

# **COMMERCIAL LEASING OF PUBLIC LANDS: STATE POLICIES REGARDING LEASES NEAR THE END OF TERM**

Lance Ching  
Research Attorney

Report No. 2, 2015

Legislative Reference Bureau  
State Capitol  
Honolulu, Hawaii 96813  
<http://lrbhawaii.org>

This report has been cataloged as follows:

Ching, Lance

Commercial leasing of public lands: state policies regarding leases near the end of term.  
Honolulu, HI: Legislative Reference Bureau, December 2015.

1. Public lands – Commercial leases – Hawaii – United States – States.  
KFH421.5 L35 A25 15-2

## **FOREWORD**

This report was prepared in response to Act 142, Session Laws of Hawaii 2015. Act 142 directed the Legislative Reference Bureau to study how other select states manage end-of-term commercial leases involving public lands.

The Bureau requested input from agencies in other states that are responsible for the leasing of public lands. The Bureau extends its appreciation to these agencies for providing information regarding the policies and procedures of their states. The Bureau also acknowledges and extends its appreciation to the National Conference of State Legislatures and the Department of Land and Natural Resources of the State of Hawaii for assisting the Bureau in the preparation of this report.

# TABLE OF CONTENTS

	<i>Page</i>
FOREWORD .....	<i>iii</i>
EXECUTIVE SUMMARY .....	<i>v</i>
1. INTRODUCTION .....	1
2. COMMERCIAL LEASING OF PUBLIC LANDS IN HAWAII .....	2
Awarding of Commercial Leases.....	3
General Lease Provisions and Length of Lease Terms.....	4
Assignment of Commercial Leases .....	6
Disposition of Commercial Leases .....	6
Oversight of Commercial Leases.....	6
Market Interest in Public Lands Currently Under Commercial Lease .....	7
3. LAWS AND POLICIES OF OTHER STATES.....	9
4. CONCLUSION.....	13

## Tables

1. Commercial Lease Rates (Per Square Foot Per Month), State of Hawaii, 2nd Quarter 2014 .....	7
2. Commercial Leasing of Public Lands Major Policy Components.....	9

## Appendices

A. Act 142, Session Laws of Hawaii 2015 .....	14
B. General Lease Form Used by the Department of Land and Natural Resources for Commercial Leases.....	16
C. Copy of Letter Sent to Other States' Agencies Responsible for the Commercial Leasing of Public Lands.....	47

## **EXECUTIVE SUMMARY**

In Act 142, Session Laws of Hawaii 2015, the Legislature expressed concern that, during the last five to fifteen years of a lease term, commercial lessees of public lands have little incentive to make major repairs or improvements to their leasehold properties -- sometimes resulting in the deterioration of infrastructure and facilities. Act 142 directed the Legislative Reference Bureau to study how other select states administer, renegotiate, re-open, extend, or otherwise dispose of long-term leases of public lands that are about to expire, to determine how the respective government lessors manage, handle, or deal with leases that:

- (1) Will terminate within ten years; and
- (2) Have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they will be unable to recoup due to the limited remaining term of the lease.

### **Management and Disposition of Public Lands in Hawaii**

The management and disposition of public lands in Hawaii is governed by chapter 171, Hawaii Revised Statutes. Commercial leases of public lands are awarded by the Board of Land and Natural Resources. These leases are then administered by the Department of Land and Natural Resources.

Except under limited circumstances, commercial leases of public lands are awarded at public auctions. While the terms of these leases vary from one lease to another, no commercial lease may exceed sixty-five years. The term of a commercial lease may be extended, upon approval of the Board of Land and Natural Resources. However, except under limited and specific circumstances, no extension may result in an aggregate lease term that exceeds the sixty-five-year maximum. Further, every commercial lease contains general provisions regarding the specific use for which the land is to be employed as well as the responsibilities of the lessee. Generally, a commercial lease will terminate at the end of the lease term, and the underlying parcel of public land would become available for a new commercial lease, which would be awarded by public auction.

According to a recent study commissioned by the Department of Land and Natural Resources, it appears that market interest in commercial leasing of public lands in Hawaii remains strong on a statewide level.

### **Management and Disposition of Public Lands in Other States**

In conducting this study, the Bureau reviewed the laws and regulations of other states that pertained to the commercial leasing of public lands. Additionally, the Bureau sought input from agencies in all fifty states that are responsible for the leasing of public lands. Based on the

review of state laws and the information received from state agencies, the Bureau focused on the laws and policies of eighteen states. However, none of the selected states appear to have laws or policies in effect that specifically address commercial leases of public lands that (1) are scheduled to terminate within ten years and (2) involve lessees that are unable or unwilling to invest capital into making improvements.

# Chapter 1

## INTRODUCTION

Section 2 of Act 142, Session Laws of Hawaii 2015, directs the Legislative Reference Bureau to conduct a study of the commercial leasing of public lands. More specifically, section 2(a) of Act 142 directs the Bureau to study how other select states administer, renegotiate, reopen, extend, or otherwise dispose of long-term leases of public lands that are about to expire, to determine how the respective government lessors manage, handle, or deal with leases that:

- (1) Will terminate within ten years; and
- (2) Have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they will be unable to recoup due to the limited remaining term of the lease.

As part of this study, the Bureau is also directed, under section 2(b) and (c) of Act 142, to consider the following:

- (1) The means by which the State, as a landowner, can balance the public policy of opening up state lands for competitive bidding or another public disposition process to provide opportunities for new lessees to lease state lands, with the interests of existing lessees, while ensuring a fair market rental return to the State; and
- (2) Current best practices relating to the terms of commercial leases of public lands in Hawaii and in other jurisdictions.

A copy of Act 142 is attached as Appendix A.

## Chapter 2

### COMMERCIAL LEASING OF PUBLIC LANDS IN HAWAII

The management and disposition of public lands in Hawaii is governed by chapter 171, Hawaii Revised Statutes (HRS).<sup>1</sup> The administrative agency that manages public lands is the Department of Land and Natural Resources (Department), which is headed by an executive board known as the Board of Land and Natural Resources (Board).<sup>2</sup>

---

<sup>1</sup> Pursuant to section 171-2, Hawaii Revised Statutes (HRS), "public lands" is defined as:

[A]ll lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- (11) Lands to which the high technology development corporation in its corporate capacity holds title;

provided that, except as otherwise limited under federal law and except for state land used as an airport as defined in section 262-1, public lands shall include the air rights over any portion of state land upon which a county mass transit project is developed after July 11, 2005.

<sup>2</sup> See section 171-3(a), HRS.

It is the policy of the State that, unless specifically authorized by statute or legislative act, all dispositions of public lands must be conducted by leases that are awarded through public auction.<sup>3</sup> Commercial leases of public lands are managed by the Land Division of the Department.

## Awarding of Commercial Leases

Generally, commercial leases of public lands are awarded at public auctions conducted under the direction of the Board and held in the land district where the underlying parcel is located.<sup>4</sup> Statewide and county-level public notice must be given prior to the commencement of any public auction.<sup>5</sup>

However, part III of chapter 171, HRS, describes various limited circumstances under which the Board may award commercial leases of public lands without conducting a public auction. For example, the Board may award commercial leases of public lands to victims of a natural disaster.<sup>6</sup> The purpose of such commercial leases would be to relocate natural disaster victims and place them in circumstances similar to those that existed prior to the natural disaster.<sup>7</sup>

The Board may also award commercial leases of public lands to governments, governmental agencies, public utilities, and renewable energy producers without conducting a public auction.<sup>8</sup> However, certain conditions would apply to the award of such commercial leases.

---

<sup>3</sup> See section 171-32, HRS.

<sup>4</sup> See sections 171-14 and 171-32, HRS.

<sup>5</sup> Pursuant to section 171-16, HRS, public notice of a public auction shall contain the following:

- (1) Time and place of the auction;
- (2) General description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the Board of Land and Natural Resources and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.

Further, pursuant to section 1-28.5, HRS, public notice shall be provided as follows:

- (1) For statewide publication:
  - (A) In a daily or weekly publication of statewide circulation; or
  - (B) By publication in separate daily or weekly publications whose combined circulation is statewide; and
- (2) For county-wide publication, by publication in a daily or weekly publication in the affected county.

<sup>6</sup> See chapter 171, part III, subpart C, HRS. Section 171-85, HRS, defines "natural disaster" as "any disaster caused by seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, or flood."

<sup>7</sup> See section 171-87, HRS.

<sup>8</sup> See chapter 171, part III, subpart D, HRS. Section 171-95(c), HRS, defines "renewable energy producer" as:

*Footnote continued on next page*

*COMMERCIAL LEASING OF PUBLIC LANDS:  
STATE POLICIES REGARDING LEASES NEAR THE END OF TERM*

For example, in the case of a public utility, a commercial lease of public lands will not be awarded if the utility has suitable lands of its own.<sup>9</sup> Further, a commercial lease of public lands awarded to a public utility would be subject to disapproval by the Legislature.<sup>10</sup> Additionally, the lease rent shall not be less than the appraised value of the public lands unless the Board determines that a nominal lease rent is necessary in connection with a government project.<sup>11</sup> Finally, a commercial lease would provide the Board with repurchase rights if the public utility should cease to use the public lands for the purpose for which the commercial lease was granted.<sup>12</sup>

In the case of a renewable energy producer, a commercial lease of public lands may only be awarded pursuant to a public process that complies with public notice requirements and provides other interested renewable energy producers with the opportunity to participate in the process.<sup>13</sup> A renewable energy producer seeking such a commercial lease would be required to submit a proposal, including detailed information on its proposed renewable energy project, to the Board for evaluation.<sup>14</sup> Prior to the lease of public land to a renewable energy producer, the Department is required to conduct no less than two public hearings on the island where the public land that is to be leased is located.<sup>15</sup>

### **General Lease Provisions and Length of Lease Terms**

Every commercial lease issued by the Board contains general provisions regarding:

- (1) The specific use or uses for which the land is to be employed;

- 
- (1) Any producer of electrical or thermal energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, biofuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269, HRS, or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or
  - (2) Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes.

<sup>9</sup> See section 171-95(b), HRS.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See section 171-95.3(a), HRS.

<sup>14</sup> See *id.*

<sup>15</sup> See section 171-95.3(c), HRS.

- (2) The improvements required to be made by the lessee; provided that a minimum reasonable time be allowed for the completion of the improvements;
- (3) Restrictions against alienation;
- (4) Rent;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
- (6) Other terms and conditions set by the Board.<sup>16</sup>

A copy of the general lease form used by the Department for commercial leases is attached as Appendix B.

While the term of commercial leases issued by the Board varies from one lease to another, no commercial lease may exceed sixty-five years.<sup>17</sup> The term of a commercial lease may be extended upon approval of the Board and to the extent necessary to qualify the lessee for loans or to facilitate the lessee's self-financing of substantial improvements to the property.<sup>18</sup> However, except under limited and specific circumstances,<sup>19</sup> no extension may result in an aggregate lease term that exceeds the sixty-five-year maximum.<sup>20</sup>

---

<sup>16</sup> See section 171-35, HRS.

<sup>17</sup> See section 171-36(a)(2), HRS.

<sup>18</sup> See section 171-36(b), HRS.

<sup>19</sup> Pursuant to Act 219, Session Laws of Hawaii 2011, the Board of Land and Natural Resources may extend the term of a commercial lease of public lands for hotel or resort use as part of a development agreement with a lessee. As part of the development agreement, the lessee must commit to making substantial improvements to the property. The extension of the lease term shall be based on the substantial improvements made, but shall be for a period not longer than fifty-five years.

Although drafted in general terms, the intent of Act 219 was to provide lessees of state-owned resort areas located on Banyan Drive in Hilo, Hawaii, with incentives to make major investments in their infrastructure and facilities.

In order to limit the authority granted to the Board of Land and Natural Resources, Act 219 defines the terms "hotel or resort" as "a development that provides transient accommodations as defined in section 237D-1 [HRS] and related services, which may include a front desk, housekeeping, food and beverage, room service, and other services customarily associated with transient accommodations; provided that no development shall qualify as a hotel or resort under this section unless at least seventy-five per cent of the living or sleeping quarters in the development are used solely for transient accommodations for the term of any lease extension."

Act 219 also defines "substantial improvements" as "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 fifty per cent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development."

Act 219 shall be repealed on December 31, 2015.

<sup>20</sup> See section 171-36(b), HRS.

## Assignment of Commercial Leases

Commercial leases issued by the Board are generally not transferable or assignable, except by devise, bequest, or intestate succession.<sup>21</sup> However, if the Board approves, a transfer or assignment of a commercial lease may be made; provided that the transfer or assignment is conducted in accordance with current industry standards, as determined by the Board.<sup>22</sup>

## Disposition of Commercial Leases

If an extension is not available, either because such an extension would exceed the sixty-five-year maximum or the Board would not approve an extension, a commercial lease of public lands will terminate at the end of the lease term. As noted earlier, it is the policy of the State that, unless specifically authorized by statute or legislative act, all dispositions of public lands must be conducted by leases that are awarded through public auction. Therefore, unless an exception under part III of chapter 171, HRS, or another law applies, the underlying parcel of public land would become available for a new commercial lease, which would be awarded by public auction.

Such public auctions are often conducted prior to the expiration of the current lease. Generally, the current lessee would be permitted to participate in the public auction and could submit a bid for a new commercial lease. If the current lessee fails to secure a new lease, the current lessee would be required to vacate the parcel of public land before the expiration of the current lease. However, if the current lessee is awarded a new commercial lease, vacating the parcel of public land would not be necessary.

## Oversight of Commercial Leases

As previously noted, while the Department manages commercial leases involving public lands, all awards, transfers, assignments, and extensions of such commercial leases are subject to approval by the Board. As head of a public agency, the Board is subject to various open meeting and recordkeeping requirements.<sup>23</sup> In addition, the Board is required to submit an annual report to the Legislature regarding all dispositions of public lands, including commercial leases, made in the preceding year.<sup>24</sup>

---

<sup>21</sup> See section 171-36(a)(5), HRS.

<sup>22</sup> See *id.* Section 171-36(a)(5), HRS, further states that "prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee[.]"

<sup>23</sup> See section 171-5 and chapter 92, HRS.

<sup>24</sup> See section 171-29, HRS.

## Market Interest in Public Lands Currently Under Commercial Lease

Market interest in the commercial leasing of public lands is influenced by a variety of factors, including but not limited to population growth, rate of employment, and the condition of the commercial and industrial markets. According to a recent market study commissioned by the Department, the statewide population of Hawaii was approximately 1.36 million at the time of the 2010 census, representing an increase of twelve percent since 2000.<sup>25</sup> Currently, there are approximately 650,000 jobs in the State.<sup>26</sup> This figure is projected to increase by 16.1 percent by the year 2040.<sup>27</sup> Statewide unemployment levels tend to fluctuate, but have generally trended downward over recent years.<sup>28</sup> Further, the industrial market in Hawaii appears to have strengthened during 2014, resulting in a commensurate increase in demand for land zoned for industrial use.<sup>29</sup>

These trends tend to indicate that market interest in commercial leasing of public lands remains strong on a statewide level.<sup>30</sup> However, it should be noted that the level of interest is not uniform throughout the State. This is reflected in the variation in lease rates between the islands of the State.

**Table 1. Commercial Lease Rates (Per Square Foot per Month)  
State of Hawaii, 2nd Quarter 2014<sup>31</sup>**

	<b>Industrial (Triple Net Lease)<sup>32</sup></b>	<b>Industrial (Gross Lease)<sup>33</sup></b>	<b>Retail (Triple Net Lease)</b>	<b>Office (Gross Lease)</b>
Oahu	\$0.99	\$1.41	\$6.51	\$2.95
Maui	1.11	1.42	3.18	N/A
Hawaii Island	0.84	1.11	3.42	N/A
Kauai	0.96	1.27	3.32	N/A
<b>State</b>	<b>\$0.99</b>	<b>\$1.35</b>	<b>\$5.21</b>	<b>N/A</b>

As indicated in Table 1, industrial lease rates tend to be higher on Oahu and Maui than on Hawaii Island and Kauai. Retail lease rates also tend to be significantly higher on Oahu than on the other islands.

<sup>25</sup> See MUNEKIYO & HIRAGA, INC., MARKET STUDY: KANOELEHUA INDUSTRIAL AREA, HILO, HAWAII 6 (State of Hawaii Department of Land and Natural Resources ed., June 2015)

<sup>26</sup> See *id.* at 25.

<sup>27</sup> See *id.*

<sup>28</sup> Statewide unemployment levels were at 7.6 percent in June 2009, and were at 4.3 percent in September 2014. See *id.* at 13.

<sup>29</sup> See *id.* at 15.

<sup>30</sup> See *id.*

<sup>31</sup> *Id.* at 14.

<sup>32</sup> A triple net lease is a type of lease in which the lessee pays rent to the lessor, as well as all taxes, insurance, and maintenance expenses that arise from the use of the property.

<sup>33</sup> A gross lease is a type of lease in which the lessor agrees to pay all expenses that are normally associated with ownership, such as utilities, repairs, insurance, and taxes.

*COMMERCIAL LEASING OF PUBLIC LANDS:  
STATE POLICIES REGARDING LEASES NEAR THE END OF TERM*

Pursuant to discussions with the Department, it appears that market interest in commercial leasing of public lands is also influenced by a parcel's particular location on an island.<sup>34</sup> For example, on Oahu, demand for commercial leases tends to be greater in the Kakaako region than in the Kapolei region.<sup>35</sup> This is likely due to Kakaako's proximity to air and sea transportation, as well as to other businesses.<sup>36</sup> Also, on Hawaii Island, demand for commercial leases in the Kanoiehua Industrial Area, which is located in Hilo, appears to be greater than in the W. H. Shipman Business Park, a privately-owned industrial park located in Keaau.<sup>37</sup> Although the facilities and infrastructure in the W. H. Shipman Business Park are newer, Kanoiehua Industrial Area's location in Hilo provides it with greater access to population centers and other businesses.<sup>38</sup>

---

<sup>34</sup> Interview with Russell Y. Tsuji, Land Administrator, Department of Land and Natural Resources of the State of Hawaii, in Honolulu, Haw. (September 9, 2015).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* See also MARKET STUDY, *supra* note 25, at 20-22.

<sup>38</sup> Interview with Russell Y. Tsuji, *supra* note 34. See also MARKET STUDY, *supra* note 25, at 20-22.

## Chapter 3

### LAWS AND POLICIES OF OTHER STATES

In order to determine whether and to what extent other states have policies in place to address commercial leases of public lands that (1) are scheduled to terminate within ten years and (2) involve lessees that are unable or unwilling to invest capital into making improvements, the Bureau reviewed the laws and regulations of other states that pertained to the commercial leasing of public lands. As part of this effort, the Bureau consulted with the Environment, Energy and Transportation Program of the National Conference of State Legislatures.

The Bureau also sought input from agencies in all fifty states that are responsible for the leasing of public lands. A copy of the letter sent to these agencies is attached as Appendix C. A total of nineteen responses were received from agencies in seventeen states. While four agencies indicated that they did not lease public lands for commercial purposes, the remaining agencies provided information regarding the policies of their state.

Based on the review of state laws and the information received from state agencies, the Bureau focused on the laws and policies of eighteen states.<sup>39</sup> Although all of these states have authorized the commercial leasing of public lands, there is a great deal of variety in how each state implements this practice. Policy components, such as how leases are awarded or the maximum length of lease terms, tend to vary from one state to another. The following table summarizes some of the major policy components of the selected states.

**Table 2. Commercial Leasing of Public Lands  
Major Policy Components**

State	Agency	Method(s) of Awarding Leases	Maximum Lease Term	Oversight of the Award/Modification of Leases	Laws or Policies that Specifically Address End-Of-Term Leases <sup>40</sup>
Alaska	Dept. of Natural Resources	Auction, sealed bid, Request for Proposal	55 yrs.	Approval of Commissioner of Natural Resources	None
Arizona	State Land Dept.	Auction	99 yrs.	Report to Governor	None

<sup>39</sup> Thirteen of the states that responded indicated that they leased public lands for commercial purposes. In addition, the Bureau's review of state laws and regulations found five other states that lease land for commercial purposes that had not responded to the Bureau's request for information.

<sup>40</sup> For the purposes of this report, the Bureau looked for states that had laws or policies to require or provide incentive to commercial lessees who were near the end of their lease term to invest capital to make repairs or improvements to the underlying property.

*COMMERCIAL LEASING OF PUBLIC LANDS:  
STATE POLICIES REGARDING LEASES NEAR THE END OF TERM*

<b>State</b>	<b>Agency</b>	<b>Method(s) of Awarding Leases</b>	<b>Maximum Lease Term</b>	<b>Oversight of the Award/Modification of Leases</b>	<b>Laws or Policies that Specifically Address End-Of-Term Leases<sup>40</sup></b>
Delaware	Dept. of Natural Resources & Environmental Control	Sealed Bid, Request for Proposal	25 yrs.	None	None
Georgia	Dept. of Natural Resources	Application	10 yrs. (Initial) 30 yrs. (Total)	Report to Legislature	None
Hawaii	Dept. of Land & Natural Resources	Auction	65 yrs.	Board Approval, Report to Legislature	None
Idaho	Dept. of Lands	Application, Sealed Bid, Request for Proposal	49 yrs.	Consult with County Commissioners	None
Michigan	Dept. of Natural Resources	Direct Negotiation	25 yrs.	None	None
Minnesota	Dept. of Administration	Sealed Bid	25 yrs.	Executive Council Approval	None
	Dept. of Natural Resources	Application, Direct Negotiation	40 yrs.	Executive Council Approval	None
Mississippi	Board of Education <sup>41</sup>	Application	40 yrs. (Initial) 65 yrs. (Total)	Oversight by the Public Lands Division of the Office of the Secretary of State	None
Montana	Dept. of Natural Resources & Conservation	Request for Proposal	99 yrs.	Board Approval	None
New Hampshire	Dept. of Resources & Economic Development	Auction, Sealed Bid	5 yrs.	Approval of Governor and Council	None
Pennsylvania	Dept. of Conservation & Natural Resources	Sealed Bid	10 yrs. or 35 yrs. (With Substantial Capital Investment)	Approval of Governor	None
Rhode Island	Dept. of Environmental Management	Sealed Bid, Request for Proposal	40 yrs.	State Properties Committee Approval	None
South Dakota	Commissioner of School & Public Lands <sup>42</sup>	Auction	99 yrs.	Report to Governor	None

<sup>41</sup> The Board of Education manages the leasing of public lands held in trust for the benefit of public schools.

<sup>42</sup> The Commissioner of School and Public Lands has general supervision of all leasing of school and public lands.

*LAWS AND POLICIES OF OTHER STATES*

<b>State</b>	<b>Agency</b>	<b>Method(s) of Awarding Leases</b>	<b>Maximum Lease Term</b>	<b>Oversight of the Award/Modification of Leases</b>	<b>Laws or Policies that Specifically Address End-Of-Term Leases<sup>40</sup></b>
Texas	General Land Office	Application	10 yrs.	Leases subject to review by Commissioner and School Land Board	None
	Parks & Wildlife Dept.	Sealed Bid	30 yrs.	None	None
Utah	Dept. of Natural Resources	Auction, Sealed Bid, Other Competitive Bidding Process	99 yrs.	None	None
Vermont	Agency of Natural Resources	Request for Proposal	90 yrs.	Legislative Approval	None
Washington	Dept. of Natural Resources	Auction, Direct Negotiation	55 yrs.	None	None
Wyoming	Board of Land Commissioners	Application	75 yrs.	None	None

As Table 2 indicates, none of the selected states appear to have laws or policies in effect that specifically address commercial leases of public lands that (1) are scheduled to terminate within ten years and (2) involve lessees that are unable or unwilling to invest capital into making improvements. However, a few state agencies indicated that they do have more general policies to address maintenance and improvements. These policies are summarized below:

- The Office of the Secretary of State of Mississippi and the Montana Department of Natural Resources and Conservation stated that when a commercial lessee seeks renewal of a lease, the agency could condition such renewal on the lessee making repairs or improvements to the property.
- The Office of the Secretary of State of Mississippi also stated that, in cases where a commercial lease expires and a new lease is awarded, the new lease could require the lessee to make repairs or improvements to the property.
- The Delaware Department of Natural Resources and Environmental Control stated that some of their long-term leases contain provisions that require the lessee to make a set amount of reinvestment into the property each year.
- The Pennsylvania Department of Conservation and Natural Resources has recently started to require lessees to have maintenance escrow accounts. They also stated that some of their leases have provisions that require the lessee to pay a performance guarantee that is only returned upon successful completion of the agreement terms.
- The Texas Parks and Wildlife Department stated that if a lessee failed to comply with the provisions of a lease, the lease could be revoked.

*COMMERCIAL LEASING OF PUBLIC LANDS:  
STATE POLICIES REGARDING LEASES NEAR THE END OF TERM*

The Bureau notes that the Hawaii Department of Land and Natural Resources also includes a general covenant regarding maintenance and improvements in its lease agreements. In pertinent part, the covenant states that "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."

## Chapter 4

### CONCLUSION

After reviewing the laws and regulations of other select states, as well as the information provided by agencies responsible for the commercial leasing of public lands in those states, it does not appear that any state has laws or policies in effect that specifically address the management of long-term commercial leases of public lands that:

- (1) Will terminate within ten years; and
- (2) Have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they will be unable to recoup due to the limited remaining term of the lease.

As a result, there appear to be no laws or policies for the Bureau to consider in determining whether any of the selected states' policies represent the current best practices with regard to this issue. Nor do there appear to be any laws or policies to consider in determining whether any of the selected states' policies provides insight on how to balance the competing public policy interests of providing opportunities for potential new lessees versus retaining existing lessees of public lands.

While some states have policies that generally address the maintenance and improvement of leased public lands, these policies appear to arise when a lease agreement is initially drafted and entered into, or within the context of negotiations for a lease renewal, rather than during the last few years of an existing lease. In comparison, commercial leases of public lands in Hawaii include a general covenant that requires lessees to maintain the property. The Bureau offers no conclusions regarding which, if any, of the policies employed by other states represents practices that should be incorporated into the commercial leasing of public lands in Hawaii.

## Appendix A

### ACT 142      S.B. NO. 544

A Bill for an Act Relating to Natural Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the department of land and natural resources has the responsibility of planning for the disposition of commercial, industrial, hotel, and resort classes of public lands to determine: specific use or uses; minimum size of parcels; required building construction or improvements; and lease terms and requirements.

The legislature also finds that one of the consequences of the state law requiring that public land leases be issued pursuant to public bidding is that an existing lessee may have little incentive to make major repairs or improvements to their leasehold properties during the last five to fifteen years of the lease, which sometimes results in the deterioration of infrastructure and facilities.

The legislature further finds that the rejuvenation of areas of public lands that have become dilapidated, obsolete, or have deteriorated over time is in the public interest and constitutes a valid public purpose.

The purpose of this Act is to require the legislative reference bureau to study how other select states manage end-of-term commercial leases involving public lands and to identify best practices in commercial leasing of public lands.

SECTION 2. (a) The legislative reference bureau shall conduct a study on how other select states administer, renegotiate, re-open, extend, or otherwise dispose of long-term leases of public lands that are about to expire to determine how the respective government lessors manage, handle, or deal with leases that:

- (1) Terminate within ten years; and
- (2) Have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they cannot recoup due to the limited remaining term of the lease.

(b) As part of the study under subsection (a), the legislative reference bureau shall consider the means by which the State, as a landowner, can balance the public policy of opening up state lands for competitive bidding or another public disposition process to provide opportunities for new lessees to lease state lands, with the interests of existing lessees, while ensuring a fair market rental return to the State.

(c) The study shall include the current best practices relating to the terms of commercial leases of public lands in Hawaii and in other jurisdictions.

(d) In conducting the study, the legislative reference bureau may consult with the department of land and natural resources and any other public or private entity that may be of assistance. The department of land and natural resources or other public entity shall assist the legislative reference bureau by providing answers to questions and background information at the request of the bureau, or other assistance deemed relevant to the study.

(e) If the legislative reference bureau determines that it does not possess the resources or expertise necessary to conduct the study, the legislative reference bureau may contract for outside services to conduct the study; provided that the legislative reference bureau shall not be subject to chapter 103D, Hawaii Revised Statutes, in obtaining the outside services.

SECTION 3. No later than twenty days prior to the convening of the regular session of 2016, the legislative reference bureau shall submit to the legislature a report of its findings and recommendations, including any proposed legislation to incorporate current best practices in the terms of commercial leases of public lands in Hawaii.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2015-2016 for the legislative reference bureau to conduct a study pursuant to this Act.

The sum appropriated shall be expended by the legislative reference bureau for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2015.  
(Approved June 25, 2015.)



TABLE OF CONTENTS

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

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
26. Acceptance of rent not a waiver .....	13
27. Extension of time .....	13
28. Justification of sureties .....	13
29. Waiver, modification, reimposition of bond and liability insurance provisions .....	14
30. Quiet enjoyment .....	14
31. Surrender .....	14
32. Non-warranty .....	15
33. Hazardous materials.....	15
34. Hawaii law .....	15
35. Exhibits - Incorporation in lease .....	16
36. Headings .....	16
37. Partial invalidity .....	16
38. Time is of the essence .....	16
39. Historic preservation .....	16
40. Incorporation by reference .....	16
SPECIAL CONDITIONS:	
41. etc. ....	
DEFINITIONS .....	
SIGNATURE PAGE .....	
ACKNOWLEDGMENT PAGE .....	

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-35, 171-59(b), or 171-95(a)(2), Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at \_\_\_\_\_ and identified as " \_\_\_\_\_," containing an area of \_\_\_\_\_, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of \_\_\_\_\_ ( ) years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, up to and including the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal \_\_\_\_\_ installments on \_\_\_\_\_ of each and every year during the term as follows:

A. For the first \_\_\_\_\_ ( ) years, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per annum.

B. The annual rental reserved shall be reopened and redetermined on the \_\_\_\_\_.

**No Percentage Rent:**

C. Determination of rent upon reopening. The rental 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 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.

**Percentage Rent:**

C. 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.

D. The interest rate on any and all unpaid or

delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

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

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, 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 with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

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

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall 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 \_\_\_\_\_ purpose(s).

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 "\_\_\_\_." 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 a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks 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 "\_\_\_\_."

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and 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 or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall 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. 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, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, 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 policy or policies of insurance shall name the State of Hawaii as an additional insured 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 Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the

policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. 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 reasonable but 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.

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, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

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

19. Lessor's lien. The Lessor shall have a lien on

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

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

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

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record

having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease 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 redispense shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispense; 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 redispense 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, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the

Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

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

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or 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, as the same are being leased as is.

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 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. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders. \_\_\_\_\_

## SPECIAL CONDITIONS

41. Full utilization of the land. The Lessee shall, within the first \_\_\_\_\_ ( ) years of the lease term, utilize the land under lease for the purposes for which this lease is sold, all in accordance with a conservation plan pursuant to paragraph 42, Good husbandry and conservation program of this lease.

42. Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within one (1) year following lease commencement. The conservation plan shall include, but not be limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson.

43. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire outside perimeter of the land under lease where the fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of the costs by adjacent landowners or Lessees for the purpose of confining animals of each adjacent owner or Lessee unless the adjacent land is owned and not leased by the government.

44. Exclusion of animals from forest lands. The Lessee shall at all times during the lease term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the premises and shall take all reasonable precautions to prevent forest fires, and in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

45. 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; provided, further, that no withdrawal or taking shall be had of those portions of the land harvested, unless the Board pays to the Lessee the value of those crops.

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

47. Restriction on residential use. The premises, or any portion, shall not be utilized for residential purposes. The construction or placement of any structure on the premises for residential purposes is strictly prohibited.

48. Hunting. No hunting shall be allowed on the premises during the term of this lease.

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. Commercial operations. The Lessee, its employees, customers, guests, agents or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. Except as otherwise provided in this lease, no commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

51. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

52. 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.

53. Dwelling restriction. The Lessee shall not place or construct any dwelling unit in excess of one family dwelling unit on the premises; provided, further, that this dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson of the Board of Land and Natural Resources.

54. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage,

bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

55. Removal of trash. The Lessee shall be responsible for the removal of all trash upon the premises, whether or not placed on the premises by Lessee or with or without Lessee's consent, and whether or not placed on the premises prior to the term of this lease.

56. 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.

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

SPECIAL CONDITIONS

41. Improvements. The Lessee shall, at its own cost and expense, within \_\_\_\_\_ ( ) years as of the date of lease commencement, complete the construction of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
at a cost of not less than \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)  
("Building Requirement"), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

42. Bond, improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the Building Requirement, but in no event shall the amount be less than \_\_\_\_\_  
NO/100 DOLLARS (\$ \_\_\_\_\_), which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the Building Requirement contained in this lease, the completion of the Building Requirement on or before the specified date of completion free from all liens and claims, and that the 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 Building Requirement.

43. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may

instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

44. 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.

45. 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. \_\_\_\_\_

---

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.

(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.

---

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.

(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.

(g) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

(h) "Pasture" means the conduct of livestock operation consisting of keeping cattle, primarily, and others, in a minor role, such as horses and sheep where animals graze the land for feed produced thereon. Compatible uses as woodland management, wildlife management and the cultivation of feed crops to be used

strictly within the premises is permitted. The operation of commercial activities such as feedlots (excepting a private feedlot designed to feed the Lessee's own cattle), dairy milking parlors, or boarding of horses is not permitted.

(i) "Timber" means any trees standing within designated areas of the leased land which are covered by a woodland management plan.

(j) "Diversified agriculture" means the cultivation and harvesting of truck, orchard, flower or nursery crops and shall not include or embrace the cultivation and harvesting of grasses or forage crops.

(k) "General agriculture" means the cultivation and harvesting of truck, orchard, flower or nursery crops and the grazing and pasturing of animals other than pigs.

(l) "Intensive agriculture" means the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals, and raising of poultry. \_\_\_\_\_

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 \_\_\_\_\_.

By \_\_\_\_\_  
Chairperson  
Board of Land and  
Natural Resources

LESSOR

\_\_\_\_\_

\_\_\_\_\_

LESSEE

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii  
\_\_\_\_\_

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively of \_\_\_\_\_, a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public, State of Hawaii  
\_\_\_\_\_

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

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

\_\_\_\_\_  
Notary Public, State of Hawaii

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

## APPENDIX C

Charlotte A. Carter-Yamauchi  
Acting Director

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
415 S. Beretania Street  
Honolulu, Hawaii 96813

October 16, 2015

[Name]  
[Title]  
[Division]  
[Department]  
[Street Address]  
[City], [State] [Zip Code]

Dear Mr./Ms. [Last Name]:

RE: Commercial Leasing of Public Lands

During its 2015 session, the Hawaii Legislature enacted Act 142, Session Laws of Hawaii 2015, requesting the Legislative Reference Bureau (Bureau) to study certain policies and procedures regarding the commercial leasing of public lands in other states. A copy of the Act is enclosed for your review. More specifically, the Act asks the Bureau to research how other states administer, renegotiate, re<sup>8</sup> open, extend, or otherwise dispose of long-term leases of public lands that are about to expire to determine how the respective government lessors manage, handle, or deal with leases that:

- (1) Terminate within ten years; and
- (2) Have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they cannot recoup due to the limited remaining term of the lease.

To assist us in preparing our report, we would appreciate your response to the questions in the enclosed questionnaire. In order to complete our report in a timely fashion, we request a response by November 6, 2015. Please feel free to refer us to another source if you do not have the information requested, to send us written materials containing the information requested, or to provide a URL where we might locate the information on the Internet. Written responses and materials may be sent to the address shown above. Responses by e-mail may be sent to one of the addresses given below.

Thank you for your anticipated assistance in this effort. If you have any questions, please call (808) 587-0666 and ask for Lance Ching or Terrence Lee, or e-mail them at [l.ching@capitol.hawaii.gov](mailto:l.ching@capitol.hawaii.gov) or [tlee@capitol.hawaii.gov](mailto:tlee@capitol.hawaii.gov), respectively.

Very truly yours,

Charlotte A. Carter-Yamauchi  
Acting Director

ls

Enc.