

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

GLS-3596

Hawai'i

Approval of a Development Agreement for a 30-Year Extension of Lease Term Effective January 16, 2026, to January 15, 2056, General Lease No. S-3596, Paradise Plants Home and Garden Center LLC, Lessee; and

Authorize the Chairperson to Approve and Execute a Lease Extension for General Lease No. S-3596, Paradise Plants Home and Garden Center LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:011.

APPLICANT:

Paradise Plants Home and Garden Center LLC, a Hawaii limited liability company

LEGAL REFERENCE:

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

LOCATION:

Portion of Government (Crown) Land of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-049:011, as shown on the attached map labeled Exhibit A.

LEASE AREA:

16,634 square feet, more or less.

ZONING:

State Land Use District: Urban
County Zoning: ML-20

TRUST LAND STATUS:

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

LEASE CHARACTER OF USE:

Allowed uses under the County of Hawaii zoning code, ML-20 limited industrial use

TERM OF LEASE:

Original term of 55 years, commencing on January 16, 1961, and expiring on January 15, 2016.

One extension of 10 years from January 16, 2016, through January 15, 2026.

Lessee is requesting an extension of 30 years, commencing on January 16, 2026, to January 15, 2056, for an aggregate term (initial term plus all extensions) of 95 years.

ANNUAL LEASE RENT:

Current annual rent is \$15,000.00, due in semi-annual installments of \$7,500.00 on January 16th and July 16th of each year.

RENTAL REOPENINGS:

Staff ordered an appraisal to determine the fair market rent of the requested lease extension in two increments, with a determination for the first 10 years from January 16, 2026, to January 15, 2036, and a separate determination for years 11-20, from January 16, 2036, to January 15, 2046. The re-opening for the final ten years of the extension period will be subject to appraisal.

By letter dated May 5, 2025, staff notified Lessee of the State's appraisal dated April 30, 2025, establishing the lease rent amounts for the two 10-year reopening periods to begin January 16, 2026, as follows:

<u>Effective Date</u>	<u>Annual Lease Rent</u>
1/16/2026	\$19,170.00
1/16/2036	\$24,539.00

Lessee accepted the State's proposed annual lease rent on May 12, 2025.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Lessee shall be required to:

1. Comply with the applicable requirements of Sections 171-36(a) and 171-192, HRS to negotiate a development agreement with department staff, and execute the development agreement and lease extension using the Department of Attorney General current lease terms and conditions necessary to implement and conform to the requirements of Act 149, Session Laws of Hawaii 2018 ("Act 149") and current law, including but not limited to substantive provisions relating to Lease Assignments, Sublease Rents, Ownership of Improvements, Removal Bond and Wastewater Disposal provisions, as discussed and recommended below;
2. Close the onsite cesspool per Department of Health (DOH) approved methods and connect to an alternative wastewater system as an additional condition of the lease extension; and
3. Reimburse the Department for the cost of procuring an appraiser to review Lessee's appraiser's report regarding the value of the existing improvements on the property.¹

CHAPTER 343— ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, Staff offers that the proposed action be exempt from the preparation of an environmental assessment pursuant to:

General Exemption Type 1: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

¹ Pursuant to Section 171-192, HRS, "The applicant for a lease extension shall pay all costs and expenses incurred by the department in connection with processing, analyzing, or negotiating any lease extension request and document and of the development agreement under subsections (a) and (b)."

Part 1, Item 40: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

The property is located within the existing and established Kanoelehua Industrial area which is zoned urban and industrial and is currently used for those purposes. Given that the property and surrounding areas are already disturbed and heavily developed, 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 laws and supports overall public health and safety. Moreso, the applicant has committed to the installation of a photovoltaic system in furtherance of the State's renewable energy goals. 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.

PUBLIC TRUST ANALYSIS

The subject property is zoned Urban and Industrial and has been fully developed with existing improvements. Additionally, the surrounding properties are all developed and being used for commercial and industrial purposes. An unoccupied improved lot in the middle of other lots developed for industrial purposes is not a suitable site for public use and recreation. 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 as a locally owned small business the opportunity to contribute to the economic wellbeing of the Hilo area and 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. Finally, staff notes that the lease extensions are authorized pursuant to Act 149. Act 149 notes that the Legislature found that these extensions were consistent with the State's fiduciary interest in managing state lands "in the best interests of the public by enhancing state revenues and promoting social, environmental, and economic well-being of Hawaii's people."

PROPOSED IMPROVEMENTS

Lessee's current improvement proposal consists of the following:

Item No.	Description	Estimated Cost
1.	Traffic rated Septic System and Abandonment of cesspool. Contractor Sewer Solutions. Including: Abandon/ backfill existing cesspool (unless okayed by engineer); Mobile of equipment; Material include septic tank, leach field, distribution box, all connecting plumbing, and septic tank covers; Labor include excavation of tank area and leach field area, hauling away of rock and debris, hauling in cinder and drain rock, crane and shipping septic tank, installation of system and plumbing connecting building mainline, backfill to level grade after engineer inspection approval (\$40,000) Engineer Plans and Permits (\$3,500) Re-paving after installation (\$5,000)	\$48,500.00
2.	Photovoltaic (PV) panels with battery storage. Contractor Blue Sky Energy. 10 modules, 410 watts, 4.1 kW.	\$24,330.00
	Grand Total	\$72,830.00

The total cost of the proposed improvements is \$72,830.00 and the estimates detailing them are included as Exhibit B.

BACKGROUND:

The subject parcel is approximately 16,634 square feet in an industrial zoned area in close proximity to the Hilo Harbor. General Lease No. S-3596 (GLS-3596) was sold by direct negotiation to Isao Morimoto dba Mori's Paint Shop of Hilo Hawaii. on January 16, 1991, for a term of fifty-five (55) years, expiring January 15, 2016.

At its meeting of January 9, 1976, under agenda item F-1-y, the Board consented to the agreement of sale of GLS-3596 from Isao Morimoto, Seller to Body & Fender Repair, Inc Purchaser.

The Board, at its meeting of December 4, 1981, under agenda item F-1-c, consented to the assignment of agreement of sale from Body & Fender Repair, Inc., Assignor, to Laupahoehoe Transportation Company, Inc., Assignee. Further, at its meeting of November 22, 1985, under agenda item F-1-a, the Board consented to the assignment of lease from First Hawaiian Bank, Trustee under the

Will of Isao Morimoto, Assignor, to Laupahoehoe Transportation Company, Inc., Assignee.

At its meeting of August 26, 1996, under agenda item D-1, the Board consented to the assignment of lease from Laupahoehoe Transportation Company, Inc., Assignor to D. L. Downing, General Contractor, Inc. Assignee.

At its meeting of January 27, 2011, under agenda item D-2, the Board consented to the assignment of lease from D. L. Downing, General Contractor, Inc., Assignor to Lesley Hill, Assignee. In addition to the assignment of lease, the Board also consented to the change in character of use to the current County of Hawaii zoning, ML (limited industrial).

At its meeting of January 22, 2016, under agenda item D-8, the Board authorized the assignment of lease under certain terms and conditions, as amended, for ten (10) years commencing January 16, 2016, and expiring on January 15, 2026.

The Lessee, Lesley Hill, passed away in May 2017. Her daughter, Loke M. Hill-Higgins, was appointed personal representative of the estate and along with her sister, Maikalani Hill-Higgins, submitted a request to have the lease assigned to the business entity, Paradise Plants Home and Garden Center LLC of which they are equal members.

At its meeting of January 22, 2021, under agenda item D-4, the Board consented to the assignment of lease to Paradise Plants Home and Garden Center LLC.

Paradise Plants and Garden Center LLC also occupies the property adjacent to GLS-3596. Paradise Plants and Garden Center LLC is a garden supply and import business and has operated in the Hilo area for over thirty-eight years. The subject property is currently used for warehouse storage and bulk sales purposes. This use is consistent with the current county zoning, industrial use.

LEASE EXTENSION:

With the Lessee's current lease set to expire on January 15, 2026, the Lessee is requesting an additional 30-year extension pursuant to Act 149, Session Laws of Hawaii 2018 (Act 149) in order to amortize the cost of additional improvements to the property. Act 149 allows up to a 40-year extension of leases located in the Hilo Community Economic District (HCED) based on "substantial improvements" to the lease premises:

"Substantial improvement" means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of

the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

Staff notes that the 40-year maximum extension provided by Act 149 is calculated from the original term of the lease. In other words, any prior lease extensions will be included in determining the maximum lease extension allowed under Act 149. With respect to GLS-3596, the original lease term was 55 years, and the lease was previously extended for a period of 10 years for a total aggregate term of 65 years. Therefore, the maximum extension that can be granted under Act 149 is 30 years for a total aggregate term of 95 years (55 years initial term with a cumulative extension period of 40 years).

The subject lease is located within the HCED as defined in Act 149. Lessee's proposed general improvements include: 1. Traffic rated Septic System and Abandonment of cesspool (\$48,500.00); 2. Photovoltaic (PV) panels with battery storage. 10 modules, 410 watts, 4.1 kW on the property (\$24,330.00) for a total cost of \$72,830.00.² Staff believes that the PV panels could appropriately be considered improvements as they are being purchased by the Lessee rather than leased.

An appraisal evaluation performed by a certified appraiser retained by the Lessee has determined that the economic life of the proposed improvements will exceed the thirty-year period necessary to amortize the improvements. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$190,000. Lessee's proposed expenditure of \$72,830.00 represents approximately 38.33% of the value of the existing improvements (\$190,000.00), and Lessee is only seeking a 30-year extension of the lease. Accordingly, Lessee's proposed expenditure appears to justify the requested 30-year extension under Act 149.

Land Division procured the services of an independent appraiser to review the appraisal report submitted by the Lessee/applicant relating to the value of the existing improvements expressly referenced in Act 149 to assure the Lessee's appraisal report and valuation is consistent with the Uniform Standards of Professional Practice (USPAP) or otherwise in line with industry standards. The aforesaid Land Division appraisal review report concluded that the Lessee's appraisal was compliant with USPAP and that the report's conclusions appear to be generally supported and credible.

Staff has confirmed that there is at least one cesspool on the leased parcel. The closure of cesspools located on State land is the Department's priority. The closure of the cesspool and installation of a new septic system is included in the Lessee's

² Lessee will self-finance the improvements to the property with the extension.

proposed improvements. Nevertheless, staff recommends that the Board require the closure of the cesspool per DOH approved methods and connection to an alternative wastewater system pursuant to the lease extension. Lessee's proposed improvement quotes include that cost as an improvement either in addition to the other improvements or as a potential substitution.

Act 149 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 has 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 149 and Section 171-192(a), HRS, as amended, similar to what has been used in prior lease extensions. A copy of the draft development agreement is attached as Exhibit C.

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 loss, or repairs damage to a property for which the owner has taken a basis adjustment for a casualty loss.³ Generally, repairs

³ Information can be found at this link: <https://www.irs.gov/businesses/small-businesses-self-employed/tangible-property-final-regulations#Whatisthefactsandcircumstancesanalysis>.

are one-time expenditures to keep the property as currently existing in a usable and operating condition.⁴

Based on the foregoing and upon review of Lessee's improvement plan, staff believes that the proposed expenditures exceed simple repairs and qualify as substantial improvements under Act 149.

Therefore, staff recommends that the Board approve the proposed lease extension and development agreement and authorize the Chairperson to execute the development agreement as well as the lease extension document. The development agreement and the lease extension document will incorporate the following specific current lease terms and conditions for the 30-year extension in order to implement Act 149 and conform the terms of the extension period to current law. Below is a summary of the five substantive provisions staff will ensure are included in the extension of this lease originally issued on January 16, 1991:

- Lease Assignments. The 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. GLS-3596 is silent on this provision, and the lease extension period should include this standard assignment of lease premium term.

4 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.

- **Sublease Rents.** The 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, HRS. GLS-3596 does not contain a sublease rent participation clause, and the sublease clause is different from the provision currently used for new leases. The lease extension document should include the updated standard sublease rent participation language.
- **Ownership of Improvements.** GLS-3596 does not include 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. GLS-3596 simply provides that at the expiration of the lease, lessee delivers possession of the demised premises to the lessor, together with all buildings and improvements in good order, reasonable wear and tear excepted, leaving open the question whether the State is responsible for removing improvements that have outlived their useful lives. The lease extension document 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 other current standard lease terms and conditions be limited to the 30-year extension period that the Board, at its discretion, may approve under Act 149. 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.

Staff is also recommending the Board allow a period of 24 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. Additionally, the 24-month period is consistent with the time period granted to other Lessee seeking extensions to complete their improvements.

Upon the Board's approval of the terms and conditions of the development agreement as set forth above, staff is recommending that the Chairperson be authorized to approve and execute the development agreement once it is finalized and thereafter to execute the lease extension document.

There are no outstanding rental reopening issues. The Lessee is current with rent, insurance and performance bond. No agency comments were solicited on the request because it involves a lease extension and not a new disposition.

RECOMMENDATION:

That the Board, subject to the Lessee fulfilling the Applicant Requirements listed above:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the lease extension and the improvements to the lease premises are expected to have minimal or no significant effect on the environment and

are therefore exempt from the preparation of an environmental assessment as a *de minimis* action.

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 based on the fair market value of the lands to be developed.
4. Authorize the Chairperson to approve and execute a development agreement with Lessee Paradise Plants Home and Garden Center LLC, for a 30-year extension of General Lease No. S-3596, covering the State-owned parcel identified by Tax Map Key: (3) 2-2-049:011 pursuant to Act 149, Session Laws of Hawaii 2018, 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 current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements, removal bond and wastewater disposal system 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.
4. Approve a 30-year extension of lease term of General Lease No. S-3596, Paradise Plants Home and Garden Center LLC, covering the State-owned parcel identified by Tax Map Key: (3) 2-2-049:011, pursuant to Act 149, Session Laws of Hawaii 2018, 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 current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements, removal bond and wastewater disposal system 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.

Respectfully Submitted,

Candace Martin

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Candace Martin
Acting District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

EXHIBIT A





40 Wiwoole Street, Hilo, Hawaii 96720 • 808.935.4043
www.paradiseplantshilo.com

September 12, 2024

Gordon Heit
District Land Agent
DLNR Hawaii District Branch
75 Aupuni Street, Room 204
Hilo, HI 96720

Ref No. GL-S-3596

RE: Application for Extension of General Lease Number S-3596 - Revised
TMK: (3) 2-2-049-011

Dear Mr. Heit:

In response to your letter dated August 23, 2024, we have revised our list of improvements to better meet the criteria for a 30 year lease extension.

We will be self-financing the following improvements:

- PV Panels with Battery Storage, Contractor: Blue Sky Energy, \$24,330
- Traffic Rated Septic system and abandonment of cesspool, Contractor: Sewer Solutions, \$48,500

You may reach me at the above address or email me at: maika@paradiseplantshilo.com or call my cell 808-292-1931. I look forward to hearing from you.

Sincerely,

Maika Hill-Higgins

A handwritten signature in cursive script that reads "Maika Hill-Higgins".

Owner/Member
Paradise Plants Home and Garden Center LLC

Quality Solar Without the Fluff!



Solar for Your Business

Prepared For:

**Paradise Plants
Warehouse**

34 Wiwoole Street

Hilo, HI, 96720

Your Project Contact:

Josh Mason

(808) 895-5816

josh@whybluesky.com

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Utility Bill Savings

Current Utility Bill

To properly understand how your system will saving you money on your utility bill each month, it helps to have an understanding of your current electricity costs. Your bill consists of two primary costs, your Customer Charge, and your costs for energy used, which is billed using a kWh rate. Here is a summary of your current average bill.

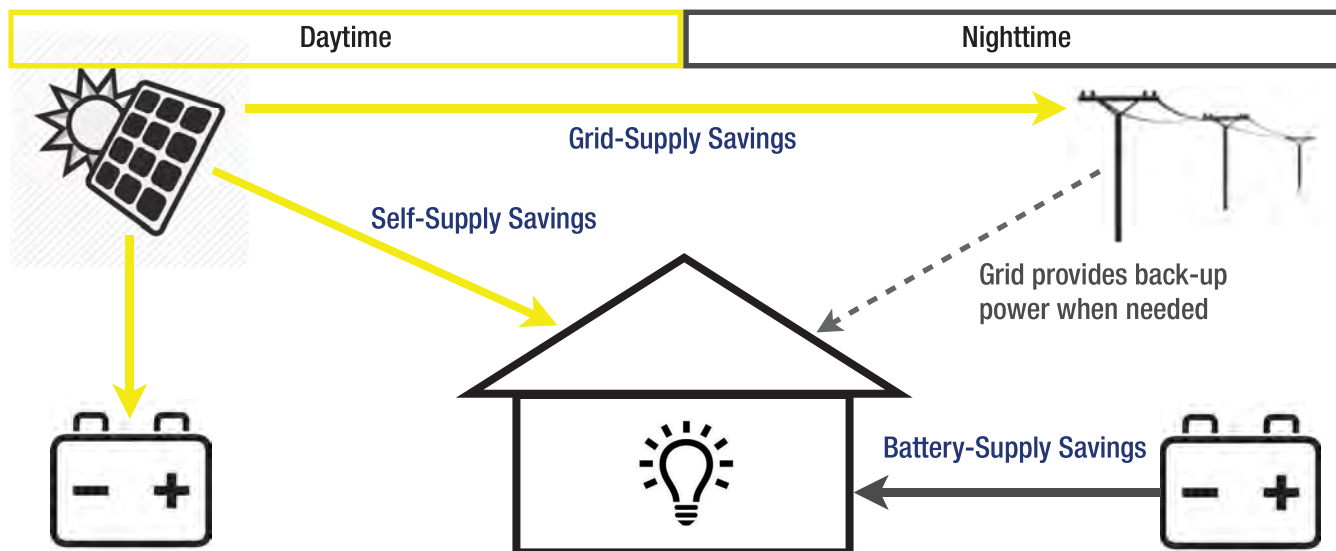
Utility Rates

Customer Charge/Mo.	\$37.00		
Rate You Pay for Energy Used	kWh/Day	\$/Month	\$/Year
kWh Rate	\$0.42	11	\$180
		\$2,200	

How Your System Reduces Your Utility Bill

Your system will save you money through a combination of the following:

1. **Self-Supply Savings** - During the daytime, your business will run directly off of power produced by your system, directly reducing the energy brought in from the grid. These are savings at your retail rate. These savings are dependent on how much energy is used during the daytime, which ranges from 40-75%+
2. **Grid-Supply Savings** - During the daytime when your system is producing more than you use, that energy will be exported to the grid for a credit of ~\$.10/kWh. Note - your total credits are limited to the net energy purchased from the grid.
3. **Battery Supply Savings** - Systems with batteries will charge the batteries during the daytime with excess energy, and the batteries will provide that energy to your business when the sun goes down (or when sunlight is insufficient to support your current power needs). Batteries make it possible for owners to significantly increase their total energy savings and further reduce dependency on the grid.





System Options & Savings Estimates

Below are the preliminary system design options based upon the information provided and discussions thus far. These provided summary information compares the general system characteristics in terms of production capacity, energy storage capacity, equipment type, warranties, and the estimated savings based upon usage information provided and/or assumed.

Your Daytime Energy Use Assumed for Estimating Savings

HELCO Avg. kWh Used/Day

Current Bill

60%

11.4

System Option Comparisons

Option	PV Only	Enphase Base	Enphase +
# of Panels	12	10	12
Module Wattage	410w	410w	405w
Est. Daily Production	17 kWh	14 kWh	17 kWh
Est. % of Daily Usage	148%	123%	146%
DC System Size	4.9 kW DC	4.1 kW DC	4.9 kW DC
Storage kWh	N/A	7 kWh	10 kWh
Storage % of Daily Use	N/A	59%	88%
<u>Inverter Options</u>			
Inverter	Enphase IQ7A	Enphase IQ8A	Enphase IQ8A
Inverter Warranty	25 Year	25 Year	25 Year
Battery	N/A	Enphase 6kWh	Enphase 10kWh
Battery Warranty		10 Yr, 4,000 cycle max	10 Yr, 4,000 cycle max @ 96% DoD
<u>System Savings Estimates (Monthly Average)</u>			
Est. HELCO Savings	\$103	\$158	\$158
Est. HELCO kWh Balance*	\$55	\$0	\$0

*Est. HELCO Balance - This represents the estimated monthly remaining HELCO kWh costs. Your bill minimum will be the greater of this amount of HELCO's bill minimum of \$26./mo.

***% Offset estimates along with savings estimates are based upon advanced models that compare seasonal energy consumption, comparative home power load profiles, and the nature of your system design options. Even under the best conditions, it is appropriate to assume your system will have some mismatch between when your house needs energy and when it is available from the sun & your batteries. This figured represents potential savings as a % of total possible savings w/ the \$26 minimum bill.



System Cost & Incentives

Below is a break down of your respective system option pricing, along with the associated tax incentives. Commercial projects provide three tax incentive elements as described below. Consult with a licensed tax professional for insight on tax incentive calculations and your tax situation:

- 1. Federal Investment Tax Credit (“ITC”)** - The ITC is a 26% Non-Refundable credit against the cost of the system (i.e. a \$100K system renders a \$26,000 ITC). As a non-refundable credit, it acts similar to a gift card against your income taxes owed, where any unused portion may be used in future years until used up. For LLC’s, the tax credit is generally treated as a pass through to the managing members.
- 2. Hawaii State Renewable Energy Tax Credit (“RETC”)** - The RETC is a 35% non-refundable credit, similar to the ITC. However, as many Hawaii tax payers have limited income tax liability, the RETC may be taken as a refundable credit instead at 24.5% of the system cost (in instances where adjusted gross income is low enough, the State provides the full 35% as a refundable credit). *Note - The IRS may consider your state tax credit as taxable income on your federal return in the following year.
- 3. Federal & State Depreciation** - The standard MACRS depreciation for solar is a five year schedule. However, ongoing tax acts have allowed for bonus depreciation to be utilized, which currently stands at 100% under the TCJA of 2017.

System Option	Solar PV Only	Solar w/Energy Storage Options	
	PV Only	Enphase Base	Enphase +
# of Modules	12	10	12
Module Wattage	410w	410w	405w
kW DC	4.9 kW	4.1 kW	4.9 kW
Est. Savings (Yr 1)	\$1,233	\$1,890	\$1,890
Turn-Key Project Cost	<u>\$18,340</u>	<u>\$24,330</u>	<u>\$29,710</u>
Tax Incentives Available			
Hawaii Tax Credit (Non-Refundable)*	\$6,419	\$8,516	\$10,399
Federal Tax Credit	\$5,502	\$7,299	\$8,913
Total Available Credits	\$11,921	\$15,815	\$19,312
Federal Depreciation Basis	\$15,589	\$20,681	\$25,254
State Depreciation Basis	\$18,340	\$24,330	\$29,710

Battery System Comparisons

The Enphase system with batteries provides two key benefits. First it will offset nighttime power usage, reducing dependence on Helco. It also provides power backup in case of a grid outage, this secures energy independence during regular short outages, as well as providing the ability to run during prolonged outages with careful energy usage.

System Option	Enphase Base	Enphase +
# of Modules	10	12
kW DC	4.1 kW	4.9 kW
Inverter Pairing	Enphase IQ8A-72-2-US	Enphase IQ8A-72-2-US
Inverter Warranty	25 Year	25 Year
Optimizer	N/A	N/A
Inverter Power Rating	3.5 kW	4.2 kW
Battery System	EN6	EN10
# of Battery Units	1	1
Energy Storage - Usable kWh	6.72 kWh	10.08 kWh
Continuous Power Rating	2.56 kW AC	3.84 kW AC
Surge Power Rating	3.84 kW AC	5.76 kW AC
Battery Warranty Period	10 Yr, 4,000 cycle max	10 Yr, 4,000 cycle max @ 96% DoD
Warranty Extension Option	15 Yrs., \$666	15 Yrs., \$999
Warrantied Cycles*	4,000	4,000
Footprint/Unit	34x31x7.5	51x31x7.5
Total Daytime Power Max	6.05 kW AC	8.03 kW AC
System Savings Est. (Yr 1)	\$1,890	\$1,890
HELCO Bill kWh Offset Est.	100%	100%
System Cost	\$24,330	\$29,710
\$/Watt (DC)	\$5.93	\$6.11
Tax Credits Available		
Hawaii Tax Credit (Non-Refundable)*	\$8,516	\$10,399
Federal Tax Credit	\$7,299	\$8,913
Total Available Credits	<u>\$15,815</u>	<u>\$19,312</u>
System Cost - Available Incentives (Min Net Cost)	<u>\$8,516</u>	<u>\$10,399</u>
Min Net Cost/Year 1 Savings	4.5	5.5

In general, the Base system options will provide the most bang for your buck in offsetting the majority of your electrical costs throughout the year, while providing back-up power for essential loads. The PLUS system(s) provide two benefits: 1) Increased energy savings throughout the year by carving out those parts of the year with lower production (rainy season) or higher usage (i.e. summertime AC), and 2) Increased back-up power and energy storage capacity in the event of a long duration grid outage (i.e. keep more things powered up for longer when the grid goes down).

System Components Summary

While solar provides a great short term return on investment, it is great to know that your system is made up of top tier quality equipment with a history of sustained performance. Below is a summary of the key components of your system and some important highlights on their comparative benefits.


Module/Solar Panel -

Q-Cell Q.Peak 400

	<ul style="list-style-type: none"> • 25 year production and 25 year workmanship warranty, one of the few panels available to meet this standard • Amongst the top output efficiencies by form factor • Aesthetic frame structure for a clean array finish
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Inverter -

Enphase IQ8A-72-2-US

	<ul style="list-style-type: none"> • 25 year inverter warranty • NEMA6 rated with one of the longest lifespan expectancies of any inverter on the market • 8th generation technology from a global leader in inverter development • Parallel wiring and advanced system controls allow for maximum system performance and uptime with no single point of failures
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Battery -

Enphase IQ Smart Battery

	<ul style="list-style-type: none"> • 4,000 cycle warranty w/option to extend to 15 years, making it one of the only batteries available with a 15 year warranty. • Made by the same manufacturer as your system inverter, using the same advanced microinverter technology to eliminate single points of failure and maximize system performance over time. • Utilizes premium LiPo4 Chemistry for great safety, higher battery output, and longer lifespan (when compared to batteries such as Generac, Tesla, LG Chem, Panasonic)
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What's Next



After carefully considering the information and system options enclosed, below is an outline of the next steps in the process if you decide that you would like to proceed.

System Design Refinement and Selection

We will provide you the additional insights and answers to any questions or concerns you have, enabling you to determine which option is best for you (which may be a refinement of an existing option), and we will collect the needed site details to finalize the system design.



Utility & Permit Application (unknown)

Once your financing has been approved (if being pursued), your initial deposit will be paid and we will complete the system engineering and then proceed with the HELCO CGS+ application process and submit for the Hawaii County Building and Electrical Permits required for the project.



Construction (1-2 weeks)

Once your HELCO CGS application has been approved and your County permits released, we will schedule the installation with you and proceed with having your system installed. Construction typically takes 1-2 days depending on the size of your system and weather conditions.



Close-Out (~3-8 weeks)

Once installation is complete, County inspections will be completed and HELCO will validate the systems installation and schedule the meter change-out (typically takes 30-60 days). We will provide you with your owner's information packet along with your orientation on your system's monitoring.



Start Savings \$\$ & Recover Tax Credits

Once your new HELCO meter is installed, you will start to see savings on your HELCO bill right away. You will also include the tax credits in your next tax return

ESTIMATE

Barros Enterprises Inc dba Sewer Solutions
PO Box 262
Kurtistown, HI 96760

sewersolutions@rocketmail.com
808-430-2323

Bill to
Paradise Plants Home & Garden Center
40 Wiwoole St
Hilo, HI 96720

Ship to
Paradise Plants Home & Garden Center
40 Wiwoole St
Hilo, HI 96720

Estimate details
Estimate no.: 1141
Estimate date: 09/06/2024

#	Date	Product or service	Description	Qty	Rate	Amount
1.		Service	Commercial Traffic Rated Septic System Including the following: -Abandon/backfill existing cesspool (unless engineer OKs use of space) -Mobile of equipment -Materials included (Traffic rated septic tank, traffic rated leach field, traffic rated distribution box, all connecting plumbing to mainline and between system, septic tank covers) -Labor included (Excavation of tank area and leach field area, hauling away of rock and debri, hauling in of cinder and drain rock, crane and shipping transport of septic tank, installation of system and plumbing connecting to building mainline, backfill to level grade finish after engineer inspection approval)	1	\$40,000.00	\$40,000.00
2.		Sales	Engineer Plans/Permit		\$3,500.00	\$3,500.00
3.		Sales	Re-paving after installation		\$5,000.00	\$5,000.00
Total					\$48,500.00	

Accepted date

Accepted by

EXHIBIT C

DEVELOPMENT AGREEMENT FOR EXTENSION OF LEASE TERM

FOR

**Paradise Plants Home and Garden Center LLC,
a Hawaii limited liability company**

*** * ***

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

State of Hawaii

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 _____, 202_ (“**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 _____, 202_, as amended, 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 **Paradise Plants Home and Garden Center LLC**, a Hawaii limited liability company, whose collective business address is 40 Wiwoole Street, Hilo, Hawaii 96720 (hereinafter collectively referred to as “**Lessee**”).

RECITALS:

- A. The State owns in fee simple that certain parcel of land, a portion of government lands, situated at Waiakea, South Hilo, Island of Hawaii, Hawaii, shown on **Exhibit A** attached hereto, incorporated herein and made a part hereof. The parcel consists of approximately 16,634 sq. feet and is identified by Tax Map Key: (3) 2-2-049:011 (“**Subject Property**”).
- B. The parcel is currently leased to Lessee under General Lease No. S-3596 for an original term of fifty-five (55) years, commencing on January 16, 1961, and expiring on January 15, 2016. The lease was extended thereafter for a period of ten (10) years commencing on January 16, 2016, and expiring on January 15, 2026 (“**Lease**”).
- C. Act 149 Session Laws of Hawaii 2018 (“**Act 149**”), codified at Sections 171-191 and 171-192, Hawaii Revised Statutes (“**HRS**”), as amended, created the Hilo community economic district which includes the Subject Property. The purpose for creating the district was to allow the State to “facilitate efficient and effective improvement, and economic opportunity, in the area for lessees who commit to making substantial improvements to the existing improvements or constructing new substantial improvements.”
- D. Act 149 authorizes the Board to extend the term of leases for public lands within the Hilo community economic district for lessees who commit to substantial improvements to the existing improvements or to new substantial improvements so long as the length of the extension granted does not extend the original lease term by more than forty (40) years, and/or to extend the terms of such leases to the extent needed to qualify the lessee for loans or to amortize the cost of substantial improvements to the premises paid for by the lessee without institutional financing.
- E. Act 149 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 install, construct, and complete by the date of completion of the total development.”

- F. An Appraisal Report prepared for the Lessee determined the market value of the leasehold improvements on the Subject Property to be \$190,000 as of May 28, 2024. Thirty percent of this amount is \$57,000.
- G. Lessee applied for a 30-year extension, which is lower than the maximum of 40 years allowed under Section 171-192, HRS, and is planning to make substantial improvements to the Subject Property in an amount which will be approximately \$72,830.
- H. Lessee’s plans and specifications for its substantial improvements to the Subject Property were presented to the Board at its meeting of _____, 202_, under agenda Item D-__, together with the State staff recommendation that the Board approve a 30-year extension of the Lease to amortize the cost of substantial improvements. The Board reviewed the plans and specifications and statutory requirements for a lease extension under Section 171-192, HRS, and approved as amended the extension of the Lease, having found the improvements of sufficient worth and value to justify a lease extension under Section 171-192, HRS, taking into consideration the total cost of Lessee’s substantial improvements.
- 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 171-192, 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, or 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 and Section 171-192, 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 _____, 202_, under agenda Item D-__, as amended, 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 January 15, 2056;
- (ii) The estimated period of time to complete the Development Plan shall be twenty-four (24) months from the Effective Date of this Agreement, which is reasonable; and
- (iii) The minimum revised annual rent to be paid by Lessee shall be based on the fair market value of the lands comprising the Subject Property to be developed, as determined by independent appraisal in accordance with Section 171-17, HRS ("**Revised Annual Rent**").

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

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.

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

Lessee shall, at Lessee’s sole cost and expense, expeditiously and diligently seek to obtain all necessary and appropriate permits and/or other regulatory approvals from the Federal Government, State of Hawaii (including the State Legislature if applicable), and/or County of Hawaii (“**County**”) so as to enable Lessee to complete the substantial 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. Lessee’s plans and specifications for substantial improvements to the Subject Property approved by the Board may include improvements that the parties acknowledge may require the use of petroleum based materials and products in the ordinary course of constructing the improvements. In that event, the State hereby consents to the storage and use of such petroleum based materials and products to the extent stored and used in compliance with applicable federal, State and County of Hawaii rules and laws or, in the absence of such rules or laws, in accordance with the highest standards prevailing in the industry. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at the State’s request concerning Lessee’s best knowledge and belief regarding the presence of hazardous materials on the Subject Property placed or released by Lessee.

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

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

7. Bonds. Lessee shall not commence construction of the improvements until Lessee has filed with the State sufficient bonds conditioned upon the full and faithful performance of all

the terms and conditions of this Agreement, including a completion bond for the 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 \$72,830, in such form and upon such terms and conditions as may be approved by the State. The Lessee shall, at its own cost and expense, within fifteen (15) days from the Effective Date of this Agreement, procure and deposit with the State and thereafter keep in full force and effect during the term of this Agreement, such bonds acceptable to the State in the amount of \$72,830 as aforesaid, which bonds shall name the State as obligee, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions and covenants of this Agreement, including, but not limited to, the completion of the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property on or before the date of completion, free from all liens and claims, pursuant to the approved Development Plan. Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the substantial improvements requirement in accordance with the approved Development Plan at the Subject Property incorporated herein this Agreement. These bonds shall provide that in case of a breach or default of any of the terms of this Agreement, 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.

9. Justification of Sureties. Any bonds required by this Agreement shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two (2) personal sureties, corporate or

individual, for which justifications shall be filed as provided in Section 78-20, HRS; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the State security in certified checks, certificates of deposit (payable on demand or after a period the State may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the State a deed or deeds of trust of real property, all of a character which is satisfactory to State and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the State shall be determined by the State, and that the Lessee may, with the approval of the State, exchange other securities or money for any of the deposited securities if in the judgment of the State the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the State and that until this consent is granted, which shall be discretionary with the State, no surety shall be released or relieved from any obligation, except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove.

10. Waiver, Modification, Reimposition of Bond and Liability Insurance Provisions. Upon substantial completion of the improvements contemplated herein and after forty-five (45) days after the filing and publication of the Notice of Final or Substantial Completion by Lessee without any applications for mechanic's or materialmen's liens, or other suits or claims relating to such substantial improvements, being filed against the Subject Property, and upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this Agreement on its part to be observed or performed, the State at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that except for any bonds terminated by Lessee after the Completion Date pursuant to the terms of Paragraph 8 hereinabove, the State reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this Agreement.

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

In addition, the State recognizes that from time to time the approved Development Plan may require changes or modifications initiated by Lessee. Lessee may make any such changes or modifications to said approved Development Plan with the prior written consent of the

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

12. Agreement to Issue Extension of Term of Lease. Upon execution of this Agreement, the State will request the Department of the Attorney General to prepare the Extended Lease document. Pursuant to Section 171-36.5, HRS or Section 171-192, HRS, the Extended Lease document (heretofore and hereinafter sometimes also simply referred to as the “Extended Lease”) shall reflect an extension term of thirty (30) 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, Sublease Rent Participation, and Ownership of Improvements. The Extended Lease document will cover the aggregate extended term between January 16, 2026 and expiring on January 15, 2056 , and will provide that in the event that the Lessee fails to successfully perform, timely satisfy or fully comply with any of the terms and conditions of this Agreement and/or approved Development Plan, the Extended Lease term will be rescinded and the Lease, together with its current termination date of January 15, 2026, 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.

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

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

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

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

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

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

(iv) If the Lessee is not in compliance with Sections 171-36.5, 171-191 and -192, HRS.

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

Upon any early termination by the State under this Agreement, this Agreement shall terminate on the date as provided for in the State's written notice and shall become null and void except as to any provisions which expressly survive termination in this Agreement. The Extended Lease shall be rescinded and Lessee shall not be entitled to an extension of the term of the Lease for the Subject Property pursuant to Section 171-36.5, HRS or Section 171-192, 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 Extended Lease.

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

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

other reasonably satisfactory alternative approved by the State, as the case may be. The foregoing covenants of Lessee shall survive expiration or any early termination of this Agreement.

16. Expenses to be Paid by Lessee. Pursuant to Section 171-192, HRS, Lessee shall pay all costs and expenses incurred by the State in connection with the processing, analyzing and negotiating of any request for a lease term extension and document, and this Agreement.

17. Substantial improvements. The Lessee shall, at its own cost and expense, within twenty-four (24) 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 SEVENTY-TWO THOUSAND EIGHT HUNDRED THIRTY AND 00/100 DOLLARS (\$72,830.00) (“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.

18. Wastewater disposal system. Cesspools are subject to Federal law and section 342D-72, Hawaii Revised Statutes. 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.

19. Removal bond. During the term of the lease extension, the Lessor reserves the right to require the Lessee to furnish a removal bond or other form of security sufficient to ensure the removal of all improvements from the lease premises at lease expiration or earlier termination.

20. 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.

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

22. 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.

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

If to the State:	Board and Department of Land and Natural Resources 1151 Punchbowl Street, Room 220 Honolulu, Hawaii 96813 Attention: Chairperson Fax No.: (808) 587-0390
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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
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If to Lessee:	Paradise Plants Home and Garden Center LLC 40 Wiwoole Street Hilo, Hawaii 96720
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And a copy to:	_____

24. 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.

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

26. 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.

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

28. 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 and Section 171-192, HRS .

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

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

35. 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.

36. 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.

37. 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.

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

39. 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 September 12, 2024.

[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 _____, as amended.

STATE OF HAWAII

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

APPROVED AS TO FORM:

Name: _____
Deputy Attorney General

Dated: _____

**Paradise Plants Home and Garden
Center LLC**, a Hawaii limited liability
company

By _____

Its _____

STATE OF HAWAII

)

) SS.

COUNTY OF

)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn 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: _____

EXHIBIT A

EXHIBIT B

LESSEE'S DEVELOPMENT PLAN DATED SEPTEMBER 12, 2024

The Project currently entails the following work which will be done concurrently as a single construction project (subject to availability of materials):

Item	Estimated Cost
1. Traffic rated Septic System and Abandonment of cesspool. Contractor Sewer Solutions. Including: Abandon/ backfill existing cesspool (unless oked by engineer); Mobile of equipment; Material include septic tank, leach field, distribution box, all connecting plumbing, and septic tank covers; Labor include excavation of tank area and leach field area, hauling away of rock and debris, hauling in cinder and drain rock, crane and shipping septic tank, installation of system and plumbing connecting building mainline, backfill to level grade after engineer inspection approval (\$40,000) Engineer Plans and Permits (\$3500) Re-paving after installation (\$5,000)	\$48,500.00 (See Exhibit 1)
2. PV panels with battery storage. Contractor Blue Sky Energy. 10 modules, 410 watts, 4.1 kW.	\$24,330.00 (See Exhibit 1)
Total:	\$72,830.00

The total estimated cost for the Project is \$72,830.00, which is 38.33% of the market value of the existing improvements (based on Lessee's appraisal) and exceeds the 30% threshold required under HRS Section 171-192.

EXHIBIT 1