



UNIVERSITY
of HAWAI'I
MĀNOA

UNIVERSITY OF HAWAII
BOARD OF REGENTS

15 JUL 31 P2:33

July 31, 2015

MEMORANDUM

TO: Randolph G. Moore
Chairperson, Board of Regents
University of Hawai'i

VIA: David Lassner
President
University of Hawai'i

VIA: Jan Gouveia
Vice President for Administration
University of Hawai'i

VIA: Robert Bley-Vroman
Interim Chancellor
University of Hawai'i at Mānoa

FROM: Jerris R. Hedges
Dean, John A. Burns School of Medicine
Interim Director, University of Hawai'i Cancer Center
University of Hawai'i at Mānoa

UNIVERSITY OF HAWAII
PRESIDENT'S OFFICE

15 JUL 31 P2:20

RECEIVED

SUBJECT: APPROVAL OF AGREEMENTS ALLOWING JABSOM TO CONTINUE TO USE THE 7th and 8th FLOORS OF THE MEDICAL OFFICE BUILDING AT THE KAPIOLANI MEDICAL CENTER FOR WOMEN AND CHILDREN:
(1) RENT RECONCILIATION AGREEMENT (From 1/1/2014 to 8/31/2015)
(2) USE AND OCCUPANCY AGREEMENTS (From 9/1/2015 to 12/31/2015)

SPECIFIC ACTION REQUESTED:

In accordance with Board of Regents Policy RP 10.201, it is requested that the Board of Regents authorize the University to enter into two (2) separate Use and Occupancy Agreements (collectively the "New Agreements") with Kapiolani Medical Center for Women and Children ("KMCWC") that would permit the John A. Burns School of Medicine ("JABSOM") to continue using space at the 7th and 8th floors of the KMCWC medical office building and hospital located at 1319 Punahou Street, Honolulu, Hawai'i ("Building"), with the one for 7th floor covering approximately 10,313 rentable square feet ("7th Floor Agreement"), and the other for the 8th floor covering approximately 8,612 rentable square feet ("8th Floor Agreement").

The New Agreements follow expiration of that certain Use and Occupancy Agreement (effective as July 1, 2008) between the parties that had an initial term from July 1, 2008, through and including

September 30, 2013, and that was subsequently extended by amendment through December 31, 2013 (collectively the "Prior Agreement"). The New Agreements cover the same premises/space on the 7th and 8th floors of the Building that had been covered by the Prior Agreement ("University Premises"). The University Premises is used by the John A. Burns School of Medicine (JABSOM) Departments of Pediatrics (7th Floor) and Obstetrics, Gynecology, and Women's Health (8th Floor).

The Board is also being requested to authorize the President to negotiate, finalize, and execute amendments to the New Agreements or new use and occupancy agreements (collectively the "Continuation Agreements"), upon terms substantially similar to the New Agreements herein, that would allow JABSOM to continue occupying the 7th and 8th Floors of the Building beyond December 31, 2015 (the scheduled expiration date of the New Agreements).

In addition, the Board is being requested to approve a rent reconciliation agreement with KMCWC under which the University would pay approximately \$787,625.72 to KMCWC to cover the rent amount due during the period between January 1, 2014, through and including August 31, 2015 ("Gap Period"). In return, KMCWC will be: (a) acknowledging that the University has fulfilled any applicable payment obligations to KMCWC during the Gap Period and (b) releasing and discharging the University from any further liability and responsibility for the payment of rent, common area maintenance ("CAM") charges, and other charges that may be or have been payable during the Gap Period (collectively the "KMCWC's Release"). The University payment and the KMCWC Release comprise the essential terms of the proposed rent reconciliation agreement ("Rent Reconciliation Agreement"). The primary reason for the proposed Rent Reconciliation Agreement is that KMCWC is not willing to agree to make the New Agreements retroactive to January 1, 2014, based in part on health care regulatory compliance concerns and in part on KMCWC policy.

RECOMMENDED EFFECTIVE DATE:

It is requested that the Board approve a start date of September 1, 2015, for each of the New Agreements and that the University be granted the authority to enter into the New Agreements and the Rent Reconciliation Agreement, effective from the date of Board approval. It is also requested that the Board approve a start date of January 1, 2016, for the Continuation Agreements and that the University be granted the authority to enter into the Continuation Agreements, effective from the date of Board approval.

ADDITIONAL COST:

The approval and execution of the New Agreements and the Continuation Agreements are not anticipated to result in any additional out-of-pocket costs or expenses to the University, other than the rents, pro-rata share of CAM, general excise tax payments, and other applicable charges payable under the New Agreements.

PURPOSE:

Rent Reconciliation Agreement

The University and KMCWC have tentatively agreed to the Rent Reconciliation Agreement under which the parties would resolve all issues relating to the University's payments (such as base rent, CAM charges, and general excise taxes) for the use and occupancy of the University Premises during the Gap Period, which runs from January 1, 2014, through and including August 31, 2015. Note that, unlike the Prior Agreement, the New Agreements contain holdover clauses, which should mitigate the need for any large rent reconciliation payments in the future should the parties not execute an extension/amendment in a timely manner.

The essential terms of the proposed Rent Reconciliation Agreement include the following, with a summary of the remaining terms listed on the attached major term sheet:

- (1) **Rental payments.** The fair market rent payable to KMCWC for the University's use of the University Premises during the Gap Period, is essentially the same per rentable square foot rent being charged by Healthcare Realty Trust, Incorporated ("HRT") to KMCWC under separate master leases for the 7th floor and 8th floor of the Building between HRT, as lessor, and KMCWC, as lessee (collectively the "Master Leases").

The total payment due from the University to KMCWC covering the Gap Period is \$787,625.72 ("True-Up Amount").

JABSOM acknowledges that no rent has been paid for its use of the University Premises during the Gap Period and the True-Up Amount is due and payable to KMCWC within a reasonable time after Board of Regents approval is obtained and not later than the time KMCWC executes the New Agreements.

- (2) **KMCWC release.** Simultaneously upon receiving the payment of the True-Up Amount from the University, KMCWC shall execute the Rent Reconciliation Agreement under which KMCWC shall release and forever discharge the University from any claims, demands, actions, liabilities, losses, damages, and/or responsibilities arising from or related to the University's obligations to pay rent, CAM charges and any other charges during the Gap Period, including the payment of any amounts that may or might be deemed to be due and owing to KMCWC by the University.

New Agreements

The Board is also being requested to approve the New Agreements, consistent with the terms listed on the attached major term sheets for the New Agreements, including the initial term which is to be from September 1, 2015, through and including December 31, 2015.

The major terms common to both Agreements include:

- (1) Parties -KMCWC and the University.

- (2) Initial Term (September 1, 2015, through and including December 31, 2015).
- (3) Extension Option (option to extend for one period of 5 years).
- (4) Option to Terminate upon certain conditions (University may terminate upon 30 days prior notice).
- (5) Permitted Use (offices and support of University educational, research, clinical, and service activities).
- (6) Base Rent and CAM payment rates (based on rental square footage).
- (7) CAM payment obligation (e.g., Master Lease pass through of KMCWC CAM payment obligation, scope, reconciliation, and right to audit).
- (8) University's maintenance and repair obligations.
- (9) Compliance with applicable laws and regulations, including healthcare laws and regulations, and KMCWC and HRT rules.
- (10) University covenants (hazardous materials and infectious waste handling, and prohibition against liens).
- (11) Master Lease (e.g., each New Agreement is subordinate to its corresponding Master Lease, University cannot comply with certain KMCWC Master Lease obligations, KMCWC not obligated to perform if HRT does not perform, KMCWC will not terminate or change Master Lease terms if adverse impact on the University, and University may not commit an act that causes KMCWC to be in breach of a Master Lease).
- (12) University government healthcare program representations (e.g., no exclusions from participation in government healthcare program and no sanctions or convictions of criminal offenses).
- (13) Standard University Limitations.
- (14) No transfer/assignment of the University's interest without KMCWC and HRT consent.

The major terms unique to the 7th Floor Agreement include:

- (1) Specific square footage of the University Premises.
- (2) Specific amount of Base Rent and CAM payment obligation.

- (3) Sharing of University Premises (with Kapi'olani Medical Specialists (KMS), a KMCWC affiliate and a possible separate University/KMS agreement).
- (4) University's Usage Rate set at 75% (with KMS allocated a 25% usage rate).

Continuation Agreements

Under the Continuation Agreements, JABSOM will be permitted to continue using and occupying the 7th and 8th Floors of the Building beyond December 31, 2015 (the scheduled expiration date of the New Agreements). It is anticipated that the terms of the Continuation Agreements will be substantially similar to the terms of the New Agreements. The Continuation Agreements could take the form of amendments to the New Agreements or new use and occupancy agreements.

Master Lessor Consent and Agreement

HRT, as the master lessor, and KMCWC, as the master lessee, entered into separate Master Leases covering the 7th and 8th Floors of the Building. Under the Master Leases, KMCWC is required to obtain HRT's consent for the New Agreements and the Continuation Agreements. HRT in the past has required that both KMCWC and the University to be parties to and sign HRT's consent and agreement. HRT is willing to issue HRT's consent and agreement and consent to the New Agreements and the Continuation Agreements (collectively the "Consent") on the condition that: (a) HRT not be obligated to provide any services to the University Premises other than what HRT is obligated to provide to KMCWC under the respective Master Leases, (b) the University has no claim or right of action directly against HRT (with the University's claim or right of action being only against KMCWC), and (c) KMCWC shall not be released or relieved of any obligations under the respective Master Leases.

BACKGROUND INFORMATION:

JABSOM Use of the University Premises

JABSOM's Department of Pediatrics is housed on the 7th Floor of the Building and JABSOM's Department of Obstetrics, Gynecology, and Women's Health is housed on the 8th Floor of the Building. The 7th and 8th floors of the Building are being leased by KMCWC from HRT under separate Master Leases and KMCWC in turn is making the University Premises available to the University under the New Agreements. The Master Leases between HRT and KMCWC were entered into on May 23, 2014, with an initial term from January 1, 2014, to and including December 31, 2015, and a KMCWC option to extend the term for one additional period of five (5) years. As described above, KMCWC has offered to the University the same terms and rental rates as are contained in each of the applicable Master Leases.

Procurement Agreement/Prior Agreement

Starting on or about July 1, 2001, JABSOM used the same University Premises pursuant to a Procurement Agreement for Services ("Procurement Agreement") with KMCWC that expired on June 30, 2008. JABSOM and KMCWC then negotiated and eventually reached agreement on a KMCWC/University Use and Occupancy Agreement that had an initial term from July 1, 2008, through and including September 30, 2013, and which was subsequently extended by amendment through

December 31, 2013 (collectively the "Prior Agreement"). The rental rate and amount payable by the University under the Prior Agreement was essentially the same as the lease rent that was payable by KMCWC for the University Premises under the prior master lease between HRT and KMCWC. At that time, the rent appeared reasonable when compared to lease rent rates being assessed by other hospitals and medical centers, such as The Queen's Medical Center (\$2.97 per square foot) and Kuakini Medical Center (\$2.28 per square foot).

Determining Extent of University Usage

A complicating factor in the Prior Agreement negotiations was that the faculty members of JABSOM's Department of Pediatrics were (and still are) dually employed by the University and KMS. One of the challenges was to equitably apportion the rental obligation to KMCWC based on the usage of the University Premises by such faculty members in their University/JABSOM capacities as compared to their KMS capacities.

It was concluded that it would be difficult and impractical to historically and prospectively track and monitor the percentages of each use. Consequently, KMCWC, KMS, and the University agreed that 75% was a reasonable approximation of the time that the faculty members of JABSOM's Department of Pediatrics used the 7th Floor of the Building for University purposes, with 25% of the time attributable to use by said faculty members in their capacities as KMCWC employees for KMS purposes.

Back at that time, the University did consider subleasing the University Premises from KMCWC. Because of the dual employment of the JABSOM faculty members by the University (JASBOM Department of Pediatrics) and KMCWC and the dual usage of the University Premises, however, it was determined that reaching agreement on such a sublease arrangement would be difficult. Consequently, KMCWC and the University entered into the Prior Agreement.

Negotiations on New Agreements

In February 2012, JABSOM asked KMCWC to begin discussions on extending the term of the Prior Agreement. KMCWC, however, declined to initiate discussions until KMCWC received a lease offer from HRT and concluded negotiations on the new Master Leases. Historically, KMCWC has passed on to the University the same lease rental rates and terms as were contained in its own master lease(s) with HRT.

Despite repeated requests from JABSOM to begin negotiations, KMCWC was unwilling to begin discussions until late August 2013 (just a few weeks before the Prior Agreement was to expire). At that time, KMCWC offered JABSOM a three-month extension (October 1, 2013 through December 31, 2013) of the Prior Agreement upon the same terms and conditions as were applicable in the final year of the Prior Agreement.

First Extension of Prior Agreement

KMCWC and the University were able to reach agreement on a short-term three-month extension to the Prior Agreement because KMCWC and HRT entered into a similar three-month extension of the

prior master lease. This extension of the Prior Agreement (with unchanged rent rates) was approved by the President in December of 2013.

Discussions regarding a further extension to the Prior Agreement and/or a new use and occupancy or sublease agreement have been ongoing between the University and KMCWC since 2012. However, as KMCWC and HRT were unable to agree on terms for the Master Lease until fairly recently, it took some time for KMCWC and the University to finalize the New Agreements.

Rent Reconciliation Agreement for Gap Period

KMCWC has also requested that the University enter into a separate agreement covering the University's use of the University Premises during the Gap Period. This is because KMCWC is declining to allow the New Agreements to be effective retroactively to January 1, 2014 (even though the HRT/KMCWC Master Leases were retroactive to January 1, 2014); according to KMCWC, this is due primarily to health care regulatory compliance concerns and KMCWC's own policy. Instead, both of the New Agreements are to be effective from September 1, 2015. This September 1, 2015 effective date was selected by KMCWC as the commencement date for the New Agreements in order to allow sufficient time for the University to obtain all necessary approvals for the New Agreements, including approval of the Board of Regents.

Rents Under Rent Reconciliation Agreement and New Agreements Compared to Prior Agreement

Under the Rent Reconciliation Agreement, the combined monthly rents for the University Premises (7th and 8th Floors) would increase from \$36,990.87 for the final year under the Prior Agreement to \$39,323.13 for the first year under the Rent Reconciliation Agreement, representing a total average increase of approximately 6.3% (7.8% increase for the 7th Floor and 5.6% for the 8th Floor, respectively). Under the Rent Reconciliation Agreement and the New Agreements, the Base Rent is increased by approximately 3% in the second year, with no change in the CAM payment rate. Thus, under the Rent Reconciliation Agreement and New Agreements, the combined monthly rents for the University Premises (7th and 8th Floors) would increase from \$39,323.13 for the first year to \$39,468.52 for the second year, representing a total average increase of approximately 1.28% (1.5% increase for the 7th Floor and 1.15% for the 8th Floor, respectively), including a minor adjustment for a reduction of 161 square feet on the 7th Floor beginning January 1, 2015.

The cost on a monthly basis (pre-GET) in the first year under the Rent Reconciliation Agreement for the 7th Floor would be approximately \$17,282.10 or about \$2.20 per rentable square foot. This compares with a monthly cost of approximately \$16,131.02 or about \$2.06 per rentable square foot for use of the 7th Floor of the Building under the Prior Agreement. The cost on a monthly basis (pre-GET) in the second year for the 7th Floor under both the Rent Reconciliation Agreement and the 7th Floor Agreement is approximately \$17,190.48 or about \$2.23 per rentable square foot (with space reduction of 162 square feet).

It should be noted that the cost per square foot on the 7th Floor under both the Prior Agreement, the Rent Reconciliation Agreement, and the 7th Floor Agreement reflects the University's 75% usage rate, even though the University does in fact utilize the entirety of the 10,474 rentable square feet

(reduced to 10,313 on January 1, 2015) on the 7th Floor, albeit on shared basis. Thus, it might be said that the University maintains use of 10,313 square feet of space on the 7th Floor for only \$17,190.48 per month (pre-GET) for 2015; this is approximately \$1.67 per square foot for the University's use of the 7th Floor.

The cost on a monthly basis (pre-GET) in the first year of the Reconciliation Agreement for the 8th Floor is approximately \$20,051.61 or about \$2.33 per rentable square foot. This compares with a monthly cost of approximately \$19,195.27 or about \$2.29 per rentable square foot for using the 8th Floor of the Building under the Prior Agreement. The cost on a monthly basis (pre-GET) in the second year of the University's use of the 8th Floor under both the Rent Reconciliation Agreement and the 8th Floor Agreement is approximately \$20,281.26 or about \$2.36 per rentable square foot.

Analysis of Comparable Properties

JABSOM has performed an analysis of comparable properties in the area, specifically other hospitals and medical/professional office buildings in the Honolulu area (attached). Costs for hospital, medical and other office spaces in similar areas ranged between \$2.35 per square foot to \$5.36 per square foot (inclusive of CAM), with an average rate of approximately \$3.35 per square foot (inclusive of CAM). Costs for leased space at the specified hospitals (inclusive of rates under existing or pending University leases) ranged between \$2.35 per square foot to \$3.75 per square foot (inclusive of CAM), with an average rate of approximately \$3.09 per square foot (inclusive of CAM).

Costs for leased space at medical office buildings (inclusive of hospitals) averaged approximately \$3.39 per square foot (inclusive of CAM). Compared to the lease rent rates (inclusive of CAM) for leased space at hospitals and medical/professional office buildings in the Honolulu area (i.e., average of about \$3.35 per square foot), KMCWC's lease rent rates of \$2.20 and \$2.33 per rentable square foot for Year 1 (inclusive of CAM), and as the same may be increased in accordance with the terms of the New Agreements (subject to the applicable maximum cap increases) appear reasonable.

JABSOM does not believe that JABSOM or the University will be able to secure similar office space in the vicinity of KMCWC to support JABSOM activities at KMCWC at the same or better rental rates (inclusive of CAM). Additionally, as JABSOM's programs are inextricably tied to clinical activities at KMCWC and its neighboring facilities, JABSOM believes there is no other practical or comparable alternative and that JABSOM should continue using the University Premises under the 7th Floor Agreement and the 8th Floor Agreement, respectively.

ACTION RECOMMENDED:

It is recommended that the Board of Regents:

1. **Approve the Rent Reconciliation Agreement.** Approve the Rent Reconciliation Agreement between KMCWC and the University covering the University's use of the University Premises (7th and 8th Floors of the Building) during the Gap Period, consistent with the terms described herein and in the attached major term sheet.

2. Approve the New Agreements. Approve the New Agreements between the University and KMCWC separately covering the University's use of the 7th Floor and the 8th Floor of the Building during the period from September 1, 2015, through and including December 31, 2015, consistent with the terms of the New Agreements described herein and in the attached major term sheets.
3. Authorize President to finalize, execute Continuation Agreements. Authorize the President to negotiate, finalize, and execute the Continuation Agreements (e.g., whether by amendments to the New Agreements or new use and occupancy agreements), upon terms substantially similar to the New Agreements herein, that would allow JABSOM to continue occupying the 7th and 8th Floors of the Building beyond December 31, 2015 (the scheduled expiration date of the New Agreements).
4. Approve the Consent. Approve the Consent between HRT, KMCWC, and the University under which HRT will or may be consenting to the New Agreements and the Continuation Agreements, as required under the Master Leases, consistent with and similar to the terms contained in the Consent executed in connection with the Prior Agreement (copy attached).
5. Authorize the President to finalize and execute. Authorize the President to: (a) complete or have completed negotiations for the New Agreements, the Rent Reconciliation Agreement, and the Continuation Agreements, (b) finalize and execute the New Agreements, the Rent Reconciliation Agreement, and the Continuation Agreements, together with the Vice President for Administration ("VPA"), in accordance with Board of Regents Policy RP 10.201, and (c) take such other action as may be deemed necessary, including the execution of additional documents, in connection with the New Agreements, the Rent Reconciliation Agreement, and the Continuation Agreements and in so doing, the President and VPA will consult with the UH Mānoa Chancellor and the JABSOM Dean.

Attachment(s)

1. Major Term Sheet for 7th Floor New Agreement
 2. Major Term Sheet for 8th Floor New Agreement
 3. Major Term Sheet for Rent Reconciliation Agreement
 4. Consent and Agreement between HRT, KMCWC, and the University (Prior Agreement)
 5. Survey of Comparable Properties
- c: Executive Administrator and Secretary to the Board Cynthia Quinn

MAJOR TERM SHEET

USE AND OCCUPANCY AGREEMENT
BETWEEN
KAPI'OLANI MEDICAL CENTER FOR WOMEN AND CHILDREN
AND
UNIVERSITY OF HAWAI'I
(for the benefit of the John A. Burns School of Medicine)

7th Floor
KMCWC Medical Office Building/Hospital
1319 Punahou Street, Honolulu, Hawai'i

1. Parties.
 - a. Landlord: Kapi'olani Medical Center for Women and Children (KMCWC)
 - b. Tenant: University of Hawaii ("University") for the benefit of the University of Hawaii at Mānoa, John A. Burns School of Medicine ("JABSOM").
2. University Premises. 7th Floor of KMCWC Medical Office Building/Hospital located at 1319 Punahou Street, Honolulu, Hawai'i ("Building"), containing approximately 10,313 rentable square feet of space ("University Premises") as shown on attached Exhibit A.
 - a. Prior Agreement. KMCWC and the University entered into a prior Use and Occupancy Agreement dated July 1, 2008, that had an initial term from July 1, 2008, through and including September 30, 2013, and that was subsequently extended by amendment through December 31, 2013 (collectively the "Prior Agreement").
 - b. New Agreement. KMCWC and the University plan to enter into a new use and occupancy agreement covering the University's use of the University Premises (which will consist of only the 7th Floor of the Building ("New Agreement").
 - c. Comparison of space area. Under the Prior Agreement, the area of the University Premises was a total of 14,854 square feet, with about 7,849 square feet allocable to the 7th Floor. The increase in square footage of the University Premises under the New Agreement (10,313 square feet) as compared to the Prior Agreement (7,849 square feet) is because KMCWC's master lessor changed its method of assessing rent from being based on usable square feet to being based on rentable square feet. The actual area to be used by the University as part of the University Premises under the New Agreement is essentially the same as under the Prior Agreement (but less a single small suite measuring about 161 rentable square feet).
3. Term. Four (4) months, beginning on September 1, 2015, and expiring on December 31, 2015 ("Initial Term").

4. Option to Extend. The University shall have the right or option to extend the term of the New Agreement for one additional period of five (5) years (the "Option Term"), provided that KMCWC extends the term of its master lease with Healthcare Realty Services Incorporated, as agent for Healthcare Realty Trust Incorporated (collectively "HRT"), the lessor under the master lease ("Master Lease") for a similar period and the University delivers to KMCWC written notice of the University's intent to exercise the Option Term ("University's Intent Notice") within thirty (30) days of receiving written confirmation from KMCWC that KMCWC has exercised its option to extend the term of its Master Lease with HRT.

The University's Intent Notice shall only be construed or interpreted as the University's conditional intention to extend the term of the New Agreement for an additional period of five (5) years and not a binding commitment to so extend the New Agreement unless and until: (1) KMCWC's exercise of its own option to extend the term of the Master Lease with HRT has become irrevocable, (2) KMCWC and the University agree upon the terms and conditions of the New Agreement applicable during the Option Term (collectively the "New Terms"), and (3) the University obtains all necessary University approvals for the New Terms, including any amendment to the existing New Agreement, in accordance with applicable University policies and requirements. The University's exercise of the Option Term and/or the issuance of the University's Intent Notice shall in no way be construed or interpreted as an acceptance of any terms, covenants, and/or conditions for the New Agreement (including the rent and pro rata share of common operating costs ("CAM") that would be payable by the University). With respect to the New Agreement, KMCWC and the University agree that the New Terms applicable during the Option Term will be the same as that applicable during the Initial Term, except for the rent and CAM amounts that are to be payable by the University, which shall be determined in part based on the same payable by KMCWC to HRT under an extension of the Master Lease.

5. Option to Terminate. The University has the right to terminate the New Agreement if any of the following conditions occur:
 - a. Should the University's public funding or allotment be substantially cut or;
 - b. The program and/or agency is abolished, terminated, reorganized, or substantially downsized.

The University will be required to furnish KMCWC with: (i) appropriate evidence of the existence or occurrence of any of the above conditions and (ii) reasonable prior written notice (e.g., 30 days) of the University's intent to terminate the New Agreement.

6. Permitted use. The University Premises may be used by the University for office and other uses related to the University's teaching, educational, research, clinical, and service activities.
7. Shared use. The University is to share the use of the University Premises with Kapi'olani Medical Specialists ("KMS"), an affiliate of KMCWC, the members of which are KMS's physician employees who have also JABSOM faculty appointments. Our understanding is that KMS is KMCWC's physician practice plan for its physician employees and is similar in concept to the University Clinical, Education, Research Associates ("UCERA") which is the practice plan for JABSOM faculty members.

KMCWC agrees to release and discharge the University from any liability or responsibility, and not to hold the University liable or responsible, for any of KMS' obligations with respect to the

use of the University Premises, including the payment of rent, CAM payments, taxes, or any other charges.

KMCWC, the University, and KMC have agreed upon a use allocation of about 75% for the University ("University Usage Rate") and 25% for KMS ("KMS Usage Rate").

If deemed necessary, the University will enter into a separate agreement with KMS covering the sharing of the University Premises upon terms that are not inconsistent with the terms of the New Agreement.

8. Rent and Other Charges:

a. Monthly Gross Rent/Base Rent Schedule:

The gross rent payable by the University to KMCWC under the New Agreement for the Initial Term (September 1, 2015 through December 31, 2015) will be \$18,106.52 per month (including base rent ("Base Rent") of about \$ 7,966.79, the University's pro-rata share of common area maintenance and operating expenses ("CAM Payment") of about \$11,215.39 (after applying the University Usage Rate) and the applicable general excise tax ("GET") of about \$916.04).

As the University is sharing use of the University Premises with KMS, the total monthly gross rent payable by the University covers the University's 75% usage allocation.

Period	Monthly Base Rent	Monthly OE Payment	Sum (Base Rent + OE Payment)	Monthly Rate per SF (Base Rent + OE Payment) / 10,313	University Usage Rate*	Subtotal (Sum x 75%)	GET (4.712% of Subtotal)	Total (Subtotal + GET)	Second Tier GET (Total x 0.04712 x 0.125)	Monthly Rent (Total + Second Tier GET)	Period Rent
09/01/15 - 12/31/15	\$7,966.79	\$14,953.85 (based on CAM of \$1.45 per SF)	\$22,920.64	\$2.2225	75%	\$17,190.48	\$810.02	\$18,000.50	\$106.02	\$18,106.52	\$72,426.08

b. General Excise Taxes: The University will pay KMCWC, as additional rent, general excise tax on the rent and the CAM Payment payable by the University to KMCWC.

c. Security Deposit. None.

d. Taxes. The University will be responsible for paying all federal, state, and county taxes assessed against the University by reason of the conduct of the University's activities, its interest in the University Premises, or any personal property placed within the University Premises.

e. Common Area Maintenance

(1) University's CAM Payment. The University will be required to pay KMCWC, in addition to the Base Rent, additional rent sufficient to cover the University's

proportionate share of the common area maintenance expenses applicable to the University Premises. The University's CAM Payment for the Initial Term shall be \$11,215.39 per month (based on \$1.45 per square foot and after applying the University Usage Rate) or an annual total of \$44,861.56 for the year (four months only).

- (2) KMCWC pass through. The University's CAM Payment obligation is to be essentially a pass through of KMCWC's CAM Payment obligation under its Master Lease (e.g., that portion of KMCWC's Proportionate Share of the Operating Expenses (as those terms are defined in the Master Lease) that apply to the 7th Floor of the Building) during the Initial Term of the New Agreement, plus GET, subject to adjustment in subsequent years and periodic reconciliation and as adjusted by the University Usage Rate. The University's CAM Payment obligation shall be due monthly at the same time the Base Rent is due and payable.
- (3) Scope of University's CAM Payment obligation. The expenses included as part of the University's CAM Payment obligation will be the same as that included in definition for KMCWC's Proportionate Share of the Operating Expenses contained in Exhibit B to the Master Lease which is attached hereto.
- (4) Reconciliation. Once KMCWC's CAM Payment obligation is determined under the Master Lease and/or KMCWC verifies that actual amount of the University's CAM Payment obligation, the amount of the University's CAM Payment to KMCWC under the New Agreement will be adjusted and reconciled so that if the University has overpaid its CAM Payment obligation, KMCWC shall credit such excess against the University's next CAM Payment obligation or if the University has underpaid its CAM Payment obligation, the University will pay KMCWC the difference between the University's actual CAM Payment obligation and the University's CAM Payment amount paid by the University during the preceding calendar year.
- (5) Audit. The University has the right, not more than once a year, to have KMCWC's CAM Payment obligation and the University's CAM Payment obligation audited and if the variance in the CAM Payment obligations is greater than five percent (5%), KMCWC will pay or reimburse the University for the cost of the audit.

9. Parking. KMCWC has no obligation to provide or make available parking to the University.

10. Maintenance and Repairs.

The University shall pay for all alarm testing and security services for the University Premises. Trash removal and cleaning services for the University Premises are to be provided by HRT. KMCWC will provide electricity for normal power requirements to the University Premises.

The University is required to maintain and keep the University Premises in good condition in compliance with all applicable laws at the University's expense during the Initial Term.

The University is also required to repair any damage to the University Premises or the Building resulting from the University's negligence. If the University fails to make such repairs, KMCWC may make the repairs at the University's cost plus 15% for KMCWC's overhead.

The University is not required to make any improvements, alterations, or repairs other than as expressly provided in the New Agreement.

11. Compliance with Applicable Laws.

The University is required to maintain all licenses, permits, and approvals customary to its business on the University Premises and comply with all federal, state, and county laws, ordinances, rules, and regulations, including federal OSHA regulations and those governing sanitation, safety, and health.

The intent of the University and KMCWC is that the New Agreement be in compliance with applicable health care laws and regulations, including federal anti-kickback and physician self-referral statutes, and specifically that the New Agreement qualifies for the space rental safe harbor to the federal anti-kickback statute and the rental of office space exception to the federal physician self-referral statute. As part of this compliance, the parties represent that the rents due under the New Agreement are based on fair market value as determined at arms' length and do not take into account the volume or value of any referrals or other business between the parties. The parties agree to reform the Agreement if necessary to comply with applicable health care laws and regulations, in a manner consistent with the terms and intent of the New Agreement.

12. Compliance with KMCWC/HRT rules.

The University's obligation to comply with rules implemented or amended by KMCWC and/or HRT for the operation or use of the University Premises and the Building ("Rules") is subject to and limited by the "University Limitations" and the University receiving prior written notice of the Rules, and provided that the Rules:

- a. Not inconsistent with New Agreement. Are not contrary to the terms of the New Agreement;
- b. Applicable to University's use. Are applicable to the University's business in the University Premises or the University's use of the University Premises;
- c. No action inconsistent with laws. Do not require the University to take any action inconsistent with applicable laws;
- d. No additional material cost. Do not impose any material additional cost, expense, or liability upon the University; and
- e. No waiver. Do not require the University to waive or release any rights, powers, authorities, or claims that the University may have or acquire.

13. University Covenants.

- a. Infectious Waste Disposal. If the University generates "Infectious Waste" as defined in the New Agreement (e.g., infectious substance, bio-waste, or medical waste as defined in any governmental laws and regulations), the University shall be responsible and pay for all costs of treating, segregating, packaging, transporting, and disposing of the Infectious Waste in compliance with all applicable governmental laws and regulations.

- b. Hazardous materials. The University shall not cause or permit any Hazardous Materials (as defined in the Master Lease) to be brought, kept, or used on the University Premises except in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession and in accordance with law. "Hazardous Materials" as such term is used in the Master Lease means "any hazardous or toxic substances, material or waste, regulated or listed pursuant to any federal, state or local environmental law, including without limitation, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act as such Acts have been or are hereafter amended from time to time."
- c. Liens. The University shall not suffer or permit any mechanic's liens or materialman's liens to be filed against the University Premises.

14. Master Lease.

- a. Subordinate to Master Lease. The New Agreement is subject and subordinate to the Master Lease.
- b. KMCWC performance conditioned upon Master Lease. KMCWC's obligation to perform under the New Agreement is conditioned on HRT's performance of its obligations under the Master Lease.
- c. University cannot comply with all Master Lease requirements. KMCWC acknowledges that the University is not authorized to and cannot indemnify, defend, and/or hold harmless KMCWC or any other entity under the New Agreement and that the University cannot perform this obligation to the extent that it might be required as a pass through of KMCWC's indemnity, defense, and hold harmless obligations under the Master Lease. The University's ability and capability to perform its obligations under the New Agreement are subject to and limited by the University Limitations (as defined herein).
- d. KMCWC will not adversely affect University in Master Lease changes. KMCWC will not terminate the Master Lease voluntarily without cause or modify it in a manner that adversely affects the University's rights under the New Agreement.
- e. University not to commit act causing KMCWC Master Lease breach. Subject to and limited by the University Limitations, the University covenants not to commit any act or omission that would result in KMCWC being in violation or breach of the Master Lease.

15. Government Healthcare Program representations. The University is required to represent to KMCWC that to the best of the University's reasonable knowledge neither the University nor its employees who will be using the University Premises have been:

- a. Excluded from participation. Excluded, served with a notice of exclusion or proposed exclusion, or committed any acts which are cause for exclusion, from participation in any federal or state healthcare program, including Medicare or Medicaid;

- b. Sanctioned. Sanctioned (such as criminal or civil penalties) under any federal or state healthcare program; or
- c. Convicted. Convicted under federal or state law of a criminal offense relating to any of the following:
 - (1) Neglect or abuse of a patient.
 - (2) Delivery of item or service under a federal/state healthcare program.
 - (3) Fraud, theft, embezzlement, breach of fiduciary duty, or other financial misconduct.
 - (4) Unlawful manufacture, distribution or dispensing of a controlled substance.
 - (5) Interference with an investigation into any of the described criminal offenses.

16. University's Limitations.

The following provisions help limit the University's liability under the New Agreement and shall apply to all of the University's obligations, duties, responsibilities, and liabilities under the New Agreement:

- a. University not authorized to indemnify. Because the University, as a State of Hawaii agency, is not authorized to indemnify KMCWC or HRT in any way, the University will have no contractual duty to indemnify, defend, or hold harmless KMCWC, HRT or any other persons under any circumstances arising out of or related to this New Agreement and the University's occupancy of the University Premises.
- b. University responsibility. The University will be responsible for damages and injuries caused by the University's officers or employees in the course of their employment to the extent that the University's liability for such damage or injury has been determined by a court or otherwise agreed to by the University. The University shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted, or otherwise properly made available for that purpose.
- c. University not responsible for others. KMCWC acknowledges that the University can only be held responsible for the actions of the University and the University's officers and employees, but not for any actions or omissions of any other person or entity, including, without limitation, any person or entity who could be deemed to be the University's representatives, agents, students, invitees, or customers.
- d. University obligations subject to funding. To the extent that the University is obligated to perform, make any payments, or satisfy a liability under the New Agreement, the University's ability to satisfy such obligations or liabilities, particularly any obligations to pay monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities.
 - (1) Qualify each University obligation to perform. This provision shall apply to and qualify each University obligation to perform under the New Agreement, including, any University obligation to reimburse KMCWC for any work performed by KMCWC due to the University's failure or refusal to perform and any University obligation to comply with the Rules.

- (2) University obligation to notify KMCWC. If the University knows, in advance, that it will not obtain requisite funding or will not be able to fulfill any obligation requiring such funding, then the University must notify KMCWC in writing within 30 days of the University obtaining such knowledge. KMCWC will thereafter have the right to immediately terminate the New Agreement within 30 days after KMCWC receives such notice from the University.
17. Liability Insurance. The University, as a sovereignty, is self-insured and therefore insurance, including but not limited to, general liability and property damage insurance, is not required. Upon KMCWC's request, the University shall obtain a statement of self-insurance from the State covering the New Agreement.
18. No Transfer Without KMCWC Consent. The University may not assign or sublicense any portion of the University Premises without the prior written consent of KMCWC and HRT, which may be withheld at the sole and absolute discretion of KMCWC or HRT.
19. Holding Over. If the University retains occupancy of the University Premises after the expiration of the term of the New Agreement without executing or intending to execute a document extending or renewing the New Agreement, the University shall be deemed to occupy the Premises on a month to month basis at the gross rent provided for under the New Agreement, subject to all the other terms, covenants, and conditions contained under the New Agreement insofar as the same are applicable to a month to month occupancy. Such month to month tenancy shall be terminable at will by either party upon thirty (30) days written notice to the other party.

ATTACHMENT 2

MAJOR TERM SHEET

USE AND OCCUPANCY AGREEMENT
BETWEEN
KAPI'OLANI MEDICAL CENTER FOR WOMEN AND CHILDREN
AND
UNIVERSITY OF HAWAI'I
(for the benefit of the John A. Burns School of Medicine)

8th Floor
KMCWC Medical Office Building/Hospital
1319 Punahou Street, Honolulu, Hawai'i

1. Parties.
 - a. Landlord: Kapi'olani Medical Center for Women and Children (KMCWC)
 - b. Tenant: University of Hawaii ("University") for the benefit of the University of Hawaii at Mānoa, John A. Burns School of Medicine ("JABSOM").
2. University Premises. 8th Floor of KMCWC Medical Office Building/Hospital located at 1319 Punahou Street, Honolulu, Hawai'i ("Building"), containing approximately 8,612 rentable square feet of space ("University Premises") as shown on attached Exhibit A.
 - a. Prior Agreement. KMCWC and the University entered into a prior Use and Occupancy Agreement dated July 1, 2008, that had an initial term from July 1, 2008, through and including September 30, 2013, and that was subsequently extended by amendment through December 31, 2013 (collectively the "Prior Agreement").
 - b. New Agreement. KMCWC and the University plan to enter into a new use and occupancy agreement covering the University's use of the University Premises (which will consist of only the 8th Floor of the Building ("New Agreement")).
 - c. Comparison of space area. Under the Prior Agreement, the area of the University Premises was a total of 14,854 square feet, with about 7,005 square feet allocable to the 8th Floor. The increase in square footage of the University Premises under the New Agreement (8,612 square feet) as compared to the Prior Agreement (7,005 square feet) is because KMCWC's master lessor changed its method of assessing rent from being based on usable square feet to being based on rentable square feet. The actual area to be used by the University as part of the University Premises under the New Agreement is the same as that used under the Prior Agreement.
3. Term. Four (4) months, beginning on September 1, 2015, and expiring on December 31, 2015 ("Initial Term").
4. Option to Extend. The University shall have the right or option to extend the term of the New Agreement for one additional period of five (5) years (the "Option Term"), provided that

KMCWC extends the term of its master lease with Healthcare Realty Services Incorporated, as agent for Healthcare Realty Trust Incorporated (collectively "HRT"), the lessor under the master lease ("Master Lease") for a similar period and the University delivers to KMCWC written notice of the University's intent to exercise the Option Term ("University's Intent Notice") within thirty (30) days of receiving written confirmation from KMCWC that KMCWC has exercised its option to extend the term of its Master Lease with HRT.

The University's Intent Notice shall only be construed or interpreted as the University's conditional intention to extend the term of the New Agreement for an additional period of five (5) years and not a binding commitment to so extend the New Agreement unless and until: (1) KMCWC's exercise of its own option to extend the term of the Master Lease with HRT has become irrevocable, (2) KMCWC and the University agree upon the terms and conditions of the New Agreement applicable during the Option Term (collectively the "New Terms") and (3) the University obtains all necessary University approvals for the New Terms, including any amendment to the existing New Agreement, in accordance with applicable University policies and requirements. The University's exercise of the Option Term and/or the issuance of the University's Intent Notice shall in no way be construed or interpreted as an acceptance of any terms, covenants, and/or conditions for the New Agreement (including the rent and pro rata share of common operating costs ("CAM") that would be payable by the University). With respect to the New Agreement, KMCWC and the University agree that the New Terms applicable during the Option Term will be the same as that applicable during the Initial Term, except for the rent and CAM amounts that are to be payable by the University, which shall be determined in part based on the same payable by KMCWC to HRT under an extension of the Master Lease."

5. Option to Terminate. The University has the right to terminate the New Agreement if any of the following conditions occur:
 - a. Should the University's public funding or allotment be substantially cut or;
 - b. The program and/or agency is abolished, terminated, reorganized, or substantially downsized.

The University will be required to furnish KMCWC with: (i) appropriate evidence of the existence or occurrence of any of the above conditions and (ii) reasonable prior written notice (e.g., 30 days) of the University's intent to terminate the New Agreement.

6. Permitted use. The University Premises may be used by the University for office and other uses related to the University's teaching, educational, research, clinical, and service activities.
7. Rent and Other Charges:
 - a. Monthly Gross Rent/Base Rent Schedule:

The gross rent payable by the University to KMCWC under the New Agreement for the Initial Term (September 1, 2015 through December 31, 2015) will be \$21,362.00 per month (including base rent ("Base Rent") of \$7,793.86, the University's pro-rata share of common area maintenance and operating expenses ("CAM Payment") of about \$12,487.40, and the applicable general excise tax ("GET") of about \$1,080.74).

Period	Monthly Base Rent	Monthly OE Payment	Sum (Base Rent + OE Payment)	Monthly Rate per SF (Base Rent + OE Payment) / 8,612	GET (4.712% of Subtotal)	Total (Subtotal + GET)	Second Tier GET (Total x 0.04712 x 0.125)	Monthly Rent (Total + Second Tier GET)	Period Rent
09/01/15 – 12/31/15	\$7,793.86	\$12,487.40 (based on CAM of \$1.45 per SF)	\$20,281.26	\$2.355	\$955.65	\$21,236.91	\$125.09	\$21,362.00	\$85,448.00

- b. General Excise Taxes: The University will pay KMCWC, as additional rent, general excise tax on the rent and the CAM Payment payable by the University to KMCWC.
- c. Security Deposit. None.
- d. Taxes. The University will be responsible for paying all federal, state, and county taxes assessed against the University by reason of the conduct of the University's activities, its interest in the University Premises, or any personal property placed within the University Premises.
- e. Common Area Maintenance
- (1) University's CAM Payment. The University will be required to pay KMCWC, in addition to the Base Rent, additional rent sufficient to cover the University's proportionate share of the common area maintenance expenses applicable to the University Premises. The University's CAM Payment for the Initial Term shall be \$12,487.40 per month (based on \$1.45 per square foot) or an annual total of \$49,949.60 for the year (four months only).
 - (2) KMCWC pass through. The University's CAM Payment obligation is to be essentially a pass through of KMCWC's CAM Payment obligation under its Master Lease (e.g., that portion of KMCWC's Proportionate Share of the Operating Expenses (as those terms are defined in the Master Lease) that apply to the 8th Floor of the Building) during the Initial Term of the New Agreement, plus GET, subject to adjustment in subsequent years and periodic reconciliation. The University's CAM Payment obligation shall be due monthly at the same time the Base Rent is due and payable.
 - (3) Scope of University's CAM Payment obligation. The expenses included as part of the University's CAM Payment obligation will be the same as that included in definition for KMCWC's Proportionate Share of the Operating Expenses contained in Exhibit B to the Master Lease which is attached hereto.
 - (4) Reconciliation. Once KMCWC's CAM Payment obligation is determined under the Master Lease and/or KMCWC verifies that actual amount of the University's CAM Payment obligation, the amount of the University's CAM Payment to KMCWC under the New Agreement will be adjusted and reconciled so that if the University has overpaid its CAM Payment obligation, KMCWC shall credit such excess against the University's next CAM Payment obligation or if the University has underpaid its

CAM Payment obligation, the University will pay KMCWC the difference between the University's actual CAM Payment obligation and the University's CAM Payment amount paid by the University during the preceding calendar year.

- (5) Audit. The University has the right, not more than once a year, to have KMCWC's CAM Payment obligation and the University's CAM Payment obligation audited and if the variance in the CAM Payment obligations is greater than five percent (5%), KMCWC will pay or reimburse the University for the cost of the audit.

8. Parking. KMCWC has no obligation to provide or make available parking to the University.

9. Maintenance and Repairs.

The University shall pay for all alarm testing and security services for the University Premises. Trash removal and cleaning services for the University Premises are to be provided by HRT. KMCWC will provide electricity for normal power requirements to the University Premises.

The University is required to maintain and keep the University Premises in good condition in compliance with all applicable laws at the University's expense during the Initial Term.

The University is also required to repair any damage to the University Premises or the Building resulting from the University's negligence. If the University fails to make such repairs, KMCWC may make the repairs at the University's cost plus 15% for KMCWC's overhead.

The University is not required to make any improvements, alterations, or repairs other than as expressly provided in the New Agreement.

10. Compliance with Applicable Laws.

The University is required to maintain all licenses, permits, and approvals customary to its business on the University Premises and comply with all federal, state, and county laws, ordinances, rules, and regulations, including federal OSHA regulations and those governing sanitation, safety, and health.

The intent of the University and KMCWC is that the New Agreement be in compliance with applicable health care laws and regulations, including federal anti-kickback and physician self-referral statutes, and specifically that the New Agreement qualifies for the space rental safe harbor to the federal anti-kickback statute and the rental of office space exception to the federal physician self-referral statute. As part of this compliance, the parties represent that the rents due under the New Agreement are based on fair market value as determined at arms' length and do not take into account the volume or value of any referrals or other business between the parties. The parties agree to reform the Agreement if necessary to comply with applicable health care laws and regulations, in a manner consistent with the terms and intent of the New Agreement.

11. Compliance with KMCWC/HRT rules.

The University's obligation to comply with rules implemented or amended by KMCWC and/or HRT for the operation or use of the University Premises and the Building is subject to and limited by the "University Limitations" and the University receiving prior written notice of the Rules, and provided that the Rules:

- a. Not inconsistent with New Agreement. Are not contrary to the terms of the New Agreement;
- b. Applicable to University's use. Are applicable to the University's business in the University Premises or the University's use of the University Premises;
- c. No action inconsistent with laws. Do not require the University to take any action inconsistent with applicable laws;
- d. No additional material cost. Do not impose any material additional cost, expense, or liability upon the University; and
- e. No waiver. Do not require the University to waive or release any rights, powers, authorities, or claims that the University may have or acquire.

12. University Covenants.

- a. Infectious Waste Disposal. If the University generates "Infectious Waste" as defined in the New Agreement (e.g., infectious substance, bio-waste, or medical waste as defined in any governmental laws and regulations), the University shall be responsible and pay for all costs of treating, segregating, packaging, transporting, and disposing of the Infectious Waste in compliance with all applicable governmental laws and regulations.
- b. Hazardous materials. The University shall not cause or permit any Hazardous Materials (as defined in the Master Lease) to be brought, kept, or used on the University Premises except in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession and in accordance with law. "Hazardous Materials" as such term is used in the Master Lease means "any hazardous or toxic substances, material or waste, regulated or listed pursuant to any federal, state or local environmental law, including without limitation, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act as such Acts have been or are hereafter amended from time to time."
- c. Liens. The University shall not suffer or permit any mechanic's liens or materialman's liens to be filed against the University Premises.

13. Master Lease.

- a. Subordinate to Master Lease. The New Agreement is subject and subordinate to the Master Lease.
- b. KMCWC performance conditioned upon Master Lease. KMCWC's obligation to perform under the New Agreement is conditioned on HRT performance of its obligations under the Master Lease.

- c. University cannot comply with all Master Lease requirements. KMCWC acknowledges that the University is not authorized to and cannot indemnify, defend, and/or hold harmless KMCWC or any other entity under the New Agreement and that the University cannot perform this obligation to the extent that it might be required as a pass through of KMCWC's indemnity, defense, and hold harmless obligations under the Master Lease. The University's ability and capability to perform its obligations under the New Agreement are subject to and limited by the University Limitations (as defined herein).
 - d. KMCWC will not adversely affect University in Master Lease changes. KMCWC will not terminate the Master Lease voluntarily without cause or modify it in a manner that adversely affects the University's rights under the New Agreement.
 - e. University not to commit act causing KMCWC Master Lease breach. Subject to and limited by the University Limitations (as defined herein), the University covenants not to commit any act or omission that would result in KMCWC being in violation or breach of the Master Lease.
14. Government Healthcare Program representations. The University is required to represent to KMCWC that to the best of the University's reasonable knowledge, neither the University nor its JABSOM employees who will be using the University Premises have been:
- a. Excluded from participation. Excluded, served with a notice of exclusion or proposed exclusion, or committed any acts which are cause for exclusion, from participation in any federal or state healthcare program, including Medicare or Medicaid;
 - b. Sanctioned. Sanctioned (such as criminal or civil penalties) under any federal or state healthcare program; or
 - c. Convicted. Convicted under federal or state law of a criminal offense relating to any of the following:
 - (1) Neglect or abuse of a patient.
 - (2) Delivery of item or service under a federal/state healthcare program.
 - (3) Fraud, theft, embezzlement, breach of fiduciary duty, or other financial misconduct.
 - (4) Unlawful manufacture, distribution or dispensing of a controlled substance.
 - (5) Interference with an investigation into any of the described criminal offenses.

15. University's Limitations.

The following provisions help limit the University's liability under the New Agreement and shall apply to all of the University's obligations, duties, responsibilities, and liabilities under the New Agreement:

- a. University not authorized to indemnify. Because the University, as a State of Hawaii agency, is not authorized to indemnify KMCWC or HRT in any way, the University will have no contractual duty to indemnify, defend, or hold harmless KMCWC, HRT, or any other persons under any circumstances arising out of or related to this New Agreement and the University's occupancy of the University Premises.

- b. University responsibility. The University will be responsible for damages and injuries caused by the University's officers or employees in the course of their employment to the extent that the University's liability for such damage or injury has been determined by a court or otherwise agreed to by the University. The University shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted, or otherwise properly made available for that purpose.
 - c. University not responsible for others. KMCWC acknowledges that the University can only be held responsible for the actions of the University and the University's officers and employees, but not for any actions or omissions of any other person or entity, including, without limitation, any person or entity who could be deemed to be the University's representatives, agents, students, invitees, or customers.
 - d. University obligations subject to funding. To the extent that the University is obligated to perform, make any payments, or satisfy a liability under the New Agreement, the University's ability to satisfy such obligations or liabilities, particularly any obligations to pay monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities.
 - (1) Qualify each University obligation to perform. This provision shall apply to and qualify each University obligation to perform under the New Agreement, including, any University obligation to reimburse KMCWC for any work performed by KMCWC due to the University's failure or refusal to perform and any University obligation to comply with the Rules.
 - (2) University obligation to notify KMCWC. If the University knows, in advance, that it will not obtain requisite funding or will not be able to fulfill any obligation requiring such funding, then the University must notify KMCWC in writing within 30 days of the University obtaining such knowledge. KMCWC will thereafter have the right to immediately terminate the New Agreement within 30 days after KMCWC receives such notice from the University.
16. Liability Insurance. The University, as a sovereignty, is self-insured and therefore insurance, including but not limited to, general liability and property damage insurance, is not required. Upon KMCWC's request, the University shall obtain a statement of self-insurance from the State covering the New Agreement.
17. No Transfer Without KMCWC Consent. The University may not assign or sublicense any portion of the University Premises without the prior written consent of KMCWC and HRT, which may be withheld at the sole and absolute discretion of KMCWC or HRT.
18. Holding Over. If the University retains occupancy of the University Premises after the expiration of the term of the New Agreement without executing or intending to execute a document extending or renewing the New Agreement, the University shall be deemed to occupy the Premises on a month to month basis at the gross rent provided for under the New Agreement, subject to all the other terms, covenants, and conditions contained under the New Agreement insofar as the same are applicable to a month to month occupancy. Such month to month tenancy shall be terminable at will by either party upon thirty (30) days written notice to the other party.

ATTACHMENT 3

MAJOR TERM SHEET

RENT RECONCILIATION AGREEMENT
BETWEEN
KAPI'OLANI MEDICAL CENTER FOR WOMEN AND CHILDREN
AND
UNIVERSITY OF HAWAI'I
(for the benefit of the John A. Burns School of Medicine)

7th and 8th Floors
KMCWC Medical Office Building/Hospital
1319 Punahou Street, Honolulu, Hawai'i

1. Parties.
 - a. Landlord: Kapi'olani Medical Center for Women and Children (KMCWC)
 - b. Tenant: University of Hawaii ("University") for the benefit of the University of Hawaii at Mānoa, John A. Burns School of Medicine ("JABSOM").
2. University Premises. 7th and 8th Floors of KMCWC Medical Office Building/Hospital located at 1319 Punahou Street, Honolulu, Hawai'i ("Building"), containing approximately 19,086 square feet of space ("University Premises") as shown on attached Exhibit A.
3. Term. Covering period from January 1, 2014, through and including August 31, 2015 ("Gap Period").
4. Rental payments. The fair market rent payable to KMCWC for the University's use of the University Premises during the Gap Period, based on rent charged by Healthcare Realty Trust Incorporated ("HRT") under the Master Leases, is: \$39,323.13 per month (\$18,203.02 per month for the 7th floor and \$21,120.11 per month for the 8th floor), inclusive of tax, for the period January 1, 2014 through December 31, 2014; and \$39,468.52 per month (\$18,106.52 per month for the 7th floor - due in part to reduction of 161 square feet - and \$21,362.00 for the 8th floor), inclusive of tax, for the period January 1, 2015 through August 31, 2015. This provides for a total amount of \$787,625.72 ("True-Up Amount"). JABSOM acknowledges that no rent has been paid for its use of the University Premises during the Gap Period and the True-Up Amount is due and payable to KMCWC within a reasonable time after Board of Regent approval is obtained and not later than the time KMCWC and the University execute the new use and occupancy agreements for the 7th Floor and the 8th Floor of the Building.
5. KMCWC release. Simultaneously upon receiving the payment of the True-Up Amount from the University, KMCWC shall execute the Rent Reconciliation Agreement under which KMCWC shall release and forever discharge the University from any claims, demands, actions, liabilities, losses, damages, and/or responsibilities arising from or related to the University's non-payment of rent, the University's proportionate share of the common area maintenance expenses applicable to the University Premises, and/or any other charges payable during the Gap Period,

including the payment of any amounts that may or might be deemed to be due and owing to KMCWC by the University during the Gap Period (collectively the "Released Claims").

6. KMCWC representations. KMCWC representation and warranty that it owns all claims, has not assigned or transferred ownership of the claims to any person or entity, terms of the Rent Reconciliation Agreement are binding upon KMCWC, KMCWC has obtained all approvals necessary and is authorized to enter into the Rent Reconciliation Agreement, and the Rent Reconciliation Agreement is/will be signed by a duly authorized KMCWC representative.
7. KMCWC's indemnity obligation. KMCWC will indemnify, defend, and hold harmless the University against any claims and actions arising from the Released Claims or KMCWC's performance of terms under the Rent Reconciliation Agreement.
8. KMCWC's covenants. KMCWC promises and covenants that neither it nor any person or entity acting on its behalf has filed, will file, or will be permitted to file any charge, claim, action, or complaint against the University relating to the Released Claims.
9. No disparagement or confidentiality. KMCWC and the University agree: (a) not to make disparaging remarks about the other relating to the Released Claims and/or the Rent Reconciliation Agreement and (b) that there will be no confidentiality with respect to this rent reconciliation or the terms contained in the Rent Reconciliation Agreement.
10. KMCWC responsible for tax consequences. Tax consequences on KMCWC relating to the Rent Reconciliation Agreement is the sole responsibility of KMCWC and KMCWC will indemnify, defend, and hold harmless the University from any tax claims, assessments, and liabilities made or imposed upon KMCWC by any government entity relating to the Rent Reconciliation Agreement.
11. Governing law. The Rent Reconciliation Agreement shall be interpreted, enforced, and governed by the law of the State of Hawaii, with the Circuit Court of the State of Hawaii having exclusive jurisdiction.
12. Governing Agreement During the Gap Period. KMCWC and the University agree that the University's use and occupancy of the University Premises during the Gap Period, and the parties' respective rights and obligations arising thereunder, shall be governed, controlled and interpreted pursuant to the terms and conditions of the prior Use and Occupancy Agreement dated July 1, 2008, as amended by the First Amendment to Use and Occupancy Agreement, effective October 1, 2013.

ATTACHMENT 4

CONSENT AND AGREEMENT

The undersigned, HEALTHCARE REALTY TRUST INCORPORATED, a Maryland corporation, which is Landlord under that certain lease referred to as the "Master Lease" in the foregoing First Amendment to Use and Occupancy Agreement, entered into April 7, 2014, but effective as of October 1, 2013 ("First Amendment"), between KAPI'OLANI MEDICAL CENTER FOR WOMEN AND CHILDREN, as "KMCWC," and the UNIVERSITY OF HAWAI'I, as "University," for the benefit of the University of Hawai'i at Mānoa John A. Burns School of Medicine, hereby consents to the amendments set forth in the First Amendment; provided, however, such consent shall not release KMCWC from the full and faithful performance by KMCWC of all the terms, conditions and agreements contained in the Master Lease and shall not be deemed a waiver or release of any of KMCWC's covenants, liabilities and obligations to Landlord under the Master Lease. By consenting to the First Amendment, Landlord in no way agrees to perform or to be obligated to perform any services for the benefit of University under the First Amendment but Landlord shall continue to provide services to the University Premises (as part of the leased Premises) in accordance with the terms and conditions of the Master Lease. University shall have no rights or claims against Landlord but shall instead look solely to KMCWC for any such claims. This Consent and Agreement shall not be deemed to create any contractual or other relationship between Landlord and University. KMCWC and University agree by their acceptance of this Consent and Agreement that the Use and Occupancy Agreement shall not be further amended or modified without the prior written consent of Landlord.

IN WITNESS WHEREOF, the undersigned Landlord has executed this Consent and Agreement on this 22nd day of May, 2014, but which shall be effective as of the Effective Date of the First Amendment.

"LANDLORD"

HEALTHCARE REALTY TRUST INCORPORATED

By 
Print Name: Julie Ferrell Wilson
Its: Senior Vice President

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[Signature page to Consent and Agreement to follow].

Consent and Agreement to
First Amendment to Use and
Occupancy Agreement
KMCWC/University of Hawai'i
KMCWC Office and Hospital Building
7th and 8th Floors

ATTACHMENT 5

Property Description	Description	Leased Space, Sq.Ft.	Monthly Lease	Rate: \$ per Sq. Ft. / Month	* CAM: \$ per Sq. Ft. / Month	Total: \$ per Sq. Ft. / Month	UH Charged Space	UH Rate: \$ per Sq. Ft. / Month
Kapiolani Medical Center 1319 Punahou Street Honolulu, HI 96826	Current Subject Property	10,474 8,612		\$ 0.75 \$ \$ 0.88 \$	1.45 \$ 1.45 \$	2.20 \$ 2.33 \$	10,474.00 \$ 8,612.00 \$	2.20 \$ 2.33 \$
<i>Comparable Properties in the Vicinity of Subject Property: Medical Buildings and Office Space</i>								
	Mean, Combined			\$ 2.17 \$	1.18 \$	3.35 \$		3.35 \$
	Mean for Class A			\$ 2.62 \$	1.37 \$	3.99 \$		3.99 \$
	Mean for Medical (including hospital)			\$ 2.24 \$	1.15 \$	3.39 \$		3.39 \$
	Mean for Hospital			\$ 2.16 \$	0.93 \$	3.09 \$		3.09 \$
Queens Medical Center 1319 Punahou Street Honolulu, HI 96826	Hospital	UH Leased 21,936		\$ 1.87 \$	1.30 \$	3.17 \$ through 06/30/15		3.17 \$
Kuakini Medical Center (HTC) 347 North Kuakini Street Honolulu, HI 96817	Hospital	UH Leased 5,207		\$ 2.35 \$	- \$	2.35 **		2.35 \$
St. Francis Medical Pavilion 2226 Liliha Street Honolulu, HI 96817	Class "A" Medical Office Building (hospital);	Space Available 12,722		\$ 2.25 \$	1.50 \$	3.75 \$		3.75 \$
Hale Pawa'a Medical Building 1401 South Beretania St. Honolulu, HI 96814	Class "A" Medical Office Building	Space Available 16,056	avg	\$ 3.86 \$	1.52 \$	5.36 \$		5.36 \$
Kapolei Medical Park Building 599 Farrington Highway Kapolei, HI 96707	Low Rise in Kapolei; Class "A" Medical Office Building	Space Available none		\$ 2.75 \$	1.04 \$	3.79 \$		3.79 \$
Pacific Guardian Tower (Mauka) 737 Bishop St. Honolulu, HI 96813	Class "A" Office Building	Space Available 60,363	avg	\$ 1.60 \$	1.42 \$	3.02 \$		3.02 \$
Kalihi Medical Building 2055 N. King St. Honolulu, HI 96826	Low rise in Kalihi; Class "B" Medical Office Building	Space Available 2,492		\$ 1.75 \$	0.75 \$ elec. metered separately	2.50 \$		2.50 \$
Medical Arts Building 1010 S. King St. Honolulu, HI 96814	Class "B" Medical Office Building in central Honolulu	Space Available 1,634		\$ 1.25 \$	1.75 \$	3.00 \$		3.00 \$
Liliha Professional Building (medical) 1520 Liliha St. Honolulu, HI 96817	High Rise near Kuakini Medical Center; Class "B" Office Building	Space Available 5,637		\$ 1.85 \$	1.33 \$	3.18 \$		3.18 \$

Notes: * CAM - Common Area Maintenance charges; charges for maintaining the common areas of a building.
**Rate per Sq Ft includes CAM