Building violation, total of 6	\$75,000		1 month
Safety concerns in various areas		\$240,000	
Install fire rated doors, stair tower	\$50,000		2 months
Replace fire protection devices (alarm pull stations, fire hose, extinguisher, signs)	\$20,000		1 month
Replace emergency light fixtures through building	\$30,000		included
Patch pavement and potholes	\$20,000		included
Replace broken windows, all common area	\$70,000		1 month
Replace broken hardwares	\$30,000		1 month
New egress lighting	\$20,000		included
Security		\$270,000	
Fence and Gate system	\$150,000		3 months
Security camera, complete	\$100,000		2 months
Wayfinding and identification signage	,000		included

Phase 1 Total		\$1,095,000	
Year 2			
Design & Permits	\$80,000	\$80,000	3-6 months
Construct ADA guardrails and handrails in stairways, egress areas	\$60,000	\$60,000	1 month
Roofing system		\$270,000	3 months
Install, recoat with new roofing as needed	\$150,000		
Flashing	\$30,000		
Gutter system	\$30,000		
Downspouts	\$20,000		
Skylights	\$10,000		
Repair roofing drainage system	\$30,000		
Restaurant space cleanout		\$90,000	1 month
Demo and clear out existing fixed furniture, equipments and all rubbish as needed	\$40,000		
Repair all water leaks due to vandalism, including waster water pipes	\$50,000		
Elevator			
Construct code compliant elevator (Makai Wing)	\$350,000	\$350,000	10 months
Design & Permit			
Structural			
Mechanical			
Electrical			
Stairs			
Repair and refinish metal stair tread, risers and framing	\$50,000	\$50,000	1 month
Prime and Paint Interior, 58 units	\$130,500	\$130,500	4 months
Landscaping, entrance and lobby area	\$10,000	\$10,000	included

Replace/repair all leaking pipes in parking area	\$30,000	\$30,000	1 month
Phase 2 Total		\$1,070,500	
Year 3			
Design & Permits	\$80,000	\$80,000	3 months
Renovate all entrance guest room doors	\$103,600	\$103,600	3 months
Increase ceiling height with new ceiling in common areas	\$100,000	\$100,000	4 months
CMU wall enclosure			
Demo decorative CMU and install new enclosures with railings, all floors	\$150,000	\$150,000	2 months
Concrete cracks and spalls	\$300,000	\$300,000	6 months, weather permitting
Repair concrete spalls and exposed rebar around windows, slabs, exterior walls, stairs, columns and all roof area			
Roof area			
Replace all rusted conduits and junction boxes	\$30,000	\$30,000	1 month
Repair, Prime and Paint		\$580,000	
Building exterior, complete	\$250,000		3 months, weather permitting
Interior, common area	\$150,000		2 months
Interior, repair drywall and paint 90 units	\$180,000		5 months
Phase 3 Total		\$1,343,600	
Year 4			
Fire sprinklers with design & permit		\$540,000	8 months
Design & Permit	\$40,000		
Install fire sprinklers in corridors	\$490,000		
Fire stopping seal as needed	\$10,000		

Restaurant renovation (9363 sf) with design & permit		\$996,000	12 months
Design & Permit	\$60,000		
Kitchen	\$200,000		
Bar area	\$70,000		
Electrical & Lighting system	\$120,000		
Plumbing	\$80,000		
Sound system	\$40,000		
Fixtures	\$90,000		
Flooring	\$96,000		
Trims & finishes	\$120,000		
Bathrooms (men & women)	\$120,000		
AC system			
Phase 4 Total		\$1,536,000	
Year 5			
Design & Permits	\$100,000	\$100,000	3 months
Office, Banquet & Lobby Reception area		\$590,000	6 months
New doors & windows	\$60,000		
New wall and ceiling finishes	\$70,000		
New flooring	\$80,000		
New fixtures and other finishes	\$150,000		
Mechanical	\$100,000		
Hardware	\$30,000		
Electrical	\$100,000		
New light fixtures Install all new lighting in hallways	\$120,000	\$120,000	2 months
New lighting in units	\$180,000	\$180,000	2 months
Flooring		\$372,500	
Replace carpet/flooring in common areas, all floors	\$150,000		
Replace flooring in units	\$222,500		

Elevator			
Construct code compliant elevator (Mauka Wing)	\$350,000	\$350,000	8 months
Design & Permit			
Structural			
Mechanical			
Electrical			
Phase 5 Total		\$1,712,500	
Year 6			
Design & Permits	\$50,000	\$50,000	3 months
Refinish Parking & Driveway		\$565,000	6 months
Reconstruct AC pavement (32,000 sf)	\$500,000		
New pavement markings	\$25,000		
New signs	\$10,000		
New concrete curb	\$30,000		
Bathroom renovation (148 units)		\$1,039,800	9 months
Shower stall	\$177,600		
Tile	\$222,000		
Plumbing	\$174,000		
Carpentry	\$148,000		
Flooring	\$207,200		
Mirrors	\$37,000		
Hardware	\$74,000		
Phase 6 Total		\$1,654,800	
Year 7			
Design & Permits	\$60,000	\$60,000	3 months

Replace exhaust fans on roof	\$50,000	\$50,000	1 month
Rebuild trash enclosure pad and structure	\$60,000	\$60,000	1 month
Railing, replace and repair existing, as needed throughout	\$350,000	\$350,000	6 months
Install new railing guardrail system on rooftop	\$200,000	\$200,000	3 months
Replace/repair roof access stair	\$50,000	\$50,000	1 month
Pool		\$300,000	4 months
Replace pool fence gate and hardware	\$70,000		
Replaster pool	\$60,000		
Renovate pool restrooms (men & women)	\$150,000		
Replace pool pump system	\$20,000		
Refrigerator, all units	\$103,600	\$103,600	included
Build a new ramp for lobby area	\$30,000	\$30,000	1 month
New facade cladding in mauka building and lobby (approx 7000 sf)	\$450,000	\$450,000	6 months
Phase 7 Total		\$1,653,600	
Total Renovation Cost		\$10,066,000	

EXHIBIT 6

TABLE OF CONTENTS

	<u>Page</u>
TERM OF LEASE	1
ANNUAL RENTAL	1
REOPENING OF ANNUAL RENTAL	2
INTEREST RATE/SERVICE CHARGE	3
RESERVATIONS:	
1. Minerals and waters	4
2. Ownership of improvements	4
AGREEMENTS AND COVENANTS BETWEEN PARTIES:	
1. Payment of rent	5
2. Taxes, assessments, etc.....	5
3. Utility services	5
4. Covenant against discrimination	5
5. Sanitation	5
6. Waste and unlawful, improper or offensive use of premises	5
7. Compliance with laws	6
8. Inspection of premises	6
9. Improvements	6
10. Repairs to improvements	6
11. Liens	6
12. Character of use	6
13. Assignments, etc.....	6
14. Subletting	7
15. Release and indemnity	7
16. Costs of litigation	8
17. Liability insurance	8
18. Bond, performance	9
19. Lessor's lien	10
20. Mortgage	10
21. Breach	10
22. Right of holder of record of a security interest	11
23. Condemnation	12
24. Right to enter	12

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
25. Inspection by prospective bidders	13
26. Acceptance of rent not a waiver	13
27. Extension of time	13
28. Justification of sureties	13
29. Waiver, modification, reimposition of bond and liability insurance provisions	14
30. Quiet enjoyment	14
31. Surrender	14
32. Non-warranty	15
33. Hazardous materials.....	15
34. Hawaii law	16
35. Exhibits - Incorporation in lease	16
36. Headings	16
37. Partial invalidity	16
38. Time is of the essence	16
39. Historic preservation	16
40. Prevention and control of noxious, invasive, or exotic plants and animals	16

SPECIAL CONDITIONS:

41. Improvements.....	28
42. Bond, Improvement.....	28
43. Inspections.....	29
44. Demolition Reserve Account.....	29
45. Environmental Regulations.....	31
46. Phase I environmental site assessment.....	31
47. Notices.....	32

DEFINITIONS

SIGNATURE PAGE

ACKNOWLEDGMENT PAGE

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-

THIS LEASE, made this _____ day of _____, 20____, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and BANYAN DRIVE MANAGEMENT LLC, a Hawaii limited liability company, whose address is _____, Hilo, Hawaii 96720, hereinafter referred to as the "Lessee."

WITNESSETH:

WHEREAS, Section 171-59, Hawaii Revised Statutes, as amended, provides that a lease of public land may be disposed of through negotiation upon a finding by the Board that the public interest demands it, and provides a competitive process under which the Board may select the lessee; and

WHEREAS, at its meeting of July 22, 2022, under agenda Item D-5, as later amended at its meeting of September 9, 2022, under agenda Item D-2, the Board authorized the issuance of a Request for Qualifications/Request for Proposals ("RFQ/RFP") to select a lessee of the property described in Exhibit "A" and as shown on Exhibit "B" attached hereto and made parts hereof, and authorized the Chairperson to solicit proposals and make a recommendation to the Board of the best applicant; and

WHEREAS, the Chairperson, in turn, delegated this function to an evaluation committee appointed by the Chairperson; and

WHEREAS, at its meeting of April 28, 2023, under agenda Item D-3, the Board approved the evaluation committee's recommendation to select Lessee as the developer under the RFQ/RFP, and further authorized the negotiation of a development agreement and a proposed lease form for the property described and shown in Exhibits "A" and "B", subject to Board approval prior to execution; and

WHEREAS, at its meeting of _____, 2024, under

agenda Item D-___, the Board approved the Development Agreement between the State of Hawaii, as the State, and Banyan Drive Management LLC, as Developer, subsequently executed by those parties effective as of _____, 2024 (the "Development Agreement"), a copy of which is attached as Exhibit "___" hereto and made a part hereof;

NOW, THEREFORE, the Lessor, pursuant to section 171-59, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises and existing improvements situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, and identified as "Hotel/Apartment Site," containing an area of 1.22 acres, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65) years, commencing on the _____ day of _____, 20____, up to and including the _____ day of _____, _____, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, rental as provided hereinbelow:

A. Rent shall consist of Base Rent and Percentage Rent.

B. Base Rent. For the term of the lease, Base Rent shall be based on land and improvements and, with respect to the improvements, Base Rent shall be determined based on the condition such improvements were in prior to undertaking the renovations described in the Development Agreement.

1. Base Rent shall be an annual rental amount, payable in advance without notice or demand, in equal semi-annual installments on _____ and _____ of each and every year.

2. Base Rent for each year during the first ten years of the lease term, up to and including the tenth (10th) year of the lease term, shall be ONE HUNDRED FORTY-SEVEN

THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$147,600.00).

3. For the second ten years of the lease term, commencing at the beginning of the eleventh (11th) year of the lease term up to and including the twentieth (20th) year of the lease term, the annual Base Rent shall be ONE HUNDRED EIGHTY-EIGHT THOUSAND NINE HUNDRED FORTY AND NO/100 DOLLARS (\$188,940.00).

4. For the third ten years of the lease term, commencing at the beginning of the twenty-first (21st) year of the lease term up to and including the thirtieth (30th) year of the lease term, the annual Base Rent shall be TWO HUNDRED FORTY-ONE THOUSAND EIGHT HUNDRED SIXTY AND NO/100 DOLLARS (\$241,860.00).

C. Percentage Rent. For the term of the lease, Percentage Rent shall be based on land and improvements and, with respect to the improvements, Percentage Rent shall be determined based on the condition such improvements were in prior to undertaking the renovations described in the Development Agreement.

1. Percentage rent shall be payable annually in arrears, without notice or demand, no later than one hundred eighty (180) days after the close of each and every of Lessee's fiscal years. Each payment of percentage rent shall be accompanied by a written statement certified as correct by Lessee, or a person duly authorized by Lessee, showing in accurate detail the amount of gross receipts, by category, for the payment period, and reviewed financial statements prepared according to generally accepted accounting principles.

2. For the first thirty (30) years of the lease, percentage rent shall be equal to zero percent (0%) of the annual gross revenue from hotel and restaurant operations on the leased premises to the extent such amount exceeds the annual base rent.

3. The annual gross revenue shall include all revenues generated from, on, or within the leased premises, including but not limited to hotel room revenues, food and beverage sales, retail sales, commissions and the gross revenues of any sublessee or concessionaire (but not including the revenues from licensees of space for radio, television, cellular

phone or other similar transmission antennas), less adjustments for:

- a. Discounts, refunds and allowances made on any sale;
- b. Sales and use taxes, hotel room or tourist taxes, general excise tax or other similar taxes now or in the future imposed on the sales of rooms, food, beverages, merchandise or services, but only if such taxes are added to the selling price, separately stated, and collected separately from the sell price of merchandise or services, from customers;
- c. Sales of fixtures, furnishings, trade fixtures or personal property that are not retail merchandise and are not sold in the ordinary course by the Lessee;
- d. Charges made by credit card companies not directly or indirectly owned or controlled by the Lessee;
- e. Receipts from sales of meals to employees of the Lessee consumed on the demised premises and sold to them at or below cost in the course of their employment, provided such sales are registered and recorded separately from other sales;
- f. Gratuities or tips received by employees from patrons or service charges collected and turned over to employees in lieu of such employees receiving gratuities or tips from patrons;
- g. Rent received from sublessees or concessionaires whose gross revenues are included in the calculation of annual gross revenue.

4. Lessee shall at all times keep and maintain accurate records of all business transactions and sales made in and from the premises. Lessor shall have the right at all reasonable times during business hours, through Lessor's duly authorized agent, attorney, or accountant, to inspect and make copies of Lessee's records, accounts, and books in any way bearing on such sales (including copies of tax or information returns furnished any governmental authority), at the premises or at any other office of Lessee at which such books, records, and accounts may be kept, and to inspect the records, accounts and books in any way bearing on sales of any other person or

firm selling goods or services in or from any part of the premises. All such information shall be held by Lessor, its agents, attorneys, and accountants in strictest confidence.

5. If an audit discloses that Lessee has underpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such deficiency and upon such notification the deficient amount shall be immediately due and payable by Lessee. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to any other remedies available in this lease or otherwise, shall be entitled to reimbursement of all costs and expenses incurred in completing any such audit in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

6. If an audit discloses that Lessee has overpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such overpayment. Overpaid amounts shall be credited to and set off against rental amounts next due and payable following the date that such overpayment is discovered or revealed.

D. Waiver of Base Rent. Base Rent is waived in an amount up to ONE MILLION NINE HUNDRED SEVENTY THOUSAND TWENTY-FOUR AND NO/100 DOLLARS (\$1,970,024.00), subject to Lessee's submission of documentation satisfactory to Lessor, including, without limitation, invoices, receipts, bank statements and cancelled checks, evidencing payment to contractors for "Qualifying Expenditures," which shall mean (i) any sum Lessee expends toward the repair and renovation of premises in an amount up to \$147,600.00, which is the amount of the first year of rent due under the lease; and (ii) any sum Lessee expends toward demolition of existing improvements or provision of basic infrastructure, including drainage, sewer, water, electricity, and other utilities, before the Lessee can make productive use of the premises, in an amount up to \$1,822,424.00. The maximum possible amount of Qualifying Expenditures under the lease is \$147,600.00 plus \$1,822,424.00, or \$1,970,024.00. Upon lease commencement, Lessee shall pay rent in accordance with paragraph B above less any credits for Qualifying Expenditures as approved by Lessor. If at any time during the rent waiver period the dollar amount of approved Qualifying Expenditures is less than

the rent otherwise due and payable under the lease, Lessee shall promptly pay the outstanding rent due upon demand. The total Base Rent that would be payable during the first twenty (20) years of the lease without a rent waiver is \$3,365,400.00.

E. Rental reopening. The annual Base Rent and Percentage Rent rates shall be reopened and redetermined as of the day following the expiration of the thirtieth (30th), fortieth (40th), and fiftieth (50th) years of the term based on land and improvements and, with respect to the improvements, Base Rent and Percentage Rent shall be determined based on the condition such improvements were in prior to undertaking the renovations described in the Development Agreement.

Determination of base rent and percentage rent upon reopening. The base rent and percentage rent for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both base rent and percentage rent, shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board or the Board's appraiser. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Provided that if the Lessee does not agree upon the fair market rental as determined by the Board's appraiser, the Lessee must notify the Lessor in writing within thirty (30) days after receipt of the determination, and the Lessee shall appoint the Lessee's own appraiser whose name and address shall be stated in the notice. The Lessee shall provide the Board with the complete appraisal prepared by the Lessee's appraiser. Each party shall pay for its own appraiser. If the Board's and the Lessee's appraisers do not agree upon the lease rental, the Lessee and the Board shall, subject to section 171-17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter. The costs of mediation and arbitration shall be borne equally by the Lessee and the Board.

In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

E. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment. _____

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature located on the land prior to or on the commencement date of this lease, excluding those improvements, renovations and upgrades described in the Development Agreement and constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land. _____

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any

trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall release, indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for hotel and apartment purposes and uses accessory and incidental thereto and customarily conducted within hotel and apartment properties.

13. Assignments, etc. The Lessee shall not transfer,

assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is an association, partnership, joint venture, corporation, limited liability company or any other similar type of legal entity, the sale or transfer of 20% or more of ownership interest or control of the "Lessee" as defined in this paragraph 13, including but not limited to a sale or transfer by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "C."

For purposes of this assignment paragraph, "Lessee shall mean and include Lessee and any person, entity or organization owning an interest in Lessee and any upstream or parent owner of the Lessee, at all levels, including but not limited to an ultimate, immediate, direct, indirect, beneficial or intermediate entity, or a holding or affiliate company (hereinafter "owner entity"). A sale or transfer (in whole or in part) of any of the owner entities that effectively results in

the owner entity cumulatively owning or holding 20% or more of the ownership interest or control of the Lessee shall be subject to the prior review and approval of the Board and the Assignment of Lease Evaluation Policy.

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

15. Release and indemnity. The Lessee shall release, indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the

covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Insurance requirements.

a. In general.

(i) Lessee's cost. Prior to the commencement of the lease, the Lessee shall procure, at its sole cost and expense, and keep in effect at all times during the term of this lease, the types and minimum amounts of insurance coverage specified herein.

(ii) No limitation. The Lessee's procurement and maintenance of insurance, or the delivery of certified copies of policies, or the delivery of certificates of insurance or other written evidence of insurance in form and substance acceptable to the Lessor shall not be construed as a limitation of any kind on the Lessee's obligation to release, indemnify, defend, insure, and hold harmless, as may be found in the lease.

(iii) Form of policies.

(a) Form and substance. All insurance required to be furnished by Lessee hereunder shall be pursuant to policies in form and substance satisfactory to the Lessor and issued by companies licensed and authorized to transact insurance business in the State of Hawaii on an admitted or non-admitted basis, in good standing with the Insurance Division of the Department of Commerce and Consumer Affairs, with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating. Unless otherwise specified, liability insurance policies shall be in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The Lessor may, upon reasonable notice and reasonable grounds, increase or change the insurance required hereunder, in which event Lessee shall comply with the increase or changes within thirty (30) days of written notice of said increases or changes.

(b) Required provision. All insurance policies shall include the following:

(i) Additional insured. Name the Lessor, as additionally insured, except with respect to worker's compensation and employer's liability.

(ii) Severability of interest. Apply separately to each insured against whom claim is made or lawsuit is brought, except with respect to the limits of insurance.

(iii) Waiver of subrogation. Contain a waiver of subrogation in favor of the Lessor.

(iv) Notification. Provide that the Lessor shall be notified, in writing, at least sixty (60) days prior to any cancellation, or material change or non-renewal of any such insurance policy.

(c) All insurance. All insurance shall:

(i) Primary. Be primary, not in excess of or pro rata, and non-contributing as to and with any other insurance held or maintained by the Lessor.

(ii) No premiums. Not require the Lessor to pay any premiums.

(iii) No partnership. The inclusion of the Lessor, as additionally insured, is not intended to, and shall not make them or any of them, a partner or joint venture with the Lessee in the conduct of the Lessee's activities.

(iv) Deductibles. The insurance required hereunder may provide for reasonable deductibles or self-insured retentions, which are reasonable and prudent in relation to the soundness of the Lessee's financial condition, subject to approval by the Lessor.

(v) Failure to obtain. Any lapse in, or failure by the Lessee to procure, maintain, and keep in full force and effect such insurance as is required under this lease, at any time during and throughout the term of this lease, shall be a material breach of this lease and shall give the Lessor the right to assess additional charges and/or terminate this lease. Should the Lessee or any of its insurers expend any such funds which would have been or should have been covered by insurance

as is required under this lease, the Lessee agrees to reimburse for such funds and to release, indemnify, defend and hold harmless the Lessor and its insurers.

(vi) Proof of insurance. The Lessee shall provide proof of all specified insurance and related requirements to the Lessor either by delivering certified copies of policies or certificates of insurance in form and substance acceptable to the Lessor, or other written evidence of insurance acceptable to the Lessor. The documents evidencing all specified types in force and minimum amounts of insurance coverage shall be submitted to the Lessor, within fifteen (15) days from the effective date of this agreement. Each policy, certificate of insurance, or other written evidence of insurance shall contain the applicable policy number(s), the inclusive dates of policy coverage and the insurance carrier's name, an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material change, limitation in scope of coverage, or non-renewal except after written notice to the Lessor at least sixty (60) calendar days prior to the effective date thereof. The Lessee shall keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s).

The Lessor reserves the right at any time to review the coverage, form, and amount of the insurance required by this lease or to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance, including copies of the insurance policy(s) that are or were in effect during the lease period.

(vii) Interim review. The Lessee agrees that the types and minimum amounts of insurance coverage specified by the Lessor herein shall be reviewed for adequacy from time to time throughout the term of this lease by the Lessor according to what a reasonable and prudent owner thereof would typically procure and maintain. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify

Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

(viii) Total insured value. The property insurance on all risks basis shall be 100% of the total value of the improvements, on a replacement cost basis, naming the State of Hawaii as loss payee.

b. General requirements.

Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, or its equivalent, and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

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

c. Construction. Before commencing with the construction of any initial or subsequent work on the Lessee's leasehold improvements or the construction or installation of other improvements, at, in, on, over, or under the Lessee's premises, the Lessee shall require all contractors and subcontractors to procure, at no cost or expense to the Lessor, and keep in effect at all times during the period of construction and installation the types and minimum amounts of insurance coverage specified, subject to the same general provisions contained in 17.a. In general above, to protect both the Lessor and the Lessee. The Lessee's contractors and subcontractors are subject to the same insurance requirements of the Lessee, unless otherwise specified herein. If the Lessee or the Lessee's contractors or subcontractors desire additional

coverage, the Lessee and the Lessee's contractors and subcontractors are responsible for the procurement and cost of such additional coverage.

The types and minimum amounts of insurance for the Lessee's contractors and subcontractors are as follows:

(i) Commercial general liability ("Occurrence Form"). Minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 general aggregate coverage, covering bodily injury and death, property damage, and personal/advertising injury (subject to a personal/advertising injury aggregate of at least \$1,000,000.00) arising out of contractor's or subcontractor's premises, operations, products, and completed operations. The policy shall include contractual liability for bodily injury, and property damage obligations assumed in the contract or agreement between the Lessee and the Lessee's contractor and subcontractor, Board Form Property Damage, and fire damage legal liability (damage to rented premises) of not less than \$1,000,000 each occurrence, and a \$1,000,000 limit for products and completed operations.

(ii) Automobile liability insurance. Hawaii no-fault automobile liability insurance, covering any auto (all owned, hired, and non-owned autos), with a combined single limit not less than \$2,000,000.00 each accident (bodily injury and property damage combined); or a bodily injury limit of not less than \$1,000,000.00 per person and \$2,000,000.00 per accident, and property damage limits of not less than \$1,000,000.00 per accident.

(iii) Workers' compensation and employers' liability. Workers' compensation coverage meeting the statutory requirements of the State of Hawaii and any other state in which employees are hired or work is performed, and including employers' liability coverage with minimum limits of \$1,000,000.00 each for bodily injury by accident (each accident), for bodily injury by disease (each employee), and for bodily injury by disease (policy limit), or as otherwise required by applicable federal and State of Hawaii laws.

(iv) Builder's risk. The Lessee or the Lessee's contractors shall procure property insurance written on a builder's risk, all risk, or equivalent policy form, including insurance against the perils of fire (with extended coverage)

and risks of physical loss or damage including but not limited to theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and start up. Coverage shall also apply to temporary buildings and debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements. The amount of insurance shall be no less than the initial contract sum, plus the value of subsequent contract modifications and the cost of materials supplied or installed by others, comprising the total value for the entire project at the site on a replacement cost basis, including reasonable compensation for architect's, engineer's, and similar consultant's services and expenses. This property insurance shall include coverage for portions of the project when stored off site or in transit. Such property insurance shall be maintained until the project is completed or until no person or entity has an insurable interest in the property other than the Lessee and the Lessor, whichever is later. This insurance shall include the insurable interests of the Lessor, the Lessee and the Lessee's contractors, subcontractors, and sub-subcontractors in the project, as their interest may appear. If this property insurance includes deductible provisions, the Lessee shall pay all deductibles or costs not covered because of such deductible provisions.

(v) Professional liability. When any architect, engineers, construction managers, or other professional consultants are hired by the Lessee or the Lessee's contractors and subcontractors, professional liability insurance covering their errors and omissions shall be maintained with limits of at least \$1,000,000.00 claims-made policy, and including contractual liability. If or when such policies are renewed or replaced, any policy retroactive dated on the renewal or replacement policy must coincide with, or precede the date work started under the contract for professional services. Any claims-made policy which is not renewed or replaced must have an extended reporting period of at least two (2) years.

(vi) Fire and extended coverage insurance for other hazards and perils (also known as "Commercial Property Insurance"). On all of the buildings, structures and other leasehold improvements, whether owned by the Lessor or the Lessee, and the Lessee's trade fixtures, equipment, furniture, furnishings and other personal property at, in, on, over, or under the premises, or any part(s) or portion(s) thereof, including business interruption coverage, as would be procured

and maintained by a reasonable and prudent owner thereof, the necessary fire policy or policies and extended broad form coverage for other hazards and perils such as, but not limited to hail, windstorm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, damage by aircraft and glass, the minimum combined replacement value of which shall be not less than \$1,000,000.00 or the value of the leasehold improvements as submitted by the Lessee to the Lessor, whichever is greater, per occurrence arising from any one cause.

d. Operation. The Lessee shall, at its sole cost and expense, procure, maintain, and keep in full force and effect during and throughout the term of this Lease, the types and minimum amounts of insurance coverage specified, adequate to protect both the Lessor and the Lessee against the risks mentioned herein, subject to the same general provisions contained in 17.a. In general above. Any sublessees are subject to the same insurance requirements of the Lessee, unless otherwise specified herein. If the Lessee or any sublessee desire additional coverage, the Lessee and the sublessee(s) are responsible for the procurement and cost of such additional coverage.

(i) Commercial general liability ("Occurrence Form"). Minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 general aggregate coverage, covering bodily injury and death, property damage, and personal/advertising injury (subject to a personal/advertising injury aggregate of at least \$1,000,000.00) arising out of the Lessee's premises and operations. The policy shall include contractual liability for any general indemnification agreement in any contract including, without limitation, this lease. Such indemnification shall include bodily injury and property damage obligations assumed in the lease and fire damage legal liability (damage to rented premises) of not less than \$1,000,000.00 each occurrence.

(ii) Workers' compensation and employers' liability. Workers' compensation coverage meeting the statutory requirements of the State of Hawaii and any other state in which employees are hired or work is performed, and including employers' liability coverage with minimum limits of \$1,000,000.00 each for bodily injury by accident (each accident), for bodily injury by disease (each employee), and for bodily injury by disease (policy limit), or as otherwise

required by applicable federal and State of Hawaii laws.

(iii) Fire and extended coverage insurance for other hazards and perils (also known as "Commercial Property Insurance"). On all of the buildings, structures and other leasehold improvements, whether owned by the Lessor or the Lessee, and the Lessee's trade fixtures, equipment, furniture, furnishings and other personal property at, in, on, over, or under the premises, or any part(s) or portion(s) thereof, including business interruption coverage, as would be procured and maintained by a reasonable and prudent owner thereof, the necessary fire policy or policies and extended broad form coverage for other hazards and perils such as, but not limited to hail, windstorm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, damage by aircraft and glass, the minimum combined replacement value of which shall be not less than \$1,000,000.00 or the value of the leasehold improvements as submitted by the Lessee to the Lessor, whichever is greater, per occurrence arising from any one cause.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the

Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease or in the Development Agreement and on its part to be observed and performed, and this

failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the

mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of

performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the premises preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any 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 term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply with, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease 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 personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep

and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor 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 Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor 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 the Lessor 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 lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably

deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or, at the option of the Lessor, Lessee shall demolish and remove such improvements and return the land in a condition acceptable to Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises or any improvements thereon, as the same are being leased as is, where is, with all faults and defects, whether latent or patent.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to release, indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the

expiration or earlier termination of the lease.

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

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

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

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

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

40. Prevention and control of noxious, invasive, or exotic plants and animals. The introduction of noxious, invasive, or exotic plant and animal species to the premises shall not be permitted. The Lessee shall be solely responsible for the removal, at no cost to the Lessor, of any and all

noxious, invasive, or exotic plant and animal species on the premises. This provision shall not apply to native species.

SPECIAL CONDITIONS

41. Improvements. The Lessee shall, at its own cost and expense, within seven (7) years as of the date of lease commencement, complete the renovation of the existing improvements on the premises comprising a six-story hotel/apartment building and accessory structures and facilities, at a cost of not less than TEN MILLION SIXTY-SIX THOUSAND AND NO/100 DOLLARS (\$10,066,000.00), in accordance with the approved Development Plan set forth in the Development Agreement.

42. Bond, improvement. Lessor and Lessee acknowledge and agree that Lessee will apply for separate building permits from the County of Hawaii for each of the seven phases of renovation work set forth in the Development Agreement. Lessee shall be allowed to post seven separate sets of bonds for the renovation project, one for each phase, in accordance with the requirements of the Development Agreement. Such bonds shall be conditioned upon the full and faithful observance and performance of all the terms and conditions of the Development Agreement with respect to each phase, including a completion bond for the full, faithful and timely completion of such phase of the Development Plan, free from all liens and claims, including the completion of the repairs and renovations of the Improvements described in such phase, and a labor and materialmen's bond in the dollar amount of such phase, in such form and upon such terms and conditions as may be approved by Lessor. For any improvements Lessee may plan in the future in addition to those required under the Development Agreement, the Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of such improvements, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the requirements of such construction plan, the completion of the improvements on or before the specified date of completion free from all liens and claims. Lessee shall release, indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused by or attributable to any work performed pursuant

to the Development Agreement or any other construction plan submitted pursuant to this paragraph.

43. Inspections. Inspection of structures or buildings on the leased premises may be conducted by a third-party inspector contracted by the Department of Land and Natural Resources; all costs of the inspection of structures or buildings shall be paid by the Lessee. The land agent of the Lessor and any party to the lease may be present during the inspection and may observe the inspection. If the inspection identifies structures and buildings needing repair or replacement, the Lessee shall be required to make the necessary repairs or replacement, in a timely manner and at its sole cost and expense. Any action taken by the Lessee pursuant to the inspection shall be carried out in conformity with laws, regulations, and ordinances of the State of Hawaii. The Lessee shall cooperate with the inspections. Failure to comply with this paragraph shall constitute a violation of the lease upon which the Lessor may terminate the lease pursuant to paragraph 21. Breach hereinabove.

44. Demolition Reserve Account; Removal Bond. In addition to periodic inspections that may be made throughout the lease term pursuant to paragraph 43 above, in year 39 of the lease Lessee shall pay for an engineering study by an engineer procured by Lessor to determine the remaining useful life of the improvements on the property. If the study shows the improvements will exhaust their useful life by the lease expiration date, or sooner, and Lessor notifies Lessee that Lessor intends to require the removal of the improvements upon lease expiration, then Lessee shall begin to fund a demolition reserve account in accordance with this paragraph. Upon receipt of such notice and no later than twenty-five (25) years prior to the expiration date of this lease, Lessee shall establish an escrow account into which Lessee shall deposit all funds necessary and required to comply with the requirements of this paragraph (the "Demolition Reserve Account"). The Demolition Reserve Account shall be established at a national banking institution or commercial escrow holder approved by Lessor.

The amount of funds deposited into the Demolition Reserve Account shall be established by a written estimate issued by a qualified construction and demolition expert procured by Lessor as Lessee's expense, for all costs of demolishing and removing all improvements on the leased premises

and restoring the leased premises to a condition acceptable to Lessor (the "Demolition Cost Estimate"). Lessee shall make equal annual deposits into the Demolition Reserve Account on the anniversary of the lease commencement date so that the funds in the Demolition Reserve Account will equal the Demolition Cost Estimate, adjusted for inflation, at lease expiration.

The Demolition Reserve Account shall be established by written escrow agreement mutually agreed and entered into by Lessee and Lessor (the "Demolition Reserve Account Escrow Agreement"). The Demolition Reserve Account Escrow Agreement shall provide that funds in the Demolition Reserve Account shall be used solely to fulfill Lessee's obligations under this paragraph and provide that all disbursements from the Demolition Reserve Account shall be made upon Lessee's written direction to the escrow holder with the consent of Lessor, provided that upon the occurrence of an event of default and the expiration of any applicable cure period provided for in this lease, all disbursements from the Demolition Reserve Account shall be made solely upon Lessor's written direction to the escrow agent without the consent of Lessee, or any other person.

The Demolition Reserve Account Escrow Agreement shall provide that Lessee grants to Lessor a continuing first lien security interest in and to all of Lessee's right, title, and interest in the Demolition Reserve Account, as well as all funds held, or designated for deposit in the Demolition Reserve Account, whether then owned, existing, or thereafter acquired, and regardless of where located, as security solely for the performance of Lessee's obligations under this paragraph and not as security for any other obligation of Lessee to Lessor. Lessee shall not grant or allow any other security interests in, liens to, or encumbrances on the Demolition Reserve Account or the funds in it. Lessee shall deliver to Lessor for filing one or more financing statements, as necessary, in connection with the Demolition Reserve Account in the form reasonably required by Lessor to properly perfect its security interest in the Demolition Reserve Account, and shall keep the lien secured by such statements perfected at all times during the existence of the Demolition Reserve Account in accordance with the laws of the State of Hawaii. Lessee shall deliver to Lessor, within ten (10) days after filing, the original and any amendments to, and continuations of, any financing statement. Except as otherwise expressly provided in the Demolition Reserve Account Escrow Agreement, Lessee shall be solely liable to the escrow agent for

the fees and expenses related to the Demolition Reserve Account. The Demolition Reserve Account Escrow Agreement shall also provide that any assignment of lease requested by Lessee and consented to in writing by Lessor shall be deemed an assignment of Lessee's interest in the Demolition Reserve Account to Lessee's assignee.

No later than ten (10) years prior to the expiration of the lease, Lessee shall post a surety bond to cover the difference between the total funds in the Demolition Reserve Account and the projected Demolition Cost Estimate at lease expiration (the "Demolition Differential"). Lessor may revisit the sufficiency of the surety bond annually and require an increase or decrease in the bond amount, as appropriate, to correspond to fluctuations in the Demolition Differential. Lessee shall post the bond in such adjusted amount as Lessor may direct within thirty (30) days of receipt of written notice from Lessor. Lessee shall post the removal bond in year 56 of the lease even if the engineering study shows remaining useful life of the improvements beyond the lease expiration date, unless Lessor expressly waives the bond in writing. Further, Lessee shall post the removal bond at any time during the lease upon the occurrence of an event of default and the expiration of any applicable cure period provided for in this lease and no later than thirty (30) days after the expiration of such cure period.

45. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

46. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board

may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

47. Notices. All notices, requests or other communications required or permitted to be given or made under this lease by either party hereto shall be in writing and shall be deemed to have been duly given or served if delivered personally to or sent by United States mail, postage prepaid, addressed to the party intended to receive such notice, at the addresses set forth below, or at such other addresses as the parties may designate from time to time by notice given to the other party in the manner hereinafter set forth, to wit:

To LESSEE: BANYAN DRIVE MANAGEMENT LLC, a Hawaii
limited liability company

Hilo, HI 96720

To LESSOR: STATE OF HAWAII
Board of Land and Natural Resources
1151 Punchbowl Street, Rm. 220
Honolulu, Hawaii 96813
Attn: Chairperson
Fax: (808) 587-0390

All mailed notices are deemed delivered 48 hours after deposit in a regularly maintained United States post office mailbox or upon personal delivery. Notices may also be sent via facsimile or email. All notices sent via facsimile or email will be deemed delivered upon transmission.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board

of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Development Agreement" means the agreement relating to the renovation of the premises approved at the Board of Land and Natural Resources' meeting of _____, 2024, which was subsequently executed by Lessor and Lessee effective as of _____, 2024, and set forth the approved development plan for the premises.

(c) "Lessee" means and includes the Lessee, its members, officers, employees, invitees, successors or permitted assigns. For purposes of the assignment paragraph 13, "Lessee" shall also mean and include Lessee and any person, entity or organization owning an interest in Lessee and any upstream or parent owner of the Lessee, at all levels.

(d) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(e) "Hotel" or "hotel operations" means the furnishing of rooms or suites on the premises to transients for less than one hundred eighty (180) consecutive days per guest stay.

(f) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(g) "Qualifying Expenditure" means (i) any sum Lessee expends toward the repair and renovation of premises in an amount up to \$147,600.00, which is the amount of the first year of rent due under the lease; and (ii) any sum Lessee expends toward demolition of existing improvements or provision of basic infrastructure, including drainage, sewer, water, electricity, and other utilities, before the Lessee can make productive use of the premises, in an amount up to \$1,822,424.00. The maximum possible amount of Qualifying Expenditures under the lease is \$147,600.00 plus \$1,822,424.00, or \$1,970,024.00.

(h) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded

or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(i) "Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Board
of Land and Natural
Resources at its meeting
held on _____.

STATE OF HAWAII

By
DAWN N.S. CHANG
Chairperson
Board of Land and
Natural Resources

APPROVED AS TO FORM:

LESSOR

Deputy Attorney General

Dated:

BANYAN DRIVE MANAGEMENT LLC,

Hawaii limited liability company

By _____

Its _____

LESSEE

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____,
before me personally appeared
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires:



STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,787

February 25, 2020

HOTEL/APARTMENT SITE

Waiakea, South Hilo, Island of Hawaii, Hawaii

Comprising the following:

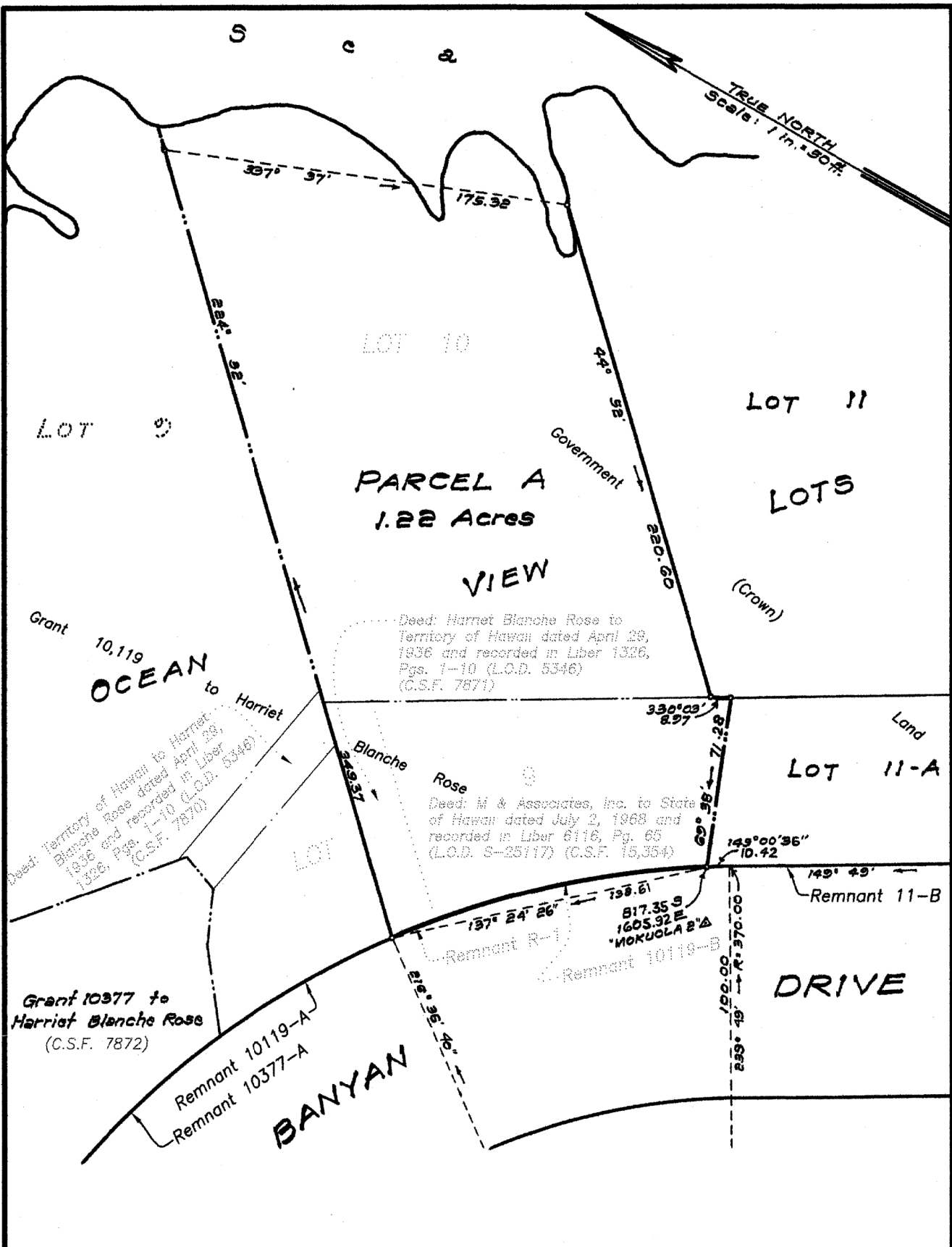
1. Portions of the Government (Crown) Land of Waiakea, being all of Lot 10 of Ocean View Lots and Government Remnants R-1 and 10119-B.
2. Portion of Grant 10,119 to Harriet Blanche Rose conveyed to the State of Hawaii by M. & Associates, Inc. by deed dated July 2, 1968 and recorded in Liber 6116, Page 65 (Land Office Deed S-25117).
3. Portion of Grant 10,119 to Harriet Blanche Rose conveyed to the Territory of Hawaii by Mrs. Harriet B. Rose by deed dated April 29, 1936 and recorded in Liber 1326, Pages 1-10 (Land Office Deed 5346).

Beginning at the south corner of this parcel of land, at the northwest corner of Government Remnant 11-B and on the northeast side of Banyan Drive, the coordinates of said of beginning referred to Government Survey Triangulation Station "MOKUOLA 2" being 817.35 feet South and 1605.92 feet East, thence running by azimuths measured clockwise from True South:-

1. Along the northeast side of Banyan Drive on a curve to the left with a radius of 370.00 feet, the chord azimuth and distance being:
137° 24' 26" 138.61 feet;

S c a

TRUE NORTH
Scale: 1 in. = 90 ft.



HOTEL/APARTMENT SITE

Waiakea, South Hilo, Island of Hawaii, Hawaii

Job H-024(20)

Scale: 1 inch = 50 feet

C. BK.

TAX MAP 2-1-05: 20

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

STATE OF HAWAII

C.S.F. NO. 25,787

RDM February 25, 2020

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "C"

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same

proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

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

2. Depreciation

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

3. Depreciated Cost of Improvements or Renovations

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

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

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improve-	Expired term:	57 mos.
ments or Renovations	Whole term:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

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

3. Adjusted Depreciated Cost of Improvements or Renovations
 $\$591,887 - \$82,690 = \underline{\$509,197}$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

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

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

Refrigerator

<u>Example</u>	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} + \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

\$1,705 - \$1,012 = \$ 693

SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- <u>693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055

SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1.	Net Consideration <u>Received</u> :			\$1,000,000
2.	Consideration <u>Paid</u> :	\$600,000		
	Premium:	<u>- 45,055</u>		
	Net Consideration <u>Paid</u> :		\$554,945	
3.	Adj Value Consideration (improvements):			
	\$554,945 X	$\frac{156.4}{121.1}$	=	\$716,708
	Depreciation:			
	\$716,708 X	$\frac{107 \text{ mos.}}{408 \text{ mos.}}$	=	<u>-187,960</u>
	Adj Dep Value Consideration:			- <u>528,748</u>
4.	Excess:			\$ 471,252
5.	Premium:	Percentage:	45%	<u>\$ 212,063</u>

EXHIBIT J

From: [Ryan](#)
To: [Moore, Kevin E](#)
Cc: [Martin, Candace M](#); [Kanani Lastimado](#); [Ryan Lee](#)
Subject: [EXTERNAL] 121 Banyan Drive; Surrender of month-to-month Revocable Permit No. S-7955
Date: Thursday, January 9, 2025 4:45:25 PM
Attachments: [Surrender of month to month Revocable Permit No. S-7955_1 \(1\).pdf](#)

Hi Kevin,

Please see attached.

It's been two years since Banyan Drive Management officially operated 121 Banyan Drive building, and even with significant monetary loss every month, BDM managed the entire building on goodwill as our RFP/PFQ development agreement was going to be on BLNR's agenda for a vote.

However, as discussed over the phone, we're surrendering our revocable permit as DLNR now doesn't even have a timeline when our submittal item will be put up for a vote.

All the utilities for the building will be terminated when we vacate the building, and this utility cut-off information will be passed on to all tenants and squatters at the 121 Banyan Drive building as of today.

Thank you and please let me know if you have any questions.

Ryan
Banyan Drive Management
121 Banyan Drive #102
Hilo, HI 96720
808-796-3099 (Office)

EXHIBIT J

BANYAN DRIVE MANAGEMENT LLC
121 Banyan Drive Hilo, HI 96720
808.796.3099

Jan 9, 2025

State of Hawaii Department of Land and Natural Resources
Attn: Kevin Moore
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Ref: Revocable Permit No. S-7955

Subject: Surrender of month-to-month Revocable Permit No. S-7955; Tax Map Key: (3)
2-1-005:020; 121 Banyan Drive Hilo, HI 96720

Dear Mr. Moore,

Banyan Drive Management LLC (BDM) is surrendering our month to month Revocable Permit No. S-7955 and giving you an official 25 days notice to vacate the premises. Our last day at 121 Banyan Drive Hilo, HI 96720 will be on February 2, 2025.

Recently, the district court issued a writ of possession for an additional five units at 121 Banyan Drive. We were in the process of carrying out the writ with the help of Hawaii sheriff sometime later this or next month, depending on the sheriff's availability. We'll still go forward with it if the sheriff contacts us. Let me know if you would rather have us not move forward with it.

We'll be giving a formal, written notice to vacate to everyone that's occupying the building (15 units), today. We'll help them as much as possible to find other housing and provide them with re-housing agencies' contact information, such as HOPE services and Catholic Charities.

Thank you,



Ryan Lee
Managing Member
Banyan Drive Management LLC

01 / 09 / 2025