

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

November 14, 2025

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

Ref: 23OD-038

OAHU

Approval of a Development Agreement and Extended, Amended and Restated General Lease for a 40-Year Extension of Lease Term, General Lease No. S-4095, Olomana Golf Links, Inc., Lessee; Authorize the Chairperson to Approve and Execute a Lease Extension for General Lease No. S-4095, Olomana Golf Links, Inc., Lessee; Waimanalo, Koolaupoko, Oahu.

Amend Prior Board Approval as Amended of Item D-6, May 26, 2023; *“Authorize the Department of Land and Natural Resources, Land Division to Negotiate a Development Agreement for a 40-Year Extension of Lease Term, General Lease No. S-4095 Olomana Golf Links, Inc., Lessee; Waimanalo, Koolaupoko, Oahu, Hawaii, Tax Map Key: (1) 4-1-013:010.”*

The purpose of the amendment is to waive the requirement for a Phase I Environmental Site Assessment upon rent re-openings for General Lease No. S-4095, Olomana Golf Links, Inc., Lessee; Waimanalo, Koolaupoko, Oahu, Hawaii, Tax Map Key: (1) 4-1-013:010.

LESSEE:

Olomana Golf Links, Inc., a Hawaii profit corporation. (“Lessee”)

LESSEE AND REQUEST:

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

LEGAL REFERENCE:

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

LOCATION:

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

AREA:

129.859 acres, more or less.

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

TRUST LAND STATUS

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

CHARACTER OF USE:

Construction and operation of a golf course and allied facilities. The allied facilities may include but are not limited to the clubhouse.

TERM OF LEASE:

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

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

ANNUAL RENTAL:

Current rent is \$161,000.00, or percentage of the gross receipts, whichever is greater. Percent rent sources: 9% from green fees, 5% from food, 7% from liquor, and 6% from pro shop.

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

¹ October 28, 1994, Agenda Item F-6

² Act 236 allows for an extension for a period no longer than 40 years without regard to any prior extensions granted.

RENTAL REOPENINGS:

Rental re-openings in the original term were at the end of the 20th and 30th years of the original term. Rental reopenings for the first extended term approved by the Board in 1994 were conducted in 1994, 2004, and 2014. The last reopening determined the rent for the prior extension period commencing October 28, 2024, through May 3, 2032 at \$161,000.00.

Re-openings for the proposed 40-year extension are addressed herein.

PROPOSED IMPROVEMENT ITEMS AND COSTS:

Lessee proposes to complete general improvements to certain golf course facilities, comprised of the main building renovations-club house/restaurant, flood prevention (wastewater treatment plant), turf management, cart barn, and parking lot for a projected cost of \$2,759,567.45.

Staff separated the total improvement costs into three (3) categories, namely

(1) Costs on completed projects;	\$704,584.28
(2) Outstanding costs on partially completed projects; and	\$180,103.20
(3) Costs on proposed improvements.	<u>\$1,874,879.97</u>
	Total: \$2,759,567.45

Individual breakdown for items covered by the above-mentioned costs is attached as **Exhibit B1 to B3**.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states, “Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing”, and Item 40, which states that “leases of state land involving negligible or no expansion or change of use beyond that previously existing”.

.Given that the property is already developed for a golf course, the area is not considered to be located within a sensitive environment. Further, no new uses that are inconsistent with current and past uses will occur as a result of the development and lease extension. Therefore, no significant adverse or cumulative impacts are anticipated.

The execution of the development agreement and lease extension will provide for the closure of a large capacity cesspool, which is regarded as harmful to both the environment and public health. Additionally, the cesspool closure is required under both federal and

state law and supports overall public health and safety. The impact resulting from these actions would be beneficial and in support of a clean and healthful environment. Therefore, staff believes that any impact from this action can be considered de minimis and should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

LESSEE REQUIREMENTS:

1. Lessee shall be required to comply with the applicable requirements of Sections 171-36(a) and 171-36.5, HRS to negotiate a development agreement with department staff, and return to the Board at a later date for review and approval of the development agreement and requested lease extension in accordance with and pursuant to the Department of Attorney General current lease terms and conditions necessary to implement and conform to the requirements of Act 236, Session Laws of Hawaii 2021 (“Act 236”) and current law, including but not limited to substantive provisions relating to Lease Assignments, Sublease Rents, Ownership of Improvements, Removal Bond and Wastewater Disposal System, as discussed and recommended below.
2. Close the onsite cesspool per Department of Health (DOH) approved methods and connect to a municipal sewer system or an alternative wastewater system as an additional condition of the lease extension; and
3. Reimburse the Department for the cost (\$8,700) of procuring an appraiser to review Lessee’s appraiser’s report regarding the value of the existing improvements on the property.

PUBLIC TRUST ANALYSIS

Although the property is currently used as a golf course, staff does not believe that the lease should be allowed to expire and the property and improvements revert back to the Department. The Department does not have expertise to manage a golf course facility, as it is not consistent with the other recreational resources currently managed by the Department such as passive parks and small boat harbors. Additionally, the Department does not have the resources to operate and maintain the golf course and facility improvements. Therefore, it is not appropriate for this property to become vacant and unencumbered in order to facilitate the public to access, use and recreate on the property. As the property is ceded land, the current use of the property provides for the betterment of Native Hawaiians, one of the public trust purposes under Section 5(f) of the Admissions Act. Furthermore, having a tenant occupying the property and paying lease rent not only generates revenue to support Department programs, also alleviates the cost to manage a

vacant property. This allows the Department to use its revenues and resources to manage public lands and provide lands for public use which is another public trust purpose under Section 5(f) of the Admissions Act.

The Department and the Board are responsible for managing approximately 1.3 million acres of public lands comprised of sensitive natural, cultural and recreational resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the Legislature and the Board determined that the Department should use a portion of the lands it manages to generate revenues to support the Department's operations and management of public lands/programs. Annual lease revenues currently support the Special Land and Development Fund (SLDF), with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects. The SLDF revenues collected by the Department's Land Division cover the entire annual operating budget for the Land Division, the Department's Office of Conservation and Coastal Lands, and the Dam Safety and Mineral Resources Programs of the Department. The revenues fund over 80 Department staff positions, including 5 positions within the Commission on Water Resource Management, and provide funding support to the Division of State Parks and various resource protection programs administered by the Division of Forestry and Wildlife such as the protection of threatened and endangered species, removal of invasive species, wildland firefighting and lifeguard services.

The SLDF is a critical and increasingly important funding source for various divisions within the Department to deal with emergency response to natural catastrophes such as fire, rockfall, flood or earthquake and hazard investigation and mitigation. The SLDF also is critical for staff support of various programs and funding conservation projects on all state lands. It has also become an important source of state match for federally funded endangered species and invasive species initiatives that otherwise would not go forward.

Aside from the lease rent revenue and the unsuitability for public use, the extension is consistent with public trust obligations as it provides the lessee the opportunity to contribute to the economic wellbeing of the State. Furthermore, the closure of the cesspool pursuant to the lease extension will serve to protect the State's water resources, which is another public trust resource. Such protection will help ensure that water is available for public trust purposes such as domestic use.

BACKGROUND:

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

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

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

The Board, at its meeting on April 8, 2016, under agenda item D-8 consented to the Stock Purchase Agreement and Consent to Mortgage (in the amount of \$2,000,000) between Hawaii OGL LLC, Seller/Mortgagee, and JNC USA, Inc., Purchaser, and Olomana Golf Links, Inc., Lessee, Mortgagor³. The mortgage was released in 2018.

Most recently, the Board, at its meeting on May 26, 2023, under agenda item D-6, approved as amended Lessee's request to authorize the Department of Land and Natural Resources, Land Division to negotiate a development Agreement for a 40-year extension of lease term pursuant to Act 236 (Session Laws of Hawaii 2021) and Sections 171-36 and -36.5 H.R.S., as amended, to incorporate the standard lease terms and conditions regarding lease assignment, sublease rent participation, and ownership of improvements used by the Department of the Attorney General with respect to the leasing of public land. A copy of the approved Board submittal is attached as **Exhibit C**.

The Board also authorized the Department of Land and Natural Resources, Land Division, to contract appraisal services at Lessee's expense to determine the minimum revised annual rent of the subject premises in accordance with Act 236.

This authorization was not deemed to be an approval of the development proposal or lease extension at this time, as staff was directed to return to the Board at a later date for review and approval of development agreement and lease extension, including plans and specification for improvements submitted by the Lessee.

The Board also amended the recommendations to adding the following conditions to the Development Agreement and lease extension documents:

1. a Phase I environmental assessment requirement upon rent re-openings;
2. adding a removal bond requirement for improvements on the property; and
3. require the lessee to submit a master plan for the entire leased premises when the Development Agreement and lease extension documents are presented to the Board for final approval.

³ Act 236 notes that "a sale or change in ownership of a lessee that is a company or entity" (such as a stock purchase) shall not be considered an assignment of the lease.

Staff contracted for an independent appraisal to determine annual lease and percentage rents for the first 20 years (at 5-year intervals) of the proposed 40-year extension period. On November 1, 2023, Lessee accepted the lease rent amounts for the 20-year period scheduled to begin May 4, 2032, as follows:

<u>Effective Date</u>	<u>Annual Rent</u>
May 4, 2032	\$190,000.00
May 4, 2037	\$215,000.00
May 4, 2042	\$240,000.00
May 4, 2047	\$265,000.00

The applicable percentage rental rates for various revenue categories during the proposed 40-year extension period are as follows: (Note: Same percentage rent during the current term.)

<u>Revenue Category</u>	<u>% Rent Rate</u>
Green fees, including cart rentals	9%
Food	5%
Alcoholic beverages	7%
Pro shop	6%

The aforesaid percentage rent schedule will also be effective commencing May 4, 2032.

DISCUSSION:

With the Lessee's current lease set to expire on May 3, 2032, the Lessee is requesting an additional 40-year extension pursuant to Act 236 as promulgated in HRS Section 171-36.5 in order to amortize the cost of additional improvements to the property. Act 236 allows up to a 40-year extension of commercial, industrial resort, mixed-use or government leases based on "substantial improvements" to the lease premises:

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

The operation of a golf course and allied facilities on the lease premises qualifies this lease as a commercial lease. Lessee's proposed improvements include general improvements to certain golf course facilities, comprised of the main building renovations-club house/restaurant, flood prevention (wastewater treatment plant), turf management, cart barn, and parking lot, at a cost of \$2,759,567.45 utilizing Lessee's own funds. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$8,434,000.00. Lessee's proposed expenditure of \$2,759,567.45 represents 32.7% of the value of the existing improvements (\$8,434,000).

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

The appraisal evaluation performed for Land Division has verified that the value of the existing improvements on the leased premises as determined by Lessee's appraisal report is sufficiently accurate for the purposes of Act 236. As part of the requested approval of the Development Agreement, the Board is also requested to determine that the Lessee's proposed expenditure makes it eligible for the requested 40-year extension under Act 236.⁴

Act 236 stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount. The Lessee have submitted plans and specifications for the total development and staff is proposing the use of a draft development agreement outlining the terms and conditions required in compliance with Act 236.

As part of its due diligence and review process, staff notes that the Internal Revenue Service (IRS) has provided criteria to determine what would qualify as a capital improvement, which is an improvement that adds to the value of a property, extends its useful life, or adjusts it to new uses. The property is improved whenever it experiences a betterment, adaption or restoration. An expenditure is for betterment if it facilitates a material condition or defect in the property that existed before it was acquired or when it was produced - it makes no difference whether or not you were cognizant of the defect when you received the unit of property; results in a material addition to the property - for instance, physically broadens, grows, or extends it, or results in a material increase in the property's capacity, productivity, power, or quality.

An expenditure is for a restoration if it returns a property that has plunged into disrepair to its ordinarily efficient operating condition; rebuilds the property to a like-new condition after the end of its useful economic life; replaces a significant part or important structural component of the property; replaces a piece of a property for which the owner has taken a

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

loss, or repairs damage to a property for which the owner has taken a basis adjustment for a casualty loss.⁵ Generally, repairs are one-time expenditures to keep the property as currently existing in a usable and operating condition.⁶

Staff herein seeks the approval of the draft Development Agreement that was negotiated with Lessee. A copy of the draft Development Agreement is attached as **Exhibit D**.

During the negotiation of the DA, Lessee, through its counsel, had raised concern that the State requirement for the Lessee to post an improvement bond (paragraph 7) equivalent to the total projected improvement costs was even obtainable and feasible. Due to the scale and probable phasing of all improvements, the Division agreed to insert a provision in paragraph 8 which would allow Lessee to reduce the bond amount over any completed works, further subject to the satisfaction of the Chairperson on those completed works. In addition, an irrevocable letter of credit was also added to paragraph 7 as a form of instrument to satisfy the improvement bond.

The 2023 approval required Lessee post a removal bond for all improvements on the property.⁷ Pursuant to the discussion with the Lessee and its counsel, the Division was advised that posting of a removal bond for over \$2.7 million improvement over 40-year

⁵ Information can be found at this link: <https://www.irs.gov/businesses/small-businesses-self-employed/tangible-property-final-regulations#Whatisthefactsandcircumstancesanalysis>.

⁶ The United States Supreme Court has recognized the highly factual nature of determining whether expenditures are for capital improvements or for ordinary repairs. See Welch v. Helvering, 290 U.S. 111, 114 (1933) (“[T]he decisive distinctions [between capital and ordinary expenditures] are those of degree and not of kind”); Deputy v. du Pont, 308 U.S. 488, 496 (1940) (observing that each case “turns on its special facts”). Because of the factual nature of the issue, the courts have articulated a number of ways to distinguish between deductible repairs and non-deductible capital improvements. For example:

Illinois Merchants Trust Co. v. Commissioner, 4 B.T.A. 103, 106 (1926), the court explained that repair and maintenance expenses are incurred for the purpose of keeping property in an ordinarily efficient operating condition over its probable useful life for the uses for which the property was acquired. Capital expenditures, in contrast, are for replacements, alterations, improvements, or additions that appreciably prolong the life of the property, materially increase its value, or make it adaptable to a different use.

Estate of Walling v. Commissioner, 373 F.2d 190, 192-193 (3rd Cir. 1967), the court explained that the relevant distinction between capital improvements and repairs is whether the expenditures are to “put” or “keep” property in efficient operating condition.

Plainfield-Union Water Co. v. Commissioner, 39 T.C. 333, 338 (1962), the court stated that if the expenditure merely restores the property to the state it was in before the situation prompting the expenditure arose and does not make the property more valuable, more useful, or longer-lived, then such an expenditure is usually considered a deductible repair. In contrast, a capital expenditure is generally considered to be a more permanent increment in the longevity, utility, or worth of the property.

⁷ The Board discussion was silent on the period in which the removal bond would be required.

span would be a huge drain on the operation budget of the golf course. Upon further review of the situation, the Division recommends the Board accept the idea of reserving the right for the Lessor to demand the removal bond for the entire improvement cost during the last ten (10) years of the requested extension. This suggestion will address the concern about overloading the operation budget with the annual premium to renew the bond. If any forfeiture were to happen due to breach of lease condition due to failure by the lessee to provide the required removal bond, the State would have the remaining term of the lease to identify any successor to the lease. The Division understands the forfeiture may not be the best-case scenario for the final outcome of the lease. However, a good performance by the lessee during the first thirty (30) years of the extension could be an acceptable compromise.

Consistent with the Board's prior approval as amended, Staff also seeks approval of the Extended, Amended and Restated General Lease S-4095, which would be substantially drafted along the versions for recent lease extension with the latest version attached as **Exhibit E**.

The lease extension document for GL S-4095 issued in 1994 updated the original 1967 lease to the then current provisions used by the Department of the Attorney General (ATG), including the provisions on assignment, sublease rent participation, and ownership of improvements. This was done prior to the interpretation of the *Kahua Ranch* case⁸ to prohibit the amendment of public auction leases, even if agreed to by both parties. Last year, the Department received advice from the ATG clarifying the limits and inapplicability of *Kahua Ranch* in the context of Act 236. Staff now understands that the Board may require that public auction leases be updated to the ATG's current lease terms and conditions, to the extent necessary to implement the requirements of Act 236, as a condition of approving the extension.

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

- **Lease Assignments.** Current lease form includes an assignment of lease premium analysis that allows the State to share in the consideration paid for an assignment of a lease under some circumstances. This term is consistent with Section 171-36, HRS. GL S-4095 is silent on this provision, and the lease extension period should include this standard assignment of lease premium term.

⁸ *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), *aff'd on reh'g*, 47 Haw. 466, 390 P.2d 737, *reh'g denied*, 47 Haw. 485, 391 P.2d 872 (1964) (*Kahua Ranch*).

- **Sublease Rents.** Current lease form includes language allowing the State to adjust the lease rent based on the sublease rent charged to the sublessee, which is also consistent with Section 171-36, Hawaii Revised Statutes. GL S-4095 is silent on this provision, and the lease extension period should include this standard sublease rent participation language.
- **Ownership of Improvements.** Current lease form includes a provision on ownership of improvements at lease expiration giving the State the option of assuming ownership or requiring the lessee to remove them at lessee's expense. State leases have incorporated this provision since about the mid-1960s. GL S-4095 simply provides that at the expiration of the lease, title to the improvements vests in the State, leaving open the question whether the State is responsible for removing improvements that have outlived their useful lives. The lease extension period (and the Development Agreement) should include the current standard terms clarifying the State's options relating to ownership of improvements.
- **Removal Bond.** Staff recommends that the Board reserve the right to impose a removal bond or other form of security during the term of the lease extension that is sufficient to ensure the removal of all improvements from the lease premises at lease expiration or earlier termination. The Board has added this requirement as part of its most recent approvals of lease extensions pursuant to Act 149.
- **Wastewater Disposal System.** Staff has worked with the Attorney General to develop language to be included in both the Development Agreement and Lease Extension document to require the closure of cesspools and connection to an alternative wastewater system. Staff further notes that cesspools are subject to Federal law and section 342D-72, Hawaii Revised Statutes. The Development Agreement and Lease Extension would require that if the premises are not connected to the County of Hawaii sewer system or serviced by a permitted individual wastewater system, the Lessee shall be required to, at its sole cost and expense, hire a licensed engineer within three (3) months of the execution of this lease to determine how many cesspools are on premises and locate the cesspool(s), and must properly abandon and close any cesspool, and follow all proper closure instructions, including performing any corrective or remedial actions required by the Federal Environmental Protection Agency and the State of Hawaii Department of Health, and obtain County sewer service or install an individual wastewater system for the Subject Property in accordance with applicable County, State of Hawaii Department of Health, and Federal Environmental Protection Agency laws, within six (6) months of the execution of this lease, which deadline may be extended by the Chairperson of the Board for good cause. All connection costs, plans, and permits for the Subject Property to connect to the county sewer system or install an individual wastewater system shall be the sole responsibility of the Lessee. Pending the abandonment and closure of cesspool(s) as outlined above, the Lessee shall not cause or allow

wastewater to be discharged into the cesspools on the premises in a way that would result in any cesspool being classified as a large capacity cesspool. The development agreement should include the current standard terms clarifying the state's options relating to wastewater disposal systems.

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

The Board, at its meeting on May 26, 2023, under agenda item D-6 approved the incorporation of the standard lease terms and conditions regarding lease assignment, sublease rent participation, ownership of improvements and removal bond requirement for improvements on the property used by the Attorney General with respect to leasing of public lands.

Specifically relating to the removal bond, staff recommends that the Board reserve the right to impose a removal bond or other form of security during the term of the lease extension that is sufficient to ensure the removal of all improvements from the lease premises at lease expiration or earlier termination.

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

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

Accordingly, staff requests the Board to affirm its prior authorization to incorporate of the standard lease terms and conditions regarding lease assignment, sublease rent participation, ownership of improvements and further include removal bond requirement into the Development Agreement and lease extension documents, as discussed above.

Staff notes that the Board, as part of its approval as amended, also required that a Phase I environmental assessment upon the next rental re-opening. Staff requests the Board to waive that requirement because staff believes it to be unnecessary and not consistent with current procedure and policy of rental re-openings.

Additionally, the Board, as part of its approval as amended, instructed the Lessee to submit a master plan for the entire leased premises when the Development Agreement and the lease extension documents are presented to the Board for final approval. Staff understands the Lessee will present its master plan at the Board meeting.

With respect to the Development Agreement, Staff is also recommending the Board allow a period of 36 months for Lessee to complete the improvements required under the development agreement. Staff is recommending such time for Lessee to complete the improvements required under the development agreement in order to provide Lessee the opportunity to address any labor or supply chain issues that may arise over the construction period without defaulting on the development agreement.

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

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, an Sections 11-200.1-15 and -16, HAR, the lease extension is expected to have a minimal or no significant impact on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
2. For the reasons stated herein, find that the development agreement and lease extension are consistent with the public trust;
3. Determine that: 1) the development proposed is of sufficient worth and value to justify the extension of the lease; 2) the estimated time to complete the improvements is approximately 24 months from the date the development agreement is signed; and 3) the minimum revised annual rent for the extension shall be based on the fair market value of the lands.
4. Approve the attached development agreement as Exhibit D with Lessee Olomana Golf Links, Inc., for a 40-year extension of General Lease No. S-4095, covering the State-owned parcel identified by Tax Map Key: (1) 4-1-013:010, pursuant to Act 236, Session Laws of Hawaii 2021, under the terms and conditions cited above, which by this reference are incorporated herein, and further subject to the following terms and conditions:
 - A. Incorporation of the most current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements and removal bond provisions used by the Department of the Attorney General with respect to leasing of public lands;
 - 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. Approve the Extended, Amended and Restated General Lease for a 40-year extension of lease term of General Lease No. S-4095, Olomana Golf Links, Inc., covering the State-owned parcel identified by Tax Map Key: (1) 4-1-013:010, pursuant to Act 236, Session Laws of Hawaii 2021, substantially under the terms and conditions cited above

and other terms and conditions attached as Exhibit E which by this reference are incorporated herein, and further subject to the following terms and conditions:

- A. Incorporation of the most current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements and removal bond provisions used by the Department of the Attorney General with respect to leasing of public lands;
 - 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.
6. Amend its May 26, 2023 approval as amended of item D-6 to waive the requirement for a Phase I environmental assessment upon rent re-openings.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn Chang, Chairperson

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TMK (1) 4-1-013:010

EXHIBIT A

Projects	Amount Spent	Outstanding Costs on Partially Completed Projects	Proposed Costs
Clubhouse Roofing Project	75,518.00		
12th/13th hole restroom	14,500.00		
Driving Range Roof (partially completed)	216,581.56	25,888.72	
Septic Tank Acquisition and Design Fee	92,796.96		
Waste Water Treatment Plant (WWTP) Construction (partially completed)	305,187.76	154,214.48	
Clubhouse			1,276,168.07
			104,712.00
Parking Lot			85,690.00
Beer Garden Enclosure			90,010.43
New Bar Area			35,497.00
Cart Barn 2			13,325.00
Chemical Room Roof			1,280.00
Mechanic Shop Roof			5,660.00
GM Office Roof			8,925.00
Cart Barn with Walls			153,298.37
Course Management			100,314.10
S-total:	704,584.28	180,103.20	1,874,879.97
GRAND TOTAL:			2,759,567.45

EXHIBIT "B1"

Clubhouse Roofing Project		Total cost stated on invoice	
Date	Company Name	Description	Amount Paid
3/28/2022	Pacific Current Industries (PCI) and RSC Roofing	Initial payment for construction on clubhouse roof. Rear off haul and dispose of laminate roofing. Dumpster and dump fees included, install GAF cool Roof shingles with algae resistance warranty and limited lifetime warranty, tear off, haul and dispose of modified bitumen roofing, install torch on modified bitumen roofing, replace composition ridge/hip cap, etc. please see invoice. payment 1 of 5, directly to PCI.	25,000.00
4/10/2022	Stephen Delagarza, related to Pacific Current Industries (PCI)	Stephen was working with/for Pacific Current Industries (PCI). Work involved demolition, purchase of new materials, and labor. This is a partial payment to Stephen.	5,700.00
4/12/2022	Stephen Delagarza, related to Pacific Current Industries (PCI)	Partial payment to Stephen for more demolition, and wood replacement. Demolition of 48 jealousy windows and frame replacement. Paint and repair all exterior areas.	5,000.00
4/15/2022	Pacific Current Industries (PCI)	partial payment for roofing work, payment 2 of 5, directly to PCI. Please see invoice for details.	10,000.00
4/18/2022	Pacific Current Industries (PCI)	partial payment for roofing work. Payment 3 of 5, directly to PCI. Please see invoice for details.	20,000.00
6/24/2022	Pacific Current Industries (PCI)	partial payment for roofing work. Payment 4 of 5, directly to PCI. Please see invoice for details.	5,000.00
8/1/2022	Pacific Current Industries (PCI)	final, full payment for roof work	4,818.00
S-total:			75,518.00

12th/13th hole restroom			
Date	Company Name	Description	Amount Paid
6/8/2021	Roofing Solutions, LLC	painting two bathrooms, replace (3) pieces of wall paneling and install two new commodes. Commode sewer drain repair, replace two faucets repair exterior water faucet, rebuild plumbing in wall. Payment 1 of 3.	3,325.00
5/18/2021	Roofing Solutions, LLC	painting two bathrooms, replace (3) pieces of wall paneling and install two new commodes. Commode sewer drain repair, replace two faucets repair exterior water faucet, rebuild plumbing in wall. Payment 2 of 3.	6,175.00
4/23/2021	Roofing Solutions, LLC	painting two bathrooms, replace (3) pieces of wall paneling and install two new commodes. Commode sewer drain repair, replace two faucets repair exterior water faucet, rebuild plumbing in wall. Payment 3 of 3.	5,000.00
S-total:			14,500.00

EXHIBIT "B2"

Driving Range Roof (partially completed)			
Date	Company Name	Description	Amount Paid
11/6/2024	Ohana Shading Systems.	Driving range roof. Partial Payment.	30,230.00
11/5/2024	Jack Toledo, Ohana Shading Systems	Driving range roof. Partial Payment.	5,300.00
11/18/2024	Ohana Shading Systems.	Driving range roof. Partial Payment.	50,000.00
4/2/2025	Jack Toledo, Ohana Shading Systems	Driving range roof. Partial Payment.	1,000.00
3/10/2025	Jack Toledo, Ohana Shading Systems	Driving range roof. Partial Payment.	5,350.00
10/18/2024	Ohana Shading Systems.	Driving range roof. Partial Payment.	24,701.56
7/1/2024	Ohana Shading Systems.	driving range roof, deposit	100,000.00

S-total: 216,581.56

Outstanding balance of the job 25,888.72

Septic Tank Acquisition and Design Fee			
Date	Company Name	Description	Amount Paid
5/25/2022	ACSI	partial payment for Fuji Clean Treatment Tank (6,000 gal), Total cost is \$84,420. deposit. Payment 1 of 3	40,000.00
6/12/2023	ACSI	partial payment for Fuji Clean Treatment Tank, Total cost is \$84,420. Payment 2 of 3	30,000.00
1/13/2024	ACSI	partial payment for Fuji Clean Treatment Tank, Total cost is \$84,420. Payment 3 of 3	14,420.00
1/13/2024	ACSI	Fuji Clean Treatment Tank design related fees. ACSI - Engineering, design and Engineer's Inspection for WWTP, Design Engineering for DOH Approval, Engineer's Inspection and closure approval	8,376.96

S-total: 92,796.96

Waste Water Treatment Plant (WWTP) Construction			
Date	Company Name	Description	Amount Paid
11/15/2023	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	100,000.00
1/5/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	10,000.00
1/25/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	80,000.00
2/18/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	50,000.00
2/27/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	40,000.00
3/26/2024	Pacific Current Industries (PCI)	During the dig for the installation of the leach field, unexpectedly found that Saddle City's (Neighboring site with multiple houses) main water line ran directly through the planned site of he leached field. Needed to completely move the Saddle City main line.	15,000.00
11/29/2024	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	1,657.12
1/14/2025	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	171.29
3/10/2025	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	1,672.97
3/12/2025	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	1,824.46
6/21/2024	Pacific Pipe	Purchase of piping materials. At the #9 hole, the main line needs to be moved in order to install the leach field.	4,861.92

S-total: 305,187.76

Outstanding balance of the job 154,214.48

Total of all amount spent: 704,584.28

Total of outstanding balance: 180,103.20

Clubhouse		
Company name	Descriptions	Costs
Elevate Builders	Top floor event hall, Kitchen/Bar, Conference & Media/Sound Area	494,710.00
	Top Floor ADA-Compliant Restrooms & Storage Room Replacement	101,501.00
	Bottom Floor Convenience Store/Bar and Offices Replacement	231,110.00
	Bottom Floor ADA-Compliant Bathrooms Replacement	81,710.00
	New Outdoor Bar Replacement	59,710.00
	Finish Materials Allowance	250,000.00
	Tax:	57,427.07
	S-total:	1,276,168.07
iBuild	Costs of second floor windows of the clubhouse, excluding installation.	100,000.00
	Tax:	4,712.00
	S-total:	104,712.00

Parking Lot		
Company name	Descriptions	Costs
S.T.S. Masonry	Parking Lot #1: Sawcut and remove asphalt: 160 ft long x 4 ft wide to 2 ft. put up the form and fill materials, then compact. Install the rebars and pour concrete with a thickened edge.	
	Parking Lot #2: Sawcut and remove asphalt: 135 ft long x 5 ft wide to 2 ft. put up the form and fill materials, then compact. Install the rebars and pour concrete with a thickened edge.	
	Parking Lot #3: Sawcut and remove asphalt: 140 ft long x 8 ft wide to 2 ft. put up the form and fill materials, then compact. Install the rebars and pour concrete with a thickened edge.	
	(Tax included)	41,800.00
	#14 hole cart path work. It currently becomes submerged during heavy rains. Necessary to raise height of cart path . 262 ft. long x 5 ft. wide - 4 inch thick	
	#15 hole cart path work. It currently becomes submerged during heavy rains. Necessary to raise height of cart path . 263 ft. long x 5 ft. wide - 4 inch thick	
	(Tax included)	43,890.00
	S-total:	85,690.00

Beer Garden Enclosure		
Company name	Descriptions	Costs
Ohana Shading Systems	Beer garden roofing.	
	Remove existing roofing and install polycarbonate and aluminum roofing	
	Remove existing front wall and back wall above concrete. Install glass windows in the back and rolling windows in the front.	
	Install accordion doors under open area of garden bar roofing.	85,960.00
Tax:		4,050.43
S-total:		90,010.43

New Bar Area

Company name	Descriptions	Costs
Ohana Shading Systems	New bar area. 17' by 46' M-Model	33,900.08
Tax:		1,596.92
S-total:		35,497.00

Cart Barn 2		
Company name	Descriptions	Costs
Ohana Shading Systems	Remove and replace corrugated roofing. 25' rake by 29' gutter.	
	Replace damaged 2" by 4" as necessary.	12,725.26
Tax:		599.74
S-total:		13,325.00

Chemical Room Roof		
Company name	Descriptions	Costs
Ohana Shading Systems	Repair corrugated metal roof. Patch holes with Gaco tape and silicone over patches. Install 6" aluminum gutters.	1,222.38
Tax:		57.62
S-total:		1,280.00

Mechanic Shop Roof		
Company name	Descriptions	Costs
Ohana Shading Systems	Remove damaged sections of corrugate metal roof. Install new corrugated metal roofing. Install 6" aluminum gutters	5,405.34
		Tax: 254.66
		S-total: 5,660.00

GM Office Roof		
Company name	Descriptions	Costs
Ohana Shading Systems	Remove and replace corrugated metal roof. 15' by 35'	8,523.49
		Tax: 401.51
		S-total: 8,925.00

Cart Barn with Walls		
Company name	Descriptions	Costs
Ohana Shading Systems	Cart Barn 40' by 212' - Remove existing roofing and replace with corrugated metal roof.	
	Reinforce necessary areas.	
	Remove and replace existing corrugated walls with new corrugated walls. 6' high by 416'. Replace damaged 2" by 4" as necessary.	
	Replace posts as necessary.	
	Remove and replace 180 LF of 1" by 10". Remove and reinstall lighting.	146,400.00
		Tax: 6,898.37
		S-total: 153,298.37

Course Management		
Company name	Descriptions	Costs
DHR Golf	Mobilize equipment and crew to job site location	10,000.00
	Levelling the tee boxes	85,800.00
		Tax: 4,514.10
		S-total: 100,314.10

Total: **1,874,879.97**

AMENDED

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

May 26, 2023

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

PSF: 23OD-038

OAHU

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

LESSEE AND REQUEST:

Development Agreement for Lease Extension.

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

LEGAL REFERENCE:

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

LOCATION:

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

AREA:

129.859 acres, more or less.

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

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

May 26, 2023 *Go*

EXHIBIT C

TRUST LAND STATUS

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

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

TERM OF LEASE:

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

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

ANNUAL RENTAL:

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

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

RENTAL REOPENINGS:

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

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

PROPOSED IMPROVEMENT ITEMS AND COSTS:

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

¹ October 28, 1994, Agenda Item F-6

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states, “Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing”, and Item 40, which states that “leases of state land involving negligible or no expansion or change of use beyond that previously existing”. The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of Section 11-200.1-17, HAR.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

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

BACKGROUND:

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

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

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

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

LEASE EXTENSION:

With the Lessee's current lease set to expire on May 3, 2032, the Lessee is requesting an additional 40-year extension pursuant to Act 236 as promulgated in HRS Section 171-36.5 in order to amortize the cost of additional improvements to the property. Act 236 allows up to a 40-year extension of commercial, industrial resort, mixed-use or government leases based on "substantial improvements" to the lease premises:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will

probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.

2. Authorize the Department of Land and Natural Resources, Land Division to negotiate a Development Agreement with Olomana Golf Links, Inc., for a 40-Year Extension of General Lease No. S-4095 covering the State owned parcel identified as Tax Map Key: (1) 4-1-013:010 pursuant to Act 236 (Session Laws of Hawaii 2021) and Sections 171-36 and -36.5, HRS, as amended, to incorporate the standard lease terms and conditions regarding lease assignment, sublease rent participation, and ownership of improvements used by the ATG with respect to the leasing of public lands, with the understanding that the authorization shall not be deemed to be an approval of the development proposal or lease extension at this time, as staff shall return to the Board at a later date for review and approval of development agreement and lease extension, including plans and specification for improvements submitted by the Lessee.
3. Authorize the Department of Land and Natural Resources, Land Division, to contract appraisal services at Lessee's expense to determine the minimum revised annual rent of the subject premises in accordance with Act 236.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn Chang, Chairperson

for

RT

Land Division Meeting: May 26, 2023; D-6: Approved as amended.

Approved as amended. The Board amended recommendation number 2 by adding the following conditions to the Development Agreement and/or lease extension document: (a) a Phase I environmental assessment requirement upon rent reopenings; (b) adding a removal bond requirement for improvements on the property; and (c) require the lessee to submit a master plan for the entire leased premises when the Development Agreement and lease extension documents are presented to the Board for final approval.



TMK (1) 4-1-013:010

EXHIBIT A

PROJECT TRACKING										
PROJECT TITLE Olomana Golf Links Renovations			COMPANY NAME Olomana Golf Links Renovations							
PROJECT MANAGER Rion Kim			DATE 11/11/2022							
STATUS			Olomana Golf Links Renovations						COST	
			STATUS	PRIORITY	DESCRIPTION	Contractor	Support	Start Date	% complete	FIXED COST
#1 Flood Prevention										\$591,263
a	Wastewater Treatment Plant Tank	In Progress			40K paid to purchase tanks	ACSI	Yes	2023	50%	\$84,420
b	Wastewater Tank Installation	Not Yet Started				First Quality	Yes	2023	10%	\$506,843
#2 Main Building Renovations - Club House /Restaurant										\$544,182
a	Window Jalousie - 2nd Floor	Completed			Reframe window sills and install new plastic windows	Gyorgy Szendi	Yes	2022	100%	\$23,664
b	Flooring Restaurant -2nd Floor	Not Yet Started			Install new vinyl flooring on entire restaurant and private party	SYD Construction	Yes	2023		\$45,000
c	Demo - Cashier / Hostess Station / Stairwell / Bar - 2nd	Not Yet Started				SYD Construction	Yes	2023		\$36,000
d	Roofing	Completed			Removed old roof tiles and replace	PCI Roofing	Yes	2022	100%	\$75,518
e	Restroom renovations - 2nd Floor	Not Yet Started				SYD Construction	Yes	2023		\$60,000
f	Electrical System / Fans - 2nd Floor	Not Yet Started			Replace outdated panels and electrical outlets	SYD Construction	Yes	2023		\$30,000
g	Interior Painting and Wall Treatment 2nd-Floor	Not Yet Started				SYD Construction	Yes	2023		\$25,000
h	Carpentry - 2nd Floor	Not Yet Started				SYD Construction	Yes	2023		\$15,000
i	Window Film & AC 2nd Floor	Not Yet Started				SYD Construction	Yes	2023		\$22,000
j	Demo 1st floor	Not Yet Started				SYD Construction	Yes	2023		\$30,000
k	Restroom Renovations - 1st floor	Not Yet Started				SYD Construction	Yes	2023		\$130,000
l	Partial Renovation for Pro Shop - 1st Floor	Not Yet Started				SYD Construction	Yes	2023		\$10,000
m	Tiling for exterior walls - 1st Floor	Not Yet Started				SYD Construction	Yes	2023		\$48,000
#3 Parking Lot										\$529,740
a	Resurfacing Parking Lot / Cart Barn / Restripe Stalls	Not Yet Started			Expand parking lot to accommodate 100 more stalls	MP - Millers Paving	Yes	2024		\$279,740
b	Underground Fuel Storage Tank	Not Yet Started			Relocate below ground fuel tank to an above ground tank	Neil Naki	no	2024		\$250,000
#4 Turf Management										\$956,634
a	Tee Box Rejuvenation	Not Yet Started			Leveling	DHR Golf	Yes	2023		\$85,300
b	Sod Installation	Not Yet Started			Fairway	DHR Golf	Yes	2023		\$208,000
c	Cart Path Concrete Repairs	Not Yet Started			Identify worst areas in need of resurfing	DHR Golf	Yes	2023		\$594,000
d	Irrigation upgrades	Not Yet Started			Install new sprinklers and switches	Pacific Pipe	Yes	2023		\$68,834
#5 Cart Barn										\$103,821
a	Cart Barn Replacement	Not Yet Started			Reconfigure/ relocate building to allow for more customer parking	PCI Roofing	Yes	2023		\$103,821
										\$2,725,640

EXHIBIT B



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

April 26, 2023

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

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

Purchase Order No. C30591

Dear Mr. Tsuji:

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

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

EXHIBIT C

Mr. Russell Y. Tsuji
April 26, 2023
Page 2

Review Conclusions as of an Effective Date of April 24, 2023

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

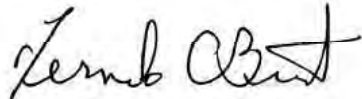
This review report has been prepared in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

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


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

Respectfully submitted,

The Benavente Group LLC



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



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

**DEVELOPMENT AGREEMENT
FOR EXTENSION OF LEASE TERM**

FOR

OLOMANA GOLF LINKS, INC.

* * *

Department of Land and Natural Resources
Ka 'Oihana Kumuwaiwai 'Āina

Land Division

State of Hawaii

EXHIBIT D

DEVELOPMENT AGREEMENT FOR EXTENSION OF LEASE TERM

THIS DEVELOPMENT AGREEMENT for Extension of Lease Term (the “**Agreement**”) is made and dated effective as of this _____ day of _____, 2024 (“**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 meeting held on May 26, 2023, Item D-6 and [Month] [Day] ___, 2024, under agenda 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 OLOMANA GOLF LINKS, INC., a Hawaii corporation, whose business address is 41-1801 Kalanianaʻole Highway, Waimanalo, Hawaii 96795 (“**Lessee**”).

RECITALS:

- A. The State owns in fee simple that certain parcel of land, a portion of government lands, situated at Waimanalo, Koolau-poko, Oahu, shown as the shaded area on **Exhibit A** attached hereto, incorporated herein and made a part hereof. The parcel consists of approximately 129.859 acres and is identified by Tax Map Key No.: (1) 4-1-013:010 (“**Subject Property**” or “**premises**”).
- B. The parcel is currently leased to Lessee under General Lease No. S-4095 for a term of sixty-five (65) years from May 4, 1967 to May 3, 2032 (“**Lease**”).
- C. Act 236, Session Laws of Hawaii 2021, codified at Section 171-36.5, Hawaii Revised Statutes (“**HRS**”), authorizes the Board to extend the term of a commercial, industrial, resort, mixed-use, or government lease that has not been assigned or transferred within 10 years prior to the receipt of an application for a lease extension in exchange for the lessee making substantial improvements to the premises.
- D. Section 171-36.5, HRS, defines “substantial improvements” to mean “any renovation, rehabilitation, reconstruction, or construction of existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of the market value of the existing improvements, that the lessee or the lessee and developer installs, constructs, and completes by the date of completion of the total development.” Lease extensions under Section 171-36.5, HRS, are limited to 40 years.
- E. A Restricted Use Appraisal Report prepared for Lessee determined the market value of the leasehold improvements on the Subject Property to be \$8,434,000.00 as of March 14, 2023. Thirty percent of this amount is \$2,530,200.00.
- F. Lessee has requested that the term of the lease be extended to May 3, 2072, and is planning to make substantial improvements to the Subject Property in an amount exceeding the minimum required to be eligible for a lease extension under Section 171-36.5, HRS, as the total cost of Lessee’s substantial improvements will be

approximately \$2,759,567.45.

- G. Section 171-36.5, HRS further provides that, “No lease extension shall be approved until the board and the lessee or the lessee and developer mutually agree to the terms and conditions of the development agreement.”
- H. On May 26, 2023, under Agenda Item D-6, the Board authorized the Land Division to negotiate with the Lessee a development agreement for a forty (40) year extension of General Lease No. S-4095 pursuant to Section 171-36.5, HRS.
- I. Lessee’s plans and specifications for its substantial improvements to the Subject Property were presented to the Board at its meeting of [Month] [Day] 2024, under Agenda Item D-__, together with Lessee’s request for a 40-year extension of the Lease to amortize the cost of the substantial improvements. The Board reviewed the plans and specifications and statutory requirements for a lease extension under Section 171-36.5, HRS, and approved the extension of the Lease.
- I. This Agreement sets forth the terms and conditions that Lessee must satisfy and successfully perform in order for the requested extension of the Lease to be issued, and for Lessee to retain the benefit of the requested extension of the term of the Lease for the Subject Property pursuant to Section 171-36.5, HRS.

AGREEMENT:

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

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

2. Continuation of the Payment of Lease Rental. Lessee shall continue to pay to the State, throughout the term of this Agreement, all rent and other charges due by Lessee under the Lease and the extension of the Lease provided for under this Agreement (the “**Extended Lease**”), pursuant to the terms and conditions of the Lease or the Extended Lease, as applicable, including the Revised Annual Rent as defined in Paragraph 3.A.(iii) herein, and all other rent and other charges due by Lessee under the Lease or Extended Lease pursuant to their terms and conditions.

3. Development Plan.

A. Pursuant to Section 171-36.5, HRS, prior to entering into this Agreement, Lessee prepared and submitted to the Board the plans and specifications of its proposed development plan for the substantial improvements to the Subject Property dated _____, a copy of which is attached hereto as **Exhibit B** incorporated herein and made a part hereof (such plans and specifications are collectively referred to as the “**Development Plan**”). All such plans and specifications of the Development Plan shall meet the requirements of and

be in full compliance with this Agreement and all applicable municipal, county, state and federal regulations, rules, codes and ordinances. The Board reviewed the Development Plan at its meeting held on [Month] [Day], 2024, under Agenda Item D-__, and determined that:

- (i) The Development Plan proposed in this Agreement is of sufficient worth and value to justify the extension of the term of the Lease to May 3, 2072;
- (ii) The estimated period of time to complete the Development Plan shall be thirty-six (36) months from the Effective Date of this Agreement, which is reasonable; and
- (iii) Lessee shall pay to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a minimum annual rental or a percentage of the gross receipts, whichever is greater (“**Revised Annual Rental**”), as provided hereinbelow, payable in advance quarterly, without notice or demand:

Minimum annual rental:

May 4, 2032 to May 3, 2037	\$190,000.00
May 4, 2037 to May 3, 2042	\$215,000.00
May 4, 2042 to May 3, 2047	\$240,000.00
May 4, 2047 to May 3, 2052	\$265,000.00

Percentage rent sources:

Green fees, including cart rentals	9%
Food	5%
Alcoholic beverages	7%
Pro Shop	6%

- (iv) The minimum annual rent and percentage rent reserved shall be reopened and redetermined as of May 4, 2052 and May 4, 2062.

B. The Board granted final approval of the Development Plan and this Agreement at its meeting held on [Month] [Day], ____, 2024, Item D-__.

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

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

substantial improvements to the Subject Property described therein are legal or structurally safe or sound.

4. Condition of the Subject Property. The State makes no representations regarding the condition or suitability of the Subject Property and of the existing structures and improvements at the Subject Property for the approved Development Plan. Lessee shall, at its sole cost and expense, be responsible for conducting its own investigations and due diligence regarding the Subject Property and the existing structures and improvements at the Subject Property, and any site work necessary to implement the approved Development Agreement, including but not limited to the removal of hazardous materials, if any. Lessee acknowledges and agrees that it assumes all risks of development at the Subject Property. Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from, or attributable to the work performed pursuant to the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property incorporated herein this Agreement.

5. Construction Period. Lessee shall use diligent and commercially reasonable efforts to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan within 36 months from the Effective Date (“**Construction Period**”). If unforeseen circumstances materially impede or delay the development or construction beyond the 180 days provided for under Paragraph 12, Lessee may seek the State’s consent to an extension of the Construction Period, with such request being taken up by the Board at a public meeting at which Lessee and any member of the public would have an opportunity to testify, with the vote of the Board members taken at such meeting being determinative of the request.

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

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

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

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

7. Bonds. Lessee shall not commence construction of the improvements until Lessee has filed with the State sufficient bonds, irrevocable letter of credit, or other financial security, conditioned upon the full and faithful performance of all the terms and conditions of this Agreement, including a completion bond for the full, faithful and timely completion of this Agreement, free from all liens and claims, including the completion of the substantial improvements described in this Agreement, and a labor and materialmen’s bond in the amount of \$2,725,640.00, in such form and upon such terms and conditions as may be approved by the State. Lessee shall, at its own cost and expense, within thirty (30) days from the Effective Date of this Agreement, procure and deposit with the State and thereafter keep in full force and effect during the term of this Agreement, such bonds acceptable to the State in the amount of \$2,725,640.00 as aforesaid, which bonds shall name the State as obligee, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions and covenants of this Agreement, including, but not limited to, the completion of the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property on or before the date of completion, free from all liens and claims, pursuant to the approved Development Plan. These bonds shall provide that in case of a breach or default of any of the terms of this Agreement, and the covenants, conditions and agreements of such bonds, the full amounts payable pursuant to the terms and conditions of such bonds shall be paid to the State as liquidated and ascertained damages and not as a penalty.

8. Completion of Construction; Inspection. Upon Lessee’s completion of the substantial improvements on the Subject Property in accordance with the approved Development Plan, Lessee shall provide written notice to the State acknowledging and confirming the same. Representatives of the State and Lessee shall then conduct a final inspection and walk through of the Subject Property within fourteen (14) days of such written notice, and a “punch list” shall be mutually prepared and agreed upon by representatives of the State and Lessee within seven (7) days of such inspection and walk through of the Subject Property. Such 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. Lessee, at Lessee’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 substantial improvements to the Subject Property has been performed in accordance with the approved Development Plan by Lessee, including any and all punch list items, and forty-five (45) days have elapsed after the filing and publication of the Notice of Final or Substantial Completion by Lessee without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such substantial improvements, being filed against the Subject Property, then the State shall confirm and notify Lessee of the same in writing ("**Completion Date**"), at which time Lessee shall have the right to terminate the bonds posted by Lessee pursuant to Paragraph 7 hereof.

To the extent Lessee's Development Plan may be completed in distinct phases as agreed to in writing by Lessee and the State, Lessee may follow the procedure in this Paragraph 8 as to each such phase of the Development Plan to establish a completion date for such phase ("**Phase Completion Date**"), at which time Lessee shall have the right to reduce the bonds posted by Lessee pursuant to Paragraph 7 hereof by the amount the Lessee and the State agree in writing is allocable to such completed phase.

9. Removal of Substantial Improvements and Bond. Lessee shall own the substantial improvements described in Exhibit B until the expiration or termination pursuant to a breach of the Lease during its term, including any applicable lease extension, at which time Lessee, upon notification by the Lessor, shall remove the substantial improvements at its cost to the satisfaction of the Lessor, further subject to the Lessor's option to allow the substantial improvements to remain on the premises at its option.

Lessor reserves the right, within the ten (10) years prior to the expiration of the lease, to require Lessee, at its own cost and expense, within thirty (30) days upon written notification by the Chairperson post a surety bond in an amount to be determined by the Chairperson to cover the cost of the removal of the improvements on the premises.

These bonds shall provide that in case of a failure by Lessee to remove the substantial improvements to the satisfaction of the Lessor, 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.

10. 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, Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the State security in certified checks, certificates of deposit (payable on demand or after a period the State may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the State a deed or deeds of trust of real property, all of a character which is satisfactory to State and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the State shall be determined by the State, and that Lessee may, with the approval of the State, exchange other securities or money for any of the deposited securities if in the judgment of the State the substitute securities or money shall be at least equal in value to those

withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by Lessee, but only upon the written consent of the State and that until this consent is granted, which shall be discretionary with the State, no surety shall be released or relieved from any obligation, except for any bonds terminated by Lessee after the Completion Date or reduced by Lessee after a Phase Completion Date pursuant to the terms of Paragraph 8 hereinabove.

11. INTENTIONALLY LEFT BLANK

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

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

13. Agreement to Issue Extension of Term of Lease. Upon execution of this Agreement, the State will request the Department of the Attorney General to prepare the Extended Lease document. Pursuant to Section 171-36.5, HRS, the Extended Lease document (heretofore and hereinafter sometimes also simply referred to as the "Extended Lease") shall reflect an extension term of forty (40) years and shall contain the Department's and the Department of the Attorney General's most current lease terms and conditions for leasing of public lands to for-profit entities, including but not limited to Lease Assignment (tailored as necessary to comply with the lease assignment restrictions contained in Section 171-36.5, HRS), Sublease Rent Participation, and Ownership of Improvements. The Extended Lease document will cover the aggregate extended term between May 4, 2032 through May 3, 2072, and it will provide that in the event that Lessee fails to successfully perform, timely satisfy, or fully comply with any of the terms and conditions of this Agreement and/or the approved Development Plan, then the Extended Lease term will be rescinded and the Lease, together with its current termination date of May 3, 2032, will be reinstated. The State and Lessee will promptly sign the Extended Lease document when the form thereof is approved by the Department of the Attorney General.

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

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

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

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

(ii) If Lessee abandons the project contemplated under the approved Development Plan, or if any assignment is made of Lessee's rights hereunder for the benefit of creditors;

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

(iv) If Lessee materially breaches this Agreement or is otherwise not in compliance with Section 171-36.5, HRS.

Upon any early termination by the State under this Agreement, this Agreement shall terminate on the date as provided for in the State's written notice and shall become null and void except as to any provisions which expressly survive termination in this Agreement. The Extended Lease shall be rescinded and Lessee shall not be entitled to an extension of the Lease for the Subject Property pursuant to Section 171-36.5, HRS. Upon the effective date of termination and without waiving any other remedies to which it may be entitled, the State shall be entitled to: (1) prosecute any claim against Lessee for fees, costs or other payments or charges that accrued prior to the effective date of termination, including the interest thereon; and (2) assert any claim that it may

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

15. Non-Waiver. The waiver by the State of any breach by Lessee 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.

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

17. Expenses to be Paid by Lessee. Pursuant to Section 171-36.5, HRS, Lessee shall pay reasonable costs and expenses incurred by the State in connection with the processing, analyzing and negotiating of any request for a lease term extension and document, and this Agreement.

18. 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.

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

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

21. Notices. Any notice or demand to the State or Lessee provided for or permitted by this Agreement shall be given in writing and: (a) mailed as registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to such party at its post office address herein

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

If to the State: Board and Department of Land and Natural
Resources
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attention: Chairperson
Fax No.: (808) 312-6357

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 Lessee: Olomana Golf Links, Inc.
41-1081 Kalanianaʻole Highway
Waimanalo, Hawaii 96795
Attention: _____
Fax No.: (808) _____

And a copy to: Bruce D. Voss
Lung Rose Voss & Wagnild
Topa Financial Center
700 Bishop Street, Suite 900
Honolulu, Hawaii 96813
Fax No.: (808) _____

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

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

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

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

26. Ratification. To the extent of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall govern and control to the extent only where there is any conflict or inconsistency with regard to the terms and conditions that Lessee must satisfy and successfully perform in order for it to be issued an extension of the term of the Lease by the State for the Subject Property pursuant to Section 171-36.5, HRS.

27. 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.

28. 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.

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

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

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

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

33. 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.

34. 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.

35. 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.

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

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

Exhibit A: Map of Subject Property

Exhibit B: Lessee's Development Plan dated _____.

[THE NEXT PAGE IS THE SIGNATURE PAGE.]

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

Approved and Executed by the Chairperson
pursuant to authority granted by the Board
of Land and Natural Resources at its
meeting held on [Month] [Day] __, 2024

STATE OF HAWAII

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

APPROVED AS TO FORM:

Name: MELISSA D. GOLDMAN
Deputy Attorney General

Dated: _____

OLOMANA GOLF LINKS, INC.,
a Hawaii corporation

By _____
Name: _____
Title: _____

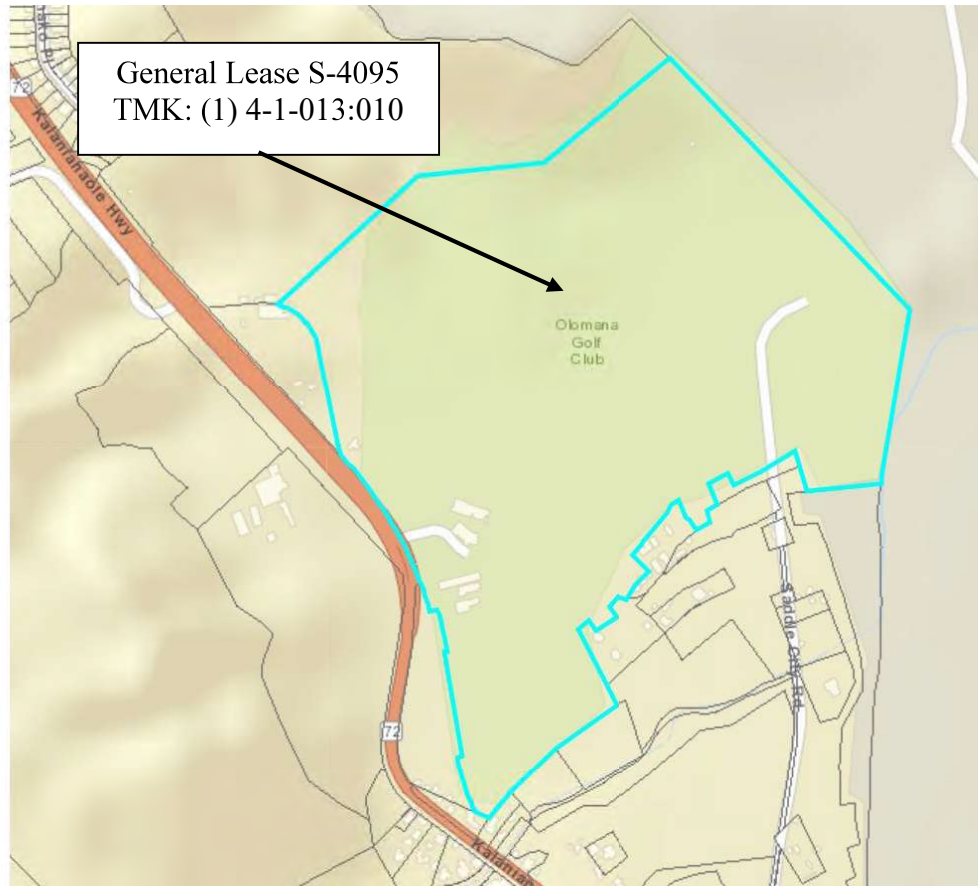
Lessee

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

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 **OLOMANA GOLF LINKS, INC.** a Hawaii corporation, and that the foregoing instrument was signed in behalf of said company by authority of its _____, and the said _____ acknowledged said instrument to be the free act and deed of said company.

Notary Public, State of Hawaii

My commission expires: _____



TMK: (1) 4-1-013:010

EXHIBIT A

Projects	Amount Spent	Outstanding Costs on Partially Completed Projects	Proposed Costs
Clubhouse Roofing Project	75,518.00		
12th/13th hole restroom	14,500.00		
Driving Range Roof (partially completed)	216,581.56	25,888.72	
Septic Tank Acquisition and Design Fee	92,796.96		
Waste Water Treatment Plant (WWTP) Construction (partially completed)	305,187.76	154,214.48	
Clubhouse			1,276,168.07
			104,712.00
Parking Lot			85,690.00
Beer Garden Enclosure			90,010.43
New Bar Area			35,497.00
Cart Barn 2			13,325.00
Chemical Room Roof			1,280.00
Mechanic Shop Roof			5,660.00
GM Office Roof			8,925.00
Cart Barn with Walls			153,298.37
Course Management			100,314.10
S-total:	704,584.28	180,103.20	1,874,879.97
GRAND TOTAL:			2,759,567.45

EXHIBIT "B"

Clubhouse Roofing Project		Total cost stated on invoice	
Date	Company Name	Description	Amount Paid
3/28/2022	Pacific Current Industries (PCI) and RSC Roofing	Initial payment for construction on clubhouse roof. Rear off haul and dispose of laminate roofing. Dumpster and dump fees included, install GAF cool Roof shingles with algae resistance warranty and limited lifetime warranty, tear off, haul and dispose of modified bitumen roofing, install torch on modified bitumen roofing, replace composition ridge/hip cap, etc. please see invoice. payment 1 of 5, directly to PCI.	25,000.00
4/10/2022	Stephen Delagarza, related to Pacific Current Industries (PCI)	Stephen was working with/for Pacific Current Industries (PCI). Work involved demolition, purchase of new materials, and labor. This is a partial payment to Stephen.	5,700.00
4/12/2022	Stephen Delagarza, related to Pacific Current Industries (PCI)	Partial payment to Stephen for more demolition, and wood replacement. Demolition of 48 jealousy windows and frame replacement. Paint and repair all exterior areas.	5,000.00
4/15/2022	Pacific Current Industries (PCI)	partial payment for roofing work, payment 2 of 5, directly to PCI. Please see invoice for details.	10,000.00
4/18/2022	Pacific Current Industries (PCI)	partial payment for roofing work. Payment 3 of 5, directly to PCI. Please see invoice for details.	20,000.00
6/24/2022	Pacific Current Industries (PCI)	partial payment for roofing work. Payment 4 of 5, directly to PCI. Please see invoice for details.	5,000.00
8/1/2022	Pacific Current Industries (PCI)	final, full payment for roof work	4,818.00
S-total:			75,518.00

12th/13th hole restroom			
Date	Company Name	Description	Amount Paid
6/8/2021	Roofing Solutions, LLC	painting two bathrooms, replace (3) pieces of wall paneling and install two new commodes. Commode sewer drain repair, replace two faucets repair exterior water faucet, rebuild plumbing in wall. Payment 1 of 3.	3,325.00
5/18/2021	Roofing Solutions, LLC	painting two bathrooms, replace (3) pieces of wall paneling and install two new commodes. Commode sewer drain repair, replace two faucets repair exterior water faucet, rebuild plumbing in wall. Payment 2 of 3.	6,175.00
4/23/2021	Roofing Solutions, LLC	painting two bathrooms, replace (3) pieces of wall paneling and install two new commodes. Commode sewer drain repair, replace two faucets repair exterior water faucet, rebuild plumbing in wall. Payment 3 of 3.	5,000.00
S-total:			14,500.00

Driving Range Roof (partially completed)			
Date	Company Name	Description	Amount Paid
11/6/2024	Ohana Shading Systems.	Driving range roof. Partial Payment.	30,230.00
11/5/2024	Jack Toledo, Ohana Shading Systems	Driving range roof. Partial Payment.	5,300.00
11/18/2024	Ohana Shading Systems.	Driving range roof. Partial Payment.	50,000.00
4/2/2025	Jack Toledo, Ohana Shading Systems	Driving range roof. Partial Payment.	1,000.00
3/10/2025	Jack Toledo, Ohana Shading Systems	Driving range roof. Partial Payment.	5,350.00
10/18/2024	Ohana Shading Systems.	Driving range roof. Partial Payment.	24,701.56
7/1/2024	Ohana Shading Systems.	driving range roof, deposit	100,000.00
S-total:			216,581.56

Outstanding balance of the job 25,888.72

Septic Tank Acquisition and Design Fee			
Date	Company Name	Description	Amount Paid
5/25/2022	ACSI	partial payment for Fuji Clean Treatment Tank (6,000 gal), Total cost is \$84,420. deposit. Payment 1 of 3	40,000.00
6/12/2023	ACSI	partial payment for Fuji Clean Treatment Tank, Total cost is \$84,420. Payment 2 of 3	30,000.00
1/13/2024	ACSI	partial payment for Fuji Clean Treatment Tank, Total cost is \$84,420. Payment 3 of 3	14,420.00
1/13/2024	ACSI	Fuji Clean Treatment Tank design related fees. ACSI - Engineering, design and Engineer's Inspection for WWTP, Design Engineering for DOH Approval, Engineer's Inspection and closure approval	8,376.96
S-total:			92,796.96

Waste Water Treatment Plant (WWTP) Construction			
Date	Company Name	Description	Amount Paid
11/15/2023	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	100,000.00
1/5/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	10,000.00
1/25/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	80,000.00
2/18/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	50,000.00
2/27/2024	Pacific Current Industries (PCI)	Wastewater treatment plant construction. See PCI Proposal. Partial payment.	40,000.00
3/26/2024	Pacific Current Industries (PCI)	During the dig for the installation of the leach field, unexpectedly found that Saddle City's (Neighboring site with multiple houses) main water line ran directly through the planned site of he leached field. Needed to completely move the Saddle City main line.	15,000.00
11/29/2024	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	1,657.12
1/14/2025	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	171.29
3/10/2025	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	1,672.97
3/12/2025	Pacific Pipe	Purchase of piping materials to move around the practice green for leach field.	1,824.46
6/21/2024	Pacific Pipe	Purchase of piping materials. At the #9 hole, the main line needs to be moved in order to install the leach field.	4,861.92
S-total:			305,187.76
Outstanding balance of the job			154,214.48

Total of all amount spent: 704,584.28

Total of outstanding balance: 180,103.20

Clubhouse		
Company name	Descriptions	Costs
Elevate Builders	Top floor event hall, Kitchen/Bar, Conference & Media/Sound Area	494,710.00
	Top Floor ADA-Compliant Restrooms & Storage Room Replacement	101,501.00
	Bottom Floor Convenience Store/Bar and Offices Replacement	231,110.00
	Bottom Floor ADA-Compliant Bathrooms Replacement	81,710.00
	New Outdoor Bar Replacement	59,710.00
	Finish Materials Allowance	250,000.00
	Tax:	57,427.07
	S-total:	1,276,168.07
iBuild	Costs of second floor windows of the clubhouse, excluding installation.	100,000.00
	Tax:	4,712.00
	S-total:	104,712.00

Parking Lot		
Company name	Descriptions	Costs
S.T.S. Masonry	Parking Lot #1: Sawcut and remove asphalt: 160 ft long x 4 ft wide to 2 ft. put up the form and fill materials, then compact. Install the rebars and pour concrete with a thickened edge.	
	Parking Lot #2: Sawcut and remove asphalt: 135 ft long x 5 ft wide to 2 ft. put up the form and fill materials, then compact. Install the rebars and pour concrete with a thickened edge.	
	Parking Lot #3: Sawcut and remove asphalt: 140 ft long x 8 ft wide to 2 ft. put up the form and fill materials, then compact. Install the rebars and pour concrete with a thickened edge.	
	(Tax included)	41,800.00
	#14 hole cart path work. It currently becomes submerged during heavy rains. Necessary to raise height of cart path . 262 ft. long x 5 ft. wide - 4 inch thick	
	#15 hole cart path work. It currently becomes submerged during heavy rains. Necessary to raise height of cart path . 263 ft. long x 5 ft. wide - 4 inch thick	
	(Tax included)	43,890.00
	S-total:	85,690.00

Beer Garden Enclosure		
Company name	Descriptions	Costs
Ohana Shading Systems	Beer garden roofing.	
	Remove existing roofing and install polycarbonate and aluminum roofing	
	Remove existing front wall and back wall above concrete. Install glass windows in the back and rolling windows in the front.	
	Install accordion doors under open area of garden bar roofing.	85,960.00
Tax:		4,050.43
S-total:		90,010.43

New Bar Area

Company name	Descriptions	Costs
Ohana Shading Systems	New bar area. 17' by 46' M-Model	33,900.08
Tax:		1,596.92
S-total:		35,497.00

Cart Barn 2		
Company name	Descriptions	Costs
Ohana Shading Systems	Remove and replace corrugated roofing. 25' rake by 29' gutter.	
	Replace damaged 2" by 4" as necessary.	12,725.26
Tax:		599.74
S-total:		13,325.00

Chemical Room Roof		
Company name	Descriptions	Costs
Ohana Shading Systems	Repair corrugated metal roof. Patch holes with Gaco tape and silicone over patches. Install 6" aluminum gutters.	1,222.38
Tax:		57.62
S-total:		1,280.00

Mechanic Shop Roof		
Company name	Descriptions	Costs
Ohana Shading Systems	Remove damaged sections of corrugate metal roof. Install new corrugated metal roofing. Install 6" aluminum gutters	5,405.34
		Tax: 254.66
		S-total: 5,660.00

GM Office Roof		
Company name	Descriptions	Costs
Ohana Shading Systems	Remove and replace corrugated metal roof. 15' by 35'	8,523.49
		Tax: 401.51
		S-total: 8,925.00

Cart Barn with Walls		
Company name	Descriptions	Costs
Ohana Shading Systems	Cart Barn 40' by 212' - Remove existing roofing and replace with corrugated metal roof.	
	Reinforce necessary areas.	
	Remove and replace existing corrugated walls with new corrugated walls. 6' high by 416'. Replace damaged 2" by 4" as necessary.	
	Replace posts as necessary.	
	Remove and replace 180 LF of 1" by 10". Remove and reinstall lighting.	146,400.00
		Tax: 6,898.37
		S-total: 153,298.37

Course Management		
Company name	Descriptions	Costs
DHR Golf	Mobilize equipment and crew to job site location	10,000.00
	Levelling the tee boxes	85,800.00
		Tax: 4,514.10
		S-total: 100,314.10

Total: **1,874,879.97**

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

EXTENDED, AMENDED AND RESTATED GENERAL LEASE NO. S-4095

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 OLOMANA GOLF LINKS, INC., whose address is 41-1801 Kalaniana'ole Highway, Waimanalo, Hawaii 96795, hereinafter referred to as the "Lessee."

WITNESSETH:

WHEREAS, unrecorded General Lease No. S-4095 dated April 4, 1967, was leased to Olomana Golf Links, Inc. a Hawaii corporation, as "Lessee"; and

WHEREAS, by unrecorded Extension of General Lease No. S-4095 dated October 11, 1995, the general lease was extended up to and including May 3, 2032.

WHEREAS, Act 236, Session Laws of Hawaii 2021 ("Act 236"), codified at section 171-36.5, Hawaii Revised Statutes ("HRS"), authorizes the Board of Land and Natural Resources to extend the term of a commercial, industrial, resort, mixed-use, or government lease upon the Board's approval of a development agreement whereby the lessee agrees to make substantial improvements to the existing improvements, to the extent such a lease extension is necessary to amortize the cost of self-financed substantial improvements to the demised premises and so long as the extension does not extend the original lease term by more than forty years; and

WHEREAS, the Board of Land and Natural Resources at its meeting held on November 14, 2025, authorized its Chairperson to approve and execute a development agreement ("Development Agreement") with the Lessee pursuant to Act 236 and section 171-36.5, Hawaii Revised Statutes, and to thereafter execute a lease extension for General Lease No. S-4095 for an additional forty (40) years, with the additional provisions as hereinafter contained; and

WHEREAS, the Development Agreement between the Board

and the Lessee was fully executed as of [REDACTED].

NOW, THEREFORE, commencing May 4, 2032, in consideration of the rents, covenants and conditions contained herein and in General Lease No. S-4095, as extended and amended, the Lessor, pursuant to Act 236 and section 171-36.5, HRS, hereby extends the term of the Lease for an additional forty (40) years, from May 4, 2032, up to and including May 3, 2072, for an aggregate term of one hundred and five (105) years, upon the following terms and conditions:

1. The terms, conditions, and covenants contained in General Lease No. S-4095 dated April 4, 1967, as extended and amended, shall continue to remain in full force and effect until the termination date of this Extended, Amended and Restated General Lease No. S-4095, provided that where any of the provisions of General Lease No. S-4095 dated April 4, 1967, conflict with the provisions of this Extended, Amended, and Restated General Lease No. S-4095, this Extended, Amended, and Restated General Lease No. S-4095 shall govern and control.

2. The Lessee shall pay to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental, as provided below, payable in advance, without notice or demand, in equal quarterly installments on January 28, April 28, July 28, and October 28 each and every year during the term, from May 4, 2032, up to and including May 3, 2072, as follows:

A. The minimum annual base rent for the period from May 4, 2032 to May 3, 2037, ONE HUNDRED AND NINETY THOUSAND AND NO/100 DOLLARS (\$190,000.00) per annum.

B. The minimum annual base rent for the period from May 4, 2037 to May 3, 2042, TWO HUNDRED AND FIFTEEN THOUSAND AND NO/100 DOLLARS (\$215,000.00) per annum.

C. The minimum annual base rent for the period from May 4, 2042 to May 3, 2047, TWO HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$240,000.00) per annum.

D. The minimum annual base rent for the period from May 4, 2047 to May 3, 2052, TWO HUNDRED AND SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$265,000.00) per annum.

E. During the term of this extension, the rent shall

be the greater of the annual base rent or annual percentage rent, if any, pursuant to the percent rent sources: nine percent (9%) from green fees including cart rentals, five percent (5%) from food, seven percent (7%) from alcoholic beverages, and six percent (6%) from pro shop.

F. The minimum annual base rental shall be reserved and reopened and redetermined on the remaining five-year periods of the extension term at a later date but prior to May 3, 2052.

G. 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.

H. The Lessee shall submit quarterly reports no later than thirty (30) days after the close of the quarter detailing the gross revenues from uses and operations of the premises. The Lessee shall also submit an annual report of the gross revenues within sixty (60) days after the close of the Lessee's fiscal year. Lessee shall submit the quarterly and annual reports even if no percentage rent is payable.

I. 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.

3. The Lessee shall complete its development plan "Development Plan" as attached to the Development Agreement dated [REDACTED], a copy of which is attached hereto and made a part hereof.

If the Lessee fails to successfully perform, timely satisfy or fully comply with any of the terms and conditions of the Development Agreement and/or approved Development Plan which continues following any applicable cure period, the Lessor shall have the right, upon written notice to Lessee, to terminate or rescind this Extended, Amended, and Restated General Lease No. S-4095, with current termination date of May 3, 2032, will be reinstated. _____

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, excluding those improvements 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 as allowed in the Development Agreement or with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, 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 construction and operation of a golf course and allied facilities. The allied facilities may include but are not limited to the clubhouse.

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 the 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 insolvent, 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, provided that no further extensions of the lease shall be permitted.

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 Lessee shall remove such improvements, at the option of the 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. Substantial improvements. The Lessee shall, at its own cost and expense, within thirty-six (36) months from the execution of the Development Agreement, complete "substantial improvements" to mean any renovation, rehabilitation, reconstruction or construction of the existing improvements, and complete by the date of completion of the total development, at a cost of not less than TWO MILLION SEVEN HUNDRED FIFTY-NINE THOUSAND FIVE HUNDRED SIXTY-SEVEN AND 45/100 DOLLARS (\$2,759,567.45) ("Building Requirement"), in accordance with the approved Development Plan set forth in the Development Agreement and in full compliance with all applicable laws, ordinances, rules and regulations.

42. Bond, improvement. The Lessee, within thirty (30) days of the effective date of the Development Agreement shall procure and deposit with the Lessor a surety bond, irrevocable letter of credit, or other financial security acceptable to the Chairperson, in an amount equal to the cost of construction of the proposed improvements, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the construction of the improvements free from all liens and claims, and that the Lessee shall release, indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to such construction. Lessee shall be permitted to reduce the amount of such bond by the value of any completed work as evidenced by a duly published notice of completion for the premises, together with any supporting documentation Lessor may request and the passing of the applicable forty-five day statute of limitations without any person or entity filing a lien action against the project or Lessee.

43. 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.

44. 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.

45. 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: OLOMANA GOLF LNKS, Inc.
41-1801 Kalaniana'ole Highway
Waimanalo, Hawaii 96795

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.

46. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

47. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without

compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.

48. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

49. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee concerning its operations under this lease.

50. 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. _____

51. Wastewater disposal system. Cesspools are subject to Federal law and section 342D-72, Hawaii Revised Statutes. If the premises are not connected to the City and County of Honolulu sewer system or serviced by a permitted individual wastewater system, the Lessee shall be required to, at its sole cost and expense, hire a licensed engineer within three (3) months of the execution of this lease to determine how many cesspools are on premises and locate the cesspool(s), and must properly abandon and close any cesspool, and follow all proper closure instructions, including performing any corrective or remedial actions required by the Federal Environmental Protection Agency and the State of Hawaii Department of Health, and obtain County sewer service or install an individual wastewater system for Parcel_Ten (10)_____ in accordance with applicable County, State of Hawaii Department of Health, and Federal Environmental Protection Agency laws, within six (6) months of the execution of this lease, which deadline may be extended by the Chairperson of the Board for good cause. All connection costs, plans, and permits for Parcel __ten (10)__ to connect to the county sewer system or install an individual wastewater system shall be the sole responsibility of the Lessee. Pending the abandonment and closure of cesspool(s) as outlined above, the Lessee shall not cause or allow wastewater to be discharged into the cesspools on the premises in a way that would result in any cesspool being classified as a large capacity cesspool.

52. Removal of Substantial Improvements and Bond. Lessee shall own the substantial improvements described in Exhibit B until the expiration or termination pursuant to a breach of the Lease during its term, including any applicable lease extension, at which time Lessee, upon notification by the Lessor, shall remove the substantial improvements at its cost to the satisfaction of the Lessor, further subject to the Lessor's option to allow the substantial improvements to remain on the premises at its option.

Lessor reserves the right, within the ten (10) years prior to the expiration of the lease, to require Lessee, at its own cost and expense, within thirty (30) days upon written notification by the Chairperson post a surety bond in an amount to be determined by the Chairperson to cover the cost of the removal of the improvements on the premises.

These bonds shall provide that in case of a failure by

Lessee to remove the substantial improvements to the satisfaction of the Lessor, 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.

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) "Lessee" means and includes the Lessee, its 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.

(c) "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.

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

(e) "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.

(f) "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.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its meeting
held on November 14, 2025. By _____

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

APPROVED AS TO FORM:

LESSOR

[Name]
Deputy Attorney General

Dated: _____

OOMANA GOLF LINKS, INC. a Hawaii
corporation.

By _____

Its _____

LESSEE

COUNTY OF

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

Notary Public, State of Hawaii

My commission expires: _____