



RESOLUTION

APPROVING A 55-YEAR LEASE AGREEMENT FOR THE HAWAIIAN HUMANE SOCIETY FOR THE WAIAKA DOG POUND, WITH AN AREA OF 2.54 ACRES, TMK: 2-8-024:37.

WHEREAS, the parcel of land situated at Kamoiliili, Honolulu, Hawaii, identified as TMK: 2-8-024:37, is set aside to the City and County of Honolulu for the operation of a dog pound to be under the control and management of the City and County of Honolulu under the State of Hawaii Executive Order No. 996, dated February 20, 1943, as shown in the highlighted area in Exhibit A, attached hereto and by reference made a part hereof; and

WHEREAS, the Hawaiian Humane Society ("HHS") currently leases said property for a term of fifty-five (55) years for the purpose of operating and maintaining a dog pound and animal shelter; and

WHEREAS, the Indenture of Lease of said property is dated May 23, 1969, and the term of the lease is for fifty-five (55) years for the period from July 1, 1969 to June 30, 2024; and

WHEREAS, the HHS is proposing in excess of \$7.0 million dollars in capital improvements on the property to meet its long-term goals of becoming a contemporary animal care facility, and to increase its operational efficiency, animal holding capacity and the number of adoptions; and

WHEREAS, the proposed capital improvements will provide increased space and a new veterinary clinic, and will help to provide better quality care for the animals; and

WHEREAS, the City and County of Honolulu is not providing funding for the proposed capital improvements and the HHS must raise the funds for its proposed improvements through donations and other fundraising activities; and

WHEREAS, by receiving a new 55-year lease agreement, effective upon execution, the HHS can commence with its capital funding campaign for the proposed improvements on said property; and

WHEREAS, said property shall be used at all times under the new 55-year lease term as an animal shelter and dog pound, under the control and management of the City and County of Honolulu, in accordance with said State Executive Order No. 996; and



RESOLUTION

WHEREAS, the HHS shall be authorized and empowered by law to seize and impound stray dogs running at large, and shall seize and impound stray dogs running at large at all times during the new 55-year lease term; and

WHEREAS, Section 28-3.1(7), Revised Ordinances of Honolulu, 1990, as amended ("ROH"), permits the Director of Budget and Fiscal Services, to award contracts to lease or rent property on terms, conditions and rentals approved by the Corporation Counsel as to form and legality without calling for public bids when the real property and/or improvements are leased or rented to any eleemosynary corporation, society or organization formed for the prevention of cruelty to animals, and which is authorized and empowered by law to seize and impound stray dogs running at large; and

WHEREAS, ROH Section 28-4.1(1) permits the Council to authorize by resolution the leasing or renting of property of the City and County of Honolulu for a longer period than five years when deemed necessary in the public interest and when the lessee or tenant is required by the terms of the proposed contract to expend the sum of \$25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the lessee's or tenant's expenditure is equal to or in excess of the sum of \$25,000.00, as determined by the Council; and

WHEREAS, the proposed capital improvements by the HHS meet the requirement for the expenditure of \$25,000.00 or more for capital assets or to provide for the renovation of maintenance of any capital asset, or the expenditure is equal to or in excess of the sum of \$25,000.00; and

WHEREAS, the continued use of said property for a dog pound and animal shelter, and the proposed capital improvements by HHS under a new 55-year lease would serve the public interest; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

- 1) The Lease attached hereto as Exhibit B is approved substantially in the form attached hereto;
- 2) The Director of Budget and Fiscal Services is authorized to execute the Lease with HHS; and
- 3) The Mayor and the Director of Budget and Fiscal Services are hereby authorized to execute any incidental or related documents to carry out the transactions



RESOLUTION

described above, as long as such documents do not increase either directly or indirectly the financial obligation of the City; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor and the Director of Budget and Fiscal Services.

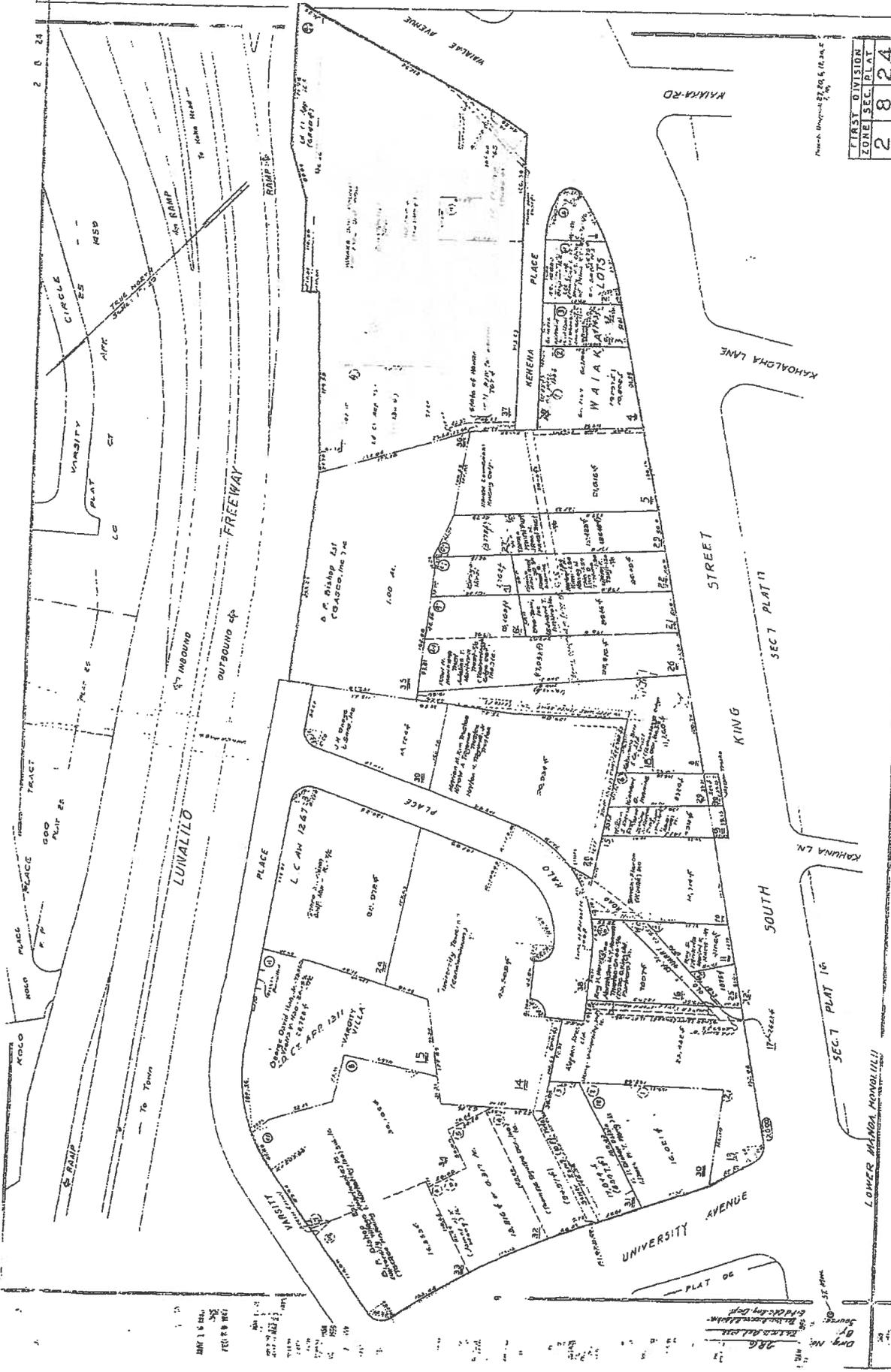
INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

October 24, 2013
Honolulu, Hawaii

Councilmembers



PRINTED

EXHIBIT A

DATE: 1/15/54
 BY: [Signature]
 FOR: [Signature]

DRY NO. 286
 BY: [Signature]
 FOR: [Signature]

.....

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

City and County of Honolulu
Department of Budget and Fiscal Services
530 South King Street, Suite 115
Honolulu, Hawaii 96813

NO. OF PAGES:

PROPERTY DESCRIPTION

DOCUMENT NO.

**Waiaka Dog Pound
Hawaii**

**TRANSFER CERTIFICATE OF
TITLE NO:**

Land Court () Regular () Double ()

Tax Map Key No. (1) 2-8-024:37

LEASE

THIS LEASE ("Lease") is between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, ("City"), and HAWAIIAN HUMANE SOCIETY, a Hawaii eleemosynary corporation formed for the prevention of cruelty to animals and authorized and empowered by law to seize and impound stray dogs running at large, the principal place of business and mailing address of which is 2700 Waiialae Avenue, Honolulu, Hawaii 96826, ("Lessee").

WITNESSETH:

In consideration of the respective rights and obligations stated below, the City and Lessee agree as follows:

1. **DEMISE AND DESCRIPTION OF PROPERTY.** The City, for and in consideration of the rents, agreements, terms, covenants and conditions herein contained, all on the part of the Lessee to be paid, kept, observed and performed, does hereby demise and lease unto the Lessee and the Lessee does hereby accept and lease, all of the real property and improvements "as-is, where-is", said real property known as the Waiaka Dog Pound, situated at Kamoiliili, Honolulu, Oahu, Hawaii, identified as Tax Map Key No. 2-8-024:37, with an area of 2.54 acres, as shown colored in yellow on the Exhibit A, attached hereto and by reference made a part hereof ("Property"). Lessee has inspected the Property and finds the Property in good condition and accepts the Property in its present condition.

2. **TERM.** To have and to hold the Property together with the rights, easements, tenements, privileges, and appurtenances, unto Lessee for the term of fifty-five (55) years commencing on the Effective Date and expiring fifty-five years from the Effective Date, as authorized by Honolulu City Council Resolution _____ dated _____, unless terminated earlier as stated below ("Term"). The "Effective Date" of this Lease shall be the date on which all parties execute this Lease and when this Lease is approved by the Board of Land and Natural Resources of the State of Hawaii.

The current lease dated May 23, 1969, by and between the City and Lessee for the Property shall immediately terminate upon the Effective Date of this Lease.

3. **RENT.** Lessee agrees to pay to the City rent at the rate of ONE DOLLAR AND NO/100 (\$1.00) per year.

4. QUIET ENJOYMENT. Upon performance of the terms of this Lease by Lessee, Lessee shall peaceably hold and enjoy the Property for the Term without hindrance or interruption by the City or any other person or persons lawfully claiming by, through, or under the City, except as may be stated below.

5. USE AND TRANSFER OF PROPERTY. The Lessee shall use the Property hereby demised for an animal shelter and dog pound, under the control and management of the City and County of Honolulu ("Project"), and is at all times during the Term authorized and empowered by law to seize and impound stray dogs running at large, and shall seize and impound stray dogs running at large during the Term. The Lessee shall equip, operate and maintain with adequate staff and personnel, and equipment, an animal shelter and dog pound on the Property demised herein for the purpose of receiving, keeping custody of, and providing proper care to estrays and impounded dogs and other animals.

Except as expressly stated in this Lessee, the Lessee shall not sell, assign, convey, sublease, mortgage, encumber, or transfer Lessee's interest in this Lease, or relinquish possession of any portion of the Property, without the prior written consent of the City and the Board of Land and Natural Resources of the State of Hawaii, which consent may be withheld in the City's and the Board's sole and absolute discretion.

6. STATE EXECUTIVE ORDER NO. 996. The Lessee shall at all times during the Term comply with the State of Hawaii Executive Order No. 996, dated February 20, 1943.

7. PAYMENT OF TAXES AND ASSESSMENTS. The Lessee shall pay, before the same become delinquent, all real property taxes and assessments for which the Property is liable during the Term. If any assessment is made under any betterment or improvement law which is payable in installments, Lessee shall pay only such installments, together with interest, which are due and payable during the Term.

8. PAYMENT OF RATES AND OTHER CHARGES. The Lessee shall pay when due all charges, duties, rates of pay of any description, including all utilities such as water, gas, sewer, refuse collection or any other charges or services as to which the Property or the Lessee may become liable.

9. COMPLIANCE WITH LAWS. The Lessee shall at all times observe and comply with all laws, statutes, ordinances, rules and regulations now or hereafter of the United States Government, the State of Hawaii, the City, or any board, department or agency of the above, which are applicable to the Property or the improvements thereon and will observe all covenants and restrictions affecting the Property.

10. **REPAIR AND MAINTENANCE.** The Lessee shall at all times during the Term, keep the Property in a clean, sanitary and orderly condition and that it shall, at its own cost and expense, keep, repair and maintain all buildings, improvements and fixtures now existing or hereafter constructed or installed in good order, condition and repair.

11. **CONSTRUCTION OF IMPROVEMENTS.** The Lessee shall construct, at its own cost and expense, the capital improvements to the Property as proposed and described in the Environmental Assessment, Per Hawaii Revised Statutes, Chapter 343, Hawaiian Humane Society Improvements, Island of Oahu, Hawaii, dated September 2013 in accordance with plans and specifications approved by the City (prior to any construction). Lessee shall not, without the previous written consent of the City, make any further improvements, alterations, additions or other changes to, in or on the Property, except as may herein be specifically allowed and provided. Prior to the making or altering of any improvements on the Property, Lessee shall submit to City for approval, the plans and specifications therefor and will not make or alter any improvements except in accordance with plans and specifications approved by the City. The City's approval of such plans and specifications will not be unreasonably withheld.

12. **IMPROVEMENTS REQUIRED BY LAW.** The Lessee, in compliance with Section 11, shall build, maintain, and repair, at its own expense, all improvements which may be required by law in connection with its use of the Property.

13. **WASTE AND UNLAWFUL USE.** The Lessee will not make or suffer any strip or waste, or make or suffer to be made any unlawful, improper, or offensive use of the Property or any part thereof, or improvements thereon.

14. **INSPECTION.** The City, and the State of Hawaii, and its agents may enter and inspect the Property at all reasonable times during the Term. The Lessee shall, at its own expense, repair all defects in the Property within sixty (60) days after the City gives written notice thereof to Lessee, or shall, if any repair cannot reasonably be completed within sixty (60) days, within such additional period as the City may allow (in writing) for good cause provided that Lessee reasonably commence such repair within the 60-day time period and act with diligence until the repair is completed.

15. **AUDITS:** All of Lessee's records relating to the Property will be available for examination during normal business hours by the City. The Lessee shall submit to the City an annual financial report.

16. **REASONABLE HOURS.** The Lessee shall maintain and publicize a schedule of reasonable hours during which the animal shelter and pound will be open to the public.

17. NEITHER PARTY AGENT, JOINT VENTURER OR PARTNER OF THE OTHER. Neither party hereto shall be construed to be an agent of, or a joint venturer or partner with, the other party.

18. BOND. Before the commencement of construction of any improvement on the Property exceeding \$5,000.00 in costs, Lessee will obtain and deposit with the City, a good and sufficient surety bond naming the City as an additional obligee, in a penal sum of not less than 100% of the cost for all labor and materials to be furnished and used for such construction, with a corporate surety authorized to do business in Hawaii guaranteeing (1) the full and faithful performance and completion of the construction contract and (2) completion of the construction free and clear of all mechanics' and materialmen's liens.

19. GENERAL INSURANCE REQUIREMENTS. At all times during the term of this Lease and any extensions thereto, the Lessee shall at its own cost and expense procure and maintain any and all insurance as required under any applicable federal, state or local law, statutes, or ordinance, including but not limited to applicable workers compensation insurance. In addition, the Lessee shall procure the insurance listed below from insurance companies authorized to do business in Hawaii, and maintain such insurance throughout the term of the Lease.

A. Commercial General and Umbrella Liability Insurance. The Lessee shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$2,000,000.00 per occurrence, and shall cover liability arising from premises, operations, independent contractors, products-completed operations and personal injury and advertising liability, and liability assumed under an insured contract. The City and the State of Hawaii shall be included as additional insureds under the policy(ies). The policy(ies) shall contain a waiver of subrogation against the City, and shall contain the standard ISO separation of insureds provision (or equivalent) to provide cross-liability coverage. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City.

The policy(ies) shall be written to provide at least 30 days advance written notice of cancellation.

The Lessee shall provide a Certificate(s) of Insurance, executed by a duly authorized representative of each insurer, to City at the time of execution of this Lease, and thereafter maintain current certificates for the term of this Lease, if requested, Lessee shall provide certified copies of insurance policy required above within 10 days of City's written request for copies of such policies.

B. Property Insurance. The Lessee assumes all risks of loss or damage to all real and personal property, including buildings, furnishings, fixtures, equipment, other personal property and tenant improvements and betterments. Lessee

shall maintain fire and other property insurance covering against loss or damage to such property, with limits equal to the Replacement Cost value. Lessee shall be solely responsible for payment of any deductible or co-insurance requirements in such policies. Lessee hereby waives any recovery of damages against the City and the State of Hawaii, including its officers, directors, employees, agents or representatives, for loss or damage to the buildings, fixtures, equipment and any other personal property. The City and State of Hawaii shall be included as additional insured and Loss Payee on all such insurance.

20. **CITY'S COSTS AND EXPENSES.** The Lessee shall pay to the City on demand all costs, including reasonable attorneys' fees and costs, incurred by the City in enforcing any of the terms of this Lease, in remedying any breach of the terms of this Lease by Lessee, in recovering possession of the Property, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee to which the City shall be made a party without any fault on its part.

21. **INDEMNITY.** The Lessee will indemnify and defend the City and the State of Hawaii, and hold the City, and the State of Hawaii, harmless against all claims whatsoever for: (a) failure of Lessee or its agents and employees to make any required disclosures in connection with the Property to users or any other person as required by law; (b) any misrepresentations made by Lessee or its agents and employees in connection with the Property to any person; (c) the failure of Lessee or its occupants, its clients, agents, employees, tenants, contractors, or subcontractors to observe all applicable laws and covenants as stated in Section 9, above, (d) the failure of Lessee to observe and perform its obligations stated in this Lease; and (e) loss or damage, including property damage, bodily injury, and wrongful death, arising out of or in connection with the use or occupancy of the Property by Lessee or any client, tenant, occupant, or other person claiming by, through or under Lessee, or any accident or fire on the Property, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Property in a safe condition, or any other liability whatsoever on account of the Property, or on account of the acts or omissions of Lessee, its employees, agents, contractors, subcontractors, tenants, occupants, clients, or any other persons present upon the Property in connection with Lessee's use or occupancy thereof. In connection with the foregoing, the Lessee will reimburse the City, and the State of Hawaii for all its costs and expenses including but not limited to reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever within the Property at the sole risk of Lessee and hold the City, and the State of Hawaii, harmless for any loss or damage thereto by any cause whatsoever.

22. **LIENS.** The Lessee will keep the Property free of all liens and encumbrances arising out of its activities. Should any such lien or encumbrance attach to the Property then: (a) Lessee shall immediately notify the City of such attachment, and (b) Lessee shall pay the claim and cause the same to be satisfied and discharged of record, and if Lessee shall not pay the same and cause it to be satisfied and discharged of record promptly, City may, at its option, pay the same and any amount paid by the City shall become immediately due and payable by Lessee to City. Lessee will indemnify and hold the City, and State of Hawaii, harmless against such lien or encumbrance and all expenses incurred by the City including but not limited to reasonable attorneys' fees.

23. **CONDEMNATION.** In case at any time or times during the Term, the Property or any portion thereof is condemned for public purposes by the State, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the premises condemned, and the Lessee shall be entitled to receive from the condemning authority the (a) value of growing crops, if any, that the Lessee is not permitted to harvest; and (b) proportionate value of the Lessee's permanent improvements taken in the proportion that it bears to the unexpired term of this Lease. The Lessee, in the alternative, may remove and relocate the Lessee's improvements to the remainder of the lands occupied by the Lessee. Lessee shall not by reason of such condemnation be entitled to any claim against the City or for compensation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of said leasehold interest by reason of such condemnation shall be payable to and the sole property of the City. 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 uses for which the land was leased, the lessee shall have the option to surrender the Lessee's Lease and be discharged for any further liability therefore, provided that the Lessee may remove the Lessee's permanent improvements within a reasonable period allowed by the City.

24. **TRANSFER BY CITY.** The City may transfer, assign, or sell this Lease, or any interest in this Lease or the Property, at any time, with prior notice to Lessee, upon which transfer, assignment or sale, City shall be released of all liability hereunder. Lessee shall attorn to the transferee, assignee, or purchaser, and shall perform all obligations required to be performed by Lessee under this Lease after the date Lessee is notified of the transfer, assignment, or sale, as though the transferee, assignee or purchaser was the original lessor named in this Lease.

25. **DEFAULT.** The Lessee shall be in default of its obligations under this Lease upon occurrence of any of the following events (hereinafter called "events of default"):

A. **Failure to Comply.** Lessee's failure to comply with any provision of this Lease which Lessee is obligated to comply with within sixty (60) days of written

notice from City to Lessee of such non-compliance, provided that if the cure cannot be completed within sixty (60) days, within such additional period as the City may allow (in writing) for good cause provided that Lessee has reasonably commenced the action to comply and diligently prosecutes the same; or

B. Abandonment. Lessee's abandonment of the Property, for a period of 30 consecutive days or more; or

C. Assignment to Creditors. Lessee's assignment of this Lease for the benefit of creditors; or

D. Writ of Execution. Lessee's interest in this Lease, or any interest in it, being taken under a writ of execution; or

E. Bankruptcy. Lessee's seeking voluntarily or the filing of an involuntary bankruptcy against Lessee, seeking the protection of the bankruptcy laws of the United States or any similar law for the relief of debtors; or

F. Breach of Covenant. Lessee's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of sixty (60) days after written notice to Lessee; or

G. Misrepresentation. Any material representation or warranty of Lessee contained herein or any material representation to City concerning the financial condition or credit standing of either Lessee or any party ("Guarantor") obligated to City under any agreement guaranteeing performance of any of the obligations of Lessee referred to herein proves to be false or misleading, or City reasonably determines that its position as City is threatened by reason of a material adverse change in the financial condition or credit standing of either Lessee or of any Guarantor.

26. REMEDIES.

A. Remedies Upon Default. Upon occurrence of any event of default, City shall terminate this Lease and take possession of the Property, without demand or previous entry and without further proceedings, together with all improvements placed thereon.

B. Exercising City's Remedies. Upon City exercising any of its above-listed remedies, Lessee agrees to the following:

1. Removal of Persons and Property. If City reenters the Property, it may remove all persons from the Property by any lawful means available. City may also remove all property of Lessee from the Property, and may enforce its right against that property, or may store the property at the expense of Lessee, or may dispose of the property if Lessee does not reclaim the property within 30 days after City

has re-entered the Property.

2. Legal Action. City may initiate legal action against Lessee at any time to recover amounts owed to City under this Lease, even though such action is initiated prior to termination of this Lease or prior to a final determination of amounts owed to City by Lessee. Initiating an action pursuant to this provision shall not be deemed a termination of this Lease and shall not preclude City from initiating subsequent actions against Lessee to recover any amounts due from Lessee.

3. Additional Remedies. If City terminates this Lease, then in addition to any other remedy available to City, City may recover from Lessee either (1) all damage sustained by City as a result of Lessee's default, and (2) the amount by which the total rent and other amounts payable for the remainder of the term of this Lease exceed the rent that City can be expected to receive for the Property for such period, together with the costs of recovering possession of the Property, the anticipated costs of reletting the Property, and reasonable attorney's fees and costs incurred by City.

4. Remedies Cumulative. The remedies available to the City are cumulative and not exclusive, and the exercise of any remedy by City shall not preclude its exercise of any other available remedies.

27. SURRENDER: HOLDING OVER.

A. Surrender. Upon expiration or earlier termination of this Lease, Lessee shall immediately vacate and surrender the Property to City, together with all improvements, additions and fixtures then on the Property, whether installed by City or by Lessee, including any air conditioning units or systems, all in good condition, ordinary wear and tear excepted; provided that City, at its option, may require Lessee to remove any or all improvements, additions and fixtures installed by Lessee in the Property, in which event Lessee shall do so and shall restore the Property to its original condition at the commencement of this Lease within seven days following the expiration or earlier termination of this Lease. Lessee shall remove all of its personal property before surrendering the Property and shall repair any damage to the Property caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease. Personal property is defined as inventory, operating equipment or other property not affixed to the Property.

B. Failure to Restore. If Lessee fails to complete the removal and the restoration in the manner and within the time specified, City may complete such removal and restoration in which event Lessee shall be liable to City for all costs incurred by City which amount shall be immediately due and payable after notice to Lessee by City of the amount due.

C. Holding Over. If Lessee remains in possession of the Property after the expiration or earlier termination of this Lease without the consent of City, Lessee shall be liable (1) for two times the Rent payable by Lessee at the expiration or earlier termination of this Lease, (2) for all other charges payable by Lessee pursuant to other provisions of this Lease, and (3) for all other damages City may sustain as a result of such wrongful holdover. Acceptance of rent or other payments by City from Lessee during any holdover period shall not be deemed to create a new tenancy in favor of Lessee, but to the contrary, City may initiate action against Lessee at any time to recover possession of the Property, and to recover all damages sustained by City as a result of Lessee's wrongful holdover.

28. DISSOLUTION OF LESSEE. In the event of the corporate dissolution of Lessee, the City may terminate this Lease.

29. HAZARDOUS SUBSTANCES. The Lessee shall not cause, permit, or allow the storage, use, escape, disposal or release of any Hazardous Materials in or about the Property by Lessee, Lessee's agents, employees, contractors, invitees or licensees, except in full compliance with all Hazardous Materials Laws. "Hazardous Materials" shall include flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances and materials defined as or included in the definition of "hazardous substance", "hazardous wastes", "hazardous materials", or "toxic substances" under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials, including, but not be limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 USC Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et. seq., the Clean Air Act, 42 U.S.C. Section 7401 et. seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, and the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, the Hawaii Environmental Response Law, Hawaii Revised Statutes Chapter 128D, as well as any similar state and local laws and ordinances and regulations now or hereafter adopted, published and/or promulgated pursuant thereto as the same may be amended from time to time (collectively, "Hazardous Materials Laws"). If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any storage, presence or release of Hazardous Materials, then the reasonable costs thereof shall be reimbursed by Lessee to the City upon demand as additional charges if such requirement applies to the Property. In addition, Lessee shall execute affidavits, representations and the like from time to time at the City's request concerning Lessee's best knowledge and belief regarding the presence of Hazardous Materials on the Property. Lessee shall keep and maintain the Property and all groundwater on or under the Property in compliance with, and shall not

cause or permit the Property and improvements thereon to be in violation of, any Hazardous Materials Laws. Lessee shall immediately advise the City in writing of (a) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Property or improvements thereon; (b) all claims made or threatened by any third party against Lessee, the City or the Property or improvements thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials or violation of or compliance with any Hazardous Materials Laws and (c) Lessee's discovery of any occurrence or condition on the Property or improvements thereon or any real property adjoining or in the vicinity of the Property which could subject the City, Lessee, or the Property or improvements thereon to any restrictions on ownership, occupancy, transferability, or use of the Property or improvements thereon under any of the Hazardous Materials Laws. In all events, Lessee shall defend, indemnify and hold harmless the City, its employees, officers, agents, successors and assigns from and against any claims, demands, actions, lawsuits, proceedings, losses, damages, liabilities, fines, penalties, judgments, awards, costs and expenses directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, removal or presence of Hazardous Materials on or under or about the Property by Lessee or attributable to Lessee including, but not limited to any damages, the cost of clean up or detoxification of the Property and the preparation and implementation of any closure or remedial or other required plans and all reasonable costs and expenses incurred by the City in connection with such items including, but not limited to, attorneys' fees and costs. The foregoing covenants shall survive the expiration, termination, or surrender of this Lease.

30. **ADA COMPLIANCE.** The Lessee shall be responsible for ensuring that the Property, all alterations and improvements in the Property, and Lessee's use and occupancy of the Property complies with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, *et seq.*), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect therewith (the "ADA").

31. **SEXUAL HARASSMENT POLICY.** The Lessee shall have and enforce a policy prohibiting sexual harassment. The Lessee's sexual harassment policy must set forth the same or greater protection than those contained or required by City Ordinance No. 93-84.

32. **MINERALS AND WATERS.** (a) All minerals as hereinafter defined, in, on or under the Property and right to prospect for, mine and remove such materials 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 such minerals by any means whatsoever, including strip mining, are hereby reserved unto the State of Hawaii. "Minerals" as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspora, boehmite,

laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the Property and not for sale to others. (b) All surface and ground waters appurtenant to the Property and the right to capture, divert or impound the same are hereby reserved onto the State of Hawaii and the right to occupy and use so much of the Property as may be required in the exercise of this right are further reserved unto the State of Hawaii; provided, however, that as a condition precedent to the exercise by the State of Hawaii of the rights reserved in this paragraph just compensation shall be paid by the State of Hawaii to the City and to the Lessee, individually and separately, for any of the improvements taken rightfully belonging to the City or the Lessee.

33. COVENANT AGAINST DISCRIMINATION. The use and enjoyment of the Property shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.

34. MORTGAGE. Except as hereinbelow provided, the Lessee shall not mortgage, hypothecate or pledge the Property or any portion thereof or this Lease or any interest therein without the prior written approval of the City and of the Board of Land and Natural Resources of the State of Hawaii, which consent may be withheld in the City's and the Board's sole and absolute discretion, and any such mortgage, hypothecation or pledge without such approval shall be null and void.

Upon due application and with the written consent of the City and of the Board of Land and Natural Resources of the State of Hawaii, the Lessee may mortgage this Lease or any interest therein or create a security interest in the public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United State, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgage, so long as the purchaser is qualified to lease, own or otherwise acquire and hold the Property or any interest therein in compliance with this Lease. 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 such 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 the aforementioned Federal agencies.

35. RIGHT OF HOLDER OF RECORD OF A SECURITY INTEREST. In the event the City seeks to forfeit the interest created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice of such breach or default, or within such additional period as the City may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the City may: (a) pay to the holder from any monies at its disposal which is made available for that purpose and the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the City shall be entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate, without prejudice to any other right or remedy for arrears of any charges or for any preceding or other breach or default and thereupon use its best efforts to redispense of the Property to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided, that a reasonable delay by the City in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any redispense effected hereunder shall be applied, first, to reimburse the City for costs and expenses in connection with such redispense, second, to discharge in full any unpaid purchase price or other indebtedness owing the City in connection with such interest or estate terminated as aforesaid, third, to the mortgagee to the extent of the value received by the City upon redispense which exceeds the fair market lease value of the Property as previously determined by the City's appraiser; and the balance, if any, shall be paid to the owner of such interest or estate.

36. WITHDRAWAL. The City and the Board of Land and Natural Resources of the State of Hawaii shall have the right to withdraw the Property, or any portion, at any time during the Term upon giving reasonable notice and without compensation, except as otherwise provided in this 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 City and the Board of Land and Natural Resources of the State of Hawaii 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 Property 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.

37. MISCELLANEOUS PROVISIONS

A. Amendment. This Lease may not be altered, amended or modified except by a written instrument executed by both parties hereto.

B. Governing Law. The provisions of this Lease shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.

C. Authorization. Each party warrants to each other party that the individuals executing this Lease are authorized to do so. Lessee further represents and warrants that there are no restrictions, agreements, or limitations on its right or ability to enter into and perform the terms of this Lease.

D. Binding Effect. Upon its execution by each party, this Lease shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Lease, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Lease shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.

E. Construction. Each party named in this Lease acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Lease; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Lease; and (v) each party has agreed to be bound by the terms stated in this Lease following its review and obtaining advice.

F. Counterparts. This Lease may be executed by the parties in counterparts. The counterparts executed by the parties named in this Lease and properly acknowledged, if necessary, taken together, shall constitute a single Lease.

G. Defined Terms. Certain terms where they initially are used in this Lease are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Lease, unless otherwise specifically stated or clearly inappropriate in the context.

H. Force Majeure. If any party is prevented from performing its obligations stated in this Lease by any event not within the reasonable control of that party, including, but not limited, to an act of God, public enemy, or war, fire, an act or

failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Lease. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Lease by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Lease shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

I. Gender: Number. In this Lease, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.

J. Independent Contractor/Non-Agency. The parties acknowledge that Lessee is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.

K. Integration. This Lease contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Lease. Each party acknowledges that no person or entity made any oral or written representations on which a party has relied as a basis to enter into the agreement stated in this Lease which is not included as a provision in it.

L. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Lease, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.

M. No Drafter. No party shall be deemed to have drafted this Lease. No provision stated in this Lease shall be construed against any party as its drafter.

N. No Offer. The provisions stated in this Lease shall not bind any party until each party has executed it and the Board of Land and Natural Resources of the State of Hawaii has approved it. The mere delivery of this Lease is not an offer.

O. No Obligations to Third Parties. Unless there is a provision stated in this Lease to the contrary, the execution and delivery of this Lease shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.

P. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default

in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

Q. Notice. Any notice required or permitted by the provisions of this Lease to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated below. No other method of notice shall be effective.

(1) CITY AND COUNTY OF HONOLULU:
Department of Budget and Fiscal Services
530 South King Street, Room 115, Honolulu, Hawaii, 96813

(2) Hawaiian Humane Society
2700 Waiialae Avenue, Honolulu, Hawaii, 96826.

R. Paragraph Titles. The titles of provisions stated in this Lease are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Lease.

S. Severability. If any term or provision of this Lease is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Lease unless that effect is made impossible by the absence of the omitted provision.

T. Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Lease).

U. Survival of Representations. The representations and warranties of the parties hereto contained in this Lease shall survive the expiration, termination or cancellation of this Lease, unless otherwise specifically stated.

V. Time is of the Essence. Time is of the essence of this Lease and with respect to Lessee's obligations under this Lease.

37. BOARD APPROVAL OF LAND AND NATURAL RESOURCES APPROVAL. This Lease is subject to the prior approval of the Board of Land and Natural Resources of the State of Hawaii pursuant to HRS Section 171-11.

IN WITNESS WHEREOF, the City and County of Honolulu and the Hawaiian Humane Society have executed this Lease on this ____ day of _____. 20__.

APPROVED AS TO
FORM AND LEGALITY

CITY AND COUNTY OF HONOLULU

By _____
Its Deputy Corporation Counsel

By _____
Its Director of Budget and Fiscal Services

CITY

HAWAIIAN HUMANE SOCIETY

By _____
Its

LESSEE

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

On this _____ day of _____, 20____, before me appeared _____ to me personally known, who, being by me duly sworn, did say that _____ is the _____ of the Department of Budget and Fiscal Services of the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, and that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council, and said _____ acknowledged the instrument to be the free act and deed of said municipal corporation.

Notary Public, State of Hawaii
My commission expires: _____

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

On this _____ day of _____, 20____, before me
appeared _____ to me personally
known, who, being by me duly sworn, did say that _____ is the
_____ of _____ and that
the seal affixed to said instrument is the corporate seal of said corporation, and that the
instrument was signed and sealed in behalf of said corporation by authority of its Board of
Directors, and the said _____ acknowledged said instrument to be
the free act and deed of said corporation.

Notary Public, State of Hawaii
My commission expires: _____