

Reviewed and Approved by Executive Director: Craig ZLB

July 5, 2023

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Amend the Revocable Right of Entry (ROE 13-18) with the University of Hawaii at Manoa John A. Burns School of Medicine (JABSOM) and the University of Hawaii Cancer Center (UHCC), Dated June 18, 2018, for Up to Three Hundred Twenty Five (325) Parking Stalls Located at Kakaako Makai Lot C [No Street Address], Honolulu, Hawaii, Tax Map Key No. (1) 2-1-015: 052 (portion), to Extend the Term by an Additional Five (5) Years Until August 31, 2028 and Increase the Rent.

II. BACKGROUND

In 2005, the University of Hawaii (UH) constructed the JABSOM campus on vacant land in Kakaako Makai owned by the Hawaii Community Development Authority (HCDA). JABSOM was required to provide 394 parking spaces for both its campus and the adjacent UHCC campus. JABSOM had intended to build a parking structure to provide the required parking; however, this project did not come to fruition.

On August 30, 2013, the HCDA signed a parking agreement with JABSOM to assist in fulfilling JABSOM's parking requirements. The agreement designated 326 parking stalls to be set aside in HCDA's Kakaako Makai Lot C, a 5.5-acre paved parking lot located adjacent to the JABSOM/UHCC campuses. The agreement included a fixed rent rate of \$50 per stall, per month. The additional 68 required stalls would be provided on JABSOM's leased premises.

In June 2018, the HCDA Kakaako Board memorialized the parking agreement with UH by approving a Right of Entry (ROE 13-18) for 325 parking stalls in Lot C at a rate of \$100 per stall, per month, escalated annually by 3 percent. ROE 13-18 is attached hereto as Exhibit A.

Lot C currently has a total of 414 marked parking stalls. 314 stalls are set aside for monthly parkers like JABSOM/UHCC and other private companies, and the remaining 100 stalls are available to the public as paid hourly parking. Because not all monthly permit holders park in Lot C at the same time, the 314 marked stalls designated for monthly parking has so far been able to accommodate all monthly parking permits.

ROE 13-18 is set to expire on August 31, 2023. In a letter dated March 29, 2023, JABSOM and UHCC requested an extension of ROE 13-18 for an additional five (5) years until August 31, 2028. UH proposes paying a flat usage fee of \$37,677.25 per month (\$115.93 per stall) for the duration of the five-year term.

III. DISCUSSION

The market rate for monthly parking in the Kakaako area ranges from \$100 to \$275 per stall. The closest comparable parking to Lot C is at the Office of Hawaiian Affairs' "Piano Lot," also located in Kakaako Makai, on the diamond head side of the JABSOM/UHCC campus. Piano Lot offers monthly parking at a rate of \$100 a stall. Covered and secured garage parking in Kakaako Mauka is more expensive, at around \$175-\$275 per stall.

Rent under ROE 13-18 was originally set at \$32,500 per month (\$100 per stall) with a 3% annual escalation. Currently, UH pays \$36,579.04 per month (about \$112.55 per stall); however, the annual escalation has been problematic for UH's accounting team to calculate.

Therefore, UH's proposes a flat usage fee of \$37,677.25 per month (\$115.93 per stall) without any annual escalation for the entire five-year extension term. This figure represents a 3% increase from their current usage fee. While HCDA is foregoing the annual 3% escalation, the flat usage fee per month effective for the five-year term is acceptable as HCDA is assisting another state agency with parking to fulfill JABSOM's important mission.

ROE 13-18 already includes a mutual termination clause that allows either party to terminate the agreement for any reason with at least 90-days written notice. This termination right allows HCDA to terminate the agreement if development occurs on Lot C.

All other terms and conditions of ROE 13-18 shall remain unchanged.

IV. RECOMMENDATION


It is recommended that the Board Authorize the Executive Director to Amend the Revocable Right of Entry (ROE 13-18) with the University of Hawaii at Manoa John A. Burns School of Medicine and the University of Hawaii Cancer Center, Dated June 18, 2018, for Up to Three Hundred Twenty Five (325) Parking Stalls Located at Kakaako Makai Lot C, Honolulu, Hawaii, Tax Map Key No. (1) 2-1-015: 052 (portion), to Extend the Term by an Additional Five (5) Years Until August 31, 2028 and Increase the Rent, and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:

Exhibit A – Executed Right of Entry (ROE 13-18) Dated June 18, 2018

Exhibit B – UH Extension Request Letter Dated March 29, 2023

Prepared By: Lindsey Doi, Asset Manager 

Reviewed By: Craig Nakamoto, Executive Director 

REVOCABLE RIGHT OF ENTRY (ROE 13-18)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (ROE) made and executed this 18th day of June 2018, the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA or GRANTOR)**, a body corporate and a public instrumentality of the State of Hawaii, hereby grants to **THE UNIVERSITY OF HAWAII**, the state university and a body corporate of the State of Hawaii, for the benefit of **THE UNIVERSITY OF HAWAII AT MANOA JOHN A. BURNS SCHOOL OF MEDICINE AND THE UNIVERSITY OF HAWAII CANCER CENTER**, (GRANTEE), a nonexclusive right of entry upon and use of the Premises (as defined below) subject to each of the following terms and conditions:

1. **Grant of Right-of-Entry.** The HCDA hereby grants to GRANTEE and GRANTEE's members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, **Permitted Persons**) an ROE to enter upon the Premises (as defined below) for the sole purposes set forth herein. GRANTEE is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons and ensuring compliance by Permitted Persons with such terms and conditions.
2. **Premises.** This ROE shall pertain to the 5.5 acre paved parking lot known as Lot C, located at the Ewa end of Ilalo Street, Honolulu, Hawaii 96813 and identified by Oahu Tax Map Key No. (1)-2-1-015:052 (**Premises**). The Premises is more particularly shown and depicted on the map attached to this ROE as Exhibit "A" and made a part hereof. Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved by GRANTOR.
3. **Term.** The term of this ROE shall commence on September 1, 2018 (**Commencement Date**) to August 31, 2023 (**Termination Date**). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.
4. **Use of Premises.** This ROE is nonexclusive. The ROE granted hereby shall be for the sole purpose of vehicle parking by Permitted Persons for up to three hundred twenty five (325) marked parking stalls located on the Premises. The availability of 325 stalls is guaranteed only between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday, excluding state and federal holidays. After hours parking is on a first come, first served basis as the lot is shared with the public. Vehicles parked in non-designated spaces for any reason, or otherwise obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal by towing at GRANTEE's sole expense.
5. **Acknowledgement of Use By Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified herein, GRANTEE

shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

6. **Due Care and Diligence.** GRANTEE shall exercise diligence and due care for public safety in entering upon the Premises and shall not unreasonably disrupt or disturb the activities customary to the operations of the HCDA or its agents on the Premises, or other persons or entities who have the right to enter and/or use the Premises with the approval of the HCDA. At all times during the term of this ROE and upon the termination of this ROE, GRANTEE shall be responsible for: (a) removing any debris or trash deposited on the Premises by GRANTEE or Permitted Persons; (b) repairing any damage to the Premises caused by GRANTEE or Permitted Persons; and (c) restoring the Premises to substantially the same condition it was in at the time of GRANTEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this ROE.

7. **GRANTEE Responsibility.** HCDA and GRANTEE acknowledge and agree that GRANTEE, as an agency of the State of Hawaii, is not authorized to indemnify HCDA in any way, including, without limitation, against any claims for bodily injury, wrongful death, and/or property damage by any persons or entities.

GRANTEE, as an organization of the State of Hawaii, shall be liable, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Actions By and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act) for all claims and demands for property damage, loss, personal injury or death caused by the negligent or wrongful act or omission of any officer or employee of the GRANTEE while acting within the scope of the office of employment, or persons acting for the GRANTEE in an official capacity, temporarily, whether with or without compensation.

8. **Condition of Premises/Assumption of Risk.** GRANTEE hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by GRANTEE. GRANTEE agrees that all property, approved improvements, and equipment of GRANTEE kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of GRANTEE. This provision shall survive the expiration or earlier termination of the ROE.

9. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E.

10. **Prohibited Use.** Any use of the Premises not authorized herein shall constitute a material breach of this ROE. Upon such breach, the HCDA may terminate this ROE and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give GRANTEE notice thereof and afford GRANTEE forty-eight (48) hours to cure such breach.

11. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by GRANTEE shall remain the property of GRANTEE. GRANTEE shall have the right, prior to the termination or revocation of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises. In the event the GRANTEE shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period, the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and any storage to GRANTEE. This provision shall survive the termination of this ROE.

12. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

13. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the HCDA's express prior written consent.

14. **Additional Terms and Conditions.**

- (a) GRANTEE shall pay the HCDA a usage fee of \$32,500 per month for the use of 325 stalls (\$100 per stall per month) with a three percent (3%) annual escalation, without notice or demand, on the first (1st) day of each month for the ensuing month during the term of this ROE. If the first (1st) day falls on a weekend or State holiday, GRANTEE shall tender payment of the usage fee on the first business day immediately following the weekend or State holiday. Without prejudice to any other rights or remedies available to the HCDA, GRANTEE shall, without further notice or demand, pay to the HCDA, a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid more than ten (10) days after its due date on the first of the month.
- (b) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.

- (c) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (d) Plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (e) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary. Written notice of any such additional terms and conditions shall be provided to GRANTEE not less than 30 days prior to the effective date. Any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.
- (f) The HCDA reserves the right to adjust the number of stalls made available to GRANTEE, provided that written notice shall be provided to GRANTEE not less than 90 days prior to the effective date. The monthly usage fee would be prorated accordingly at the \$100 per stall rate and three percent (3%) annual escalation. These material changes shall be memorialized in a written amendment to this ROE, signed by the parties.

15. **Termination.** Either Party may terminate this ROE at any time upon not less than 90 days prior written notice.

16. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority
Attention: Lindsey Doi, Asset Manager
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: contact@hcdaweb.org

University of Hawaii
University of Hawaii at Manoa
John A. Burns School of Medicine
University of Hawaii Cancer Center
Honolulu, Hawaii 96813
Attention: Nancy Foster, Executive Director of Administration, Finance,
& Operations & Chief Financial Officer

Phone: (808)692-1201
Fax: (808)692-1267
Email: nkfooster@hawaii.edu

With a Copy to:
Office of Procurement and Real Property Management
University of Hawaii
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822
Attention: Director
Phone: (808) 956-8687
Fax: (808) 956-2093

17. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

18. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.

19. **Representation on Authority of Parties/Signatories.** Each person signing this agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

20. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

21. **Entire Agreement.** This ROE constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the HCDA and GRANTEE have caused this ROE to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: Garrett H. Kamemoto
Garrett H. Kamemoto
Interim Executive Director

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawaii

By: [Signature]
Jan S. Gouveia
Its Vice President for Administration

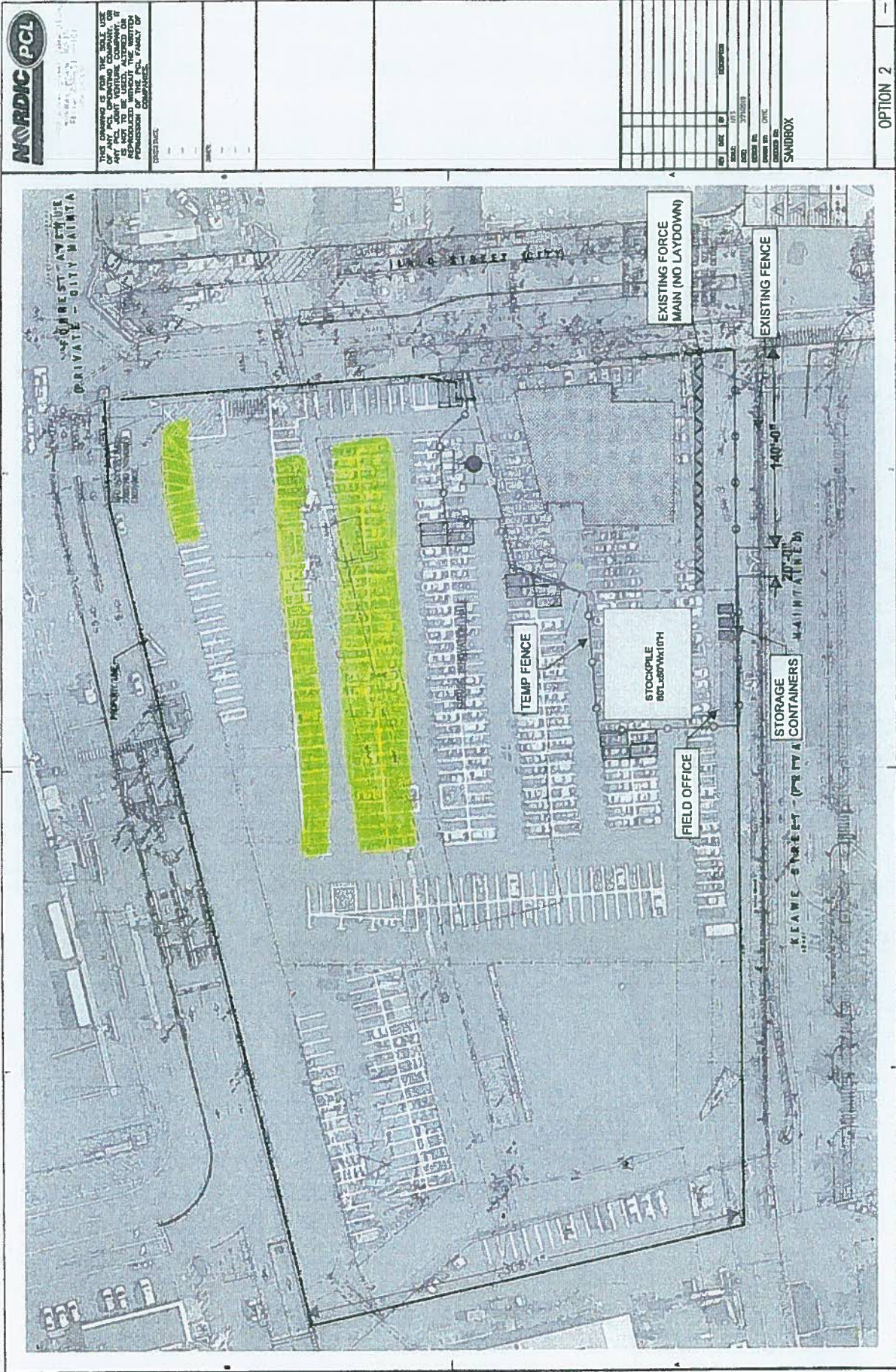
Recommend Approval:

By: [Signature]
David Lassner
Interim Chancellor
University of Hawaii at Manoa

APPROVED AS TO FORM:
Office of General Counsel:

[Signature]
Emi Morita
Associate General Counsel

Exhibit A





UNIVERSITY
of HAWAII[®]
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John A. Burns School of Medicine
Office of the Dean

651 Ilalo Stgreet, MEB, Honolulu, HI 96813-5534

An Equal Opportunity/Affirmative Action Institution



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CANCER CENTER

701 Ilalo Street, Honolulu HI 96813 | Tel (808) 586-3010
Fax (808) 586-3052 | www.uhcancercenter.org

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March 29, 2023

Craig Nakamoto
Executive Director
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

RE: Extension and/or Renewal of the Right of Entry Agreement (ROE) between the Hawaii Community Development Authority (HCDA) and the University of Hawai'i (University) for parking use of a portion of "Lot C" by the John A. Burns School of Medicine (JABSOM) and the University of Hawai'i Cancer Center (UHCC)

Dear Director Nakamoto:

Under the ROE pertaining to Lot C between the University and HCDA, as approved at the June 6, 2018 meeting of the HCDA and effective from September 1, 2018, the University has been allowed to use a portion of Lot C for parking up to 325 vehicles. As this ROE is due to expire on August 31, 2023, the University hereby formally expresses its interest in renewing and/or extending the ROE for an additional term of five (5) years, with the further option, at the University's sole discretion, to renew and/or extend the ROE for an additional term of five (5) years. The University also requests a flat usage fee of \$37,677.25 per month for the use of the 325 stalls (\$115.93 per stall per month) for the entirety of the five (5) year term, September 1, 2023 through and including August 31, 2028.

Under the Administrative Amendment No. 1 to Development Permit dated May 25, 2010, the University is required to provide 394 parking stalls in connection with the University's operation of JABSOM and UHCC. As such, the continued use of Lot C to meet this requirement as well as current parking needs is critical to the University. As indicated, the extension and/or renewal of the ROE would tentatively cover the same area:

- 325 parking stalls, as previously used by the University, at Lot C, which is designated as TMK (1)2-1-015:052 (por.) (Lot C) (parcel map attached hereto as Exhibit A).

We appreciate HCDA's consideration of our request to extend and/or renew the ROE for Lot C under the terms proposed.



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**John A. Burns School of Medicine
Office of the Dean**

651 Ilalo Stgreet, MEB, Honolulu, HI 96813-5534

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If you have any questions or concerns, please contact Nancy Foster at 808-692-1201 or nkfoster@hawaii.edu, or Cliff Martin at 808-356-5767 or CMartin@cc.hawaii.edu.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lee Buenco".

Lee Buenco-sejo-Lum
Interim Dean, John A. Burns School of Medicine

A handwritten signature in black ink, appearing to read "Naoto T. Ueno".

Naoto T. Ueno
Director, University of Hawaii Cancer Center

Enclosure(s) / Attachment(s)

c: Lori Sunakoda, Deputy Attorney General
Nancy Foster, Chief Financial Officer, JABSOM
Cliff Martin, Associate Director for Administration, UHCC