

Authorizing Hangar 111 Abrogation Kalaeloa Airport, Barbers Point, Oahu, Hawai‘i

WHEREAS, certain real property owned by the UNITED STATES OF AMERICA, located in the City and County of Honolulu, State of Hawai‘i, had been declared surplus and was subject to assignment for disposal for educational purposes by the Secretary of the U.S. Department of Education, under provisions of section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, as amended (Act), (63 Stat. 377), and the rules and regulations promulgated pursuant thereto, more particularly described as follows:

Hangar 111, consisting of approximately 105,000 square feet with second floor offices, a small ramp area and an adjacent parking lot with a total land area of about 4.5 acres at the former Barbers Point Naval Air Station, City and County of Honolulu, island of Oahu, State of Hawai‘i, designated as Tax Map Key No. (1) 9-1-013:025 (collectively the “Property”).

WHEREAS, the University of Hawai‘i (“*University*”) Board of Regents authorized the University to acquire ownership of the Property (see University of Hawai‘i Board of Regents, Resolution dated October 9, 1998, signed by Board Chair Donald Kim and certified by Board Secretary David Iha), and the University completed acquiring the Property by Quitclaim Deed dated July 20, 2000, and recorded on December 13, 2000 (“*Deed*”) from the United States of America, by its Secretary of Education (“*USDOE*”); and

WHEREAS, the Deed contains certain restrictive covenants and conditions that apply to the Property (collectively “*Restrictive Covenants*”) in favor of USDOE, relating primarily to requiring the University to continue using the Property for the educational purposes as described in the University application submitted to USDOE, which University application has been amended over time; and

WHEREAS, some of the Restrictive Covenants are scheduled to be in effect for up to thirty-three (33) years or longer; and

WHEREAS the Deed contains a procedure by which the University may abrogate or terminate early the effectiveness of the Restrictive Covenants; and

WHEREAS, this abrogation or early termination procedure requires the University to submit a payment to USDOE that is determined in accordance with the abrogation payment formula described in the Deed and is based on a fair market value appraisal of the Property reduced by an offset for the applicable public benefit allowance; and

WHEREAS, the University desires to abrogate or terminate early the Restrictive Covenants; and

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WHEREAS, the University anticipates that with the abrogation or early termination of the Restrictive Covenants, the University will be able to allow third parties to use the Property for non-educational purposes and the University will be permitted to lease the Property to entities for commercial purposes; and

WHEREAS, USDOE has determined that the University should submit to USDOE an abrogation payment of Eleven Million One Hundred Seventy-Three Thousand Five Hundred and No/100 Dollars (\$11,173,500.00), which calculation is based on a fair market value appraisal of the Property reduced by an offset for the applicable public benefit allowance (“*Abrogation Payment*”); and

WHEREAS, the Hawai‘i State Legislature has appropriated \$11,500,000 and the University has requested release of such funds in part to pay the Abrogation Payment to USDOE; and

WHEREAS, the University and USDOE have reached tentative agreement upon the terms of the Abrogation and Release of Restrictions (“*Abrogation*”), under which the University would pay the Abrogation Payment to USDOE and USDOE will release all of the Restrictive Covenants and enable the University to allow third parties to use the Property for non-educational purposes and permit entities to lease the Property for commercial purposes; and

WHEREAS, the University is seeking approval from the Board of Regents to finalize and execute the Abrogation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Regents of the University of Hawai‘i hereby approves the Abrogation, authorizes the University of Hawai‘i (“*University*”), through its President and/or Vice President for Budget and Finance/Chief Financial Officer (“*VPBF*”), to negotiate, finalize, and execute the Abrogation, submit the Abrogation Payment to USDOE, and take any action and execute such other documents as the President and/or the VPBF deem necessary to implement the Abrogation; and

BE IT FURTHER RESOLVED that the University has legal authority, is willing and is in a position financially and otherwise to implement the Abrogation and gain additional flexibility to allow third parties to use the Property for non-educational purposes and permit the University to lease the Property to entities for commercial purposes, and that President David Lassner and Vice President for Budget and Finance/Chief Financial Officer Kalbert Young are hereby authorized, for and on behalf of the University, to do and perform any and all acts and things which may be necessary to carry out this resolution, including the negotiation, finalization, and execution of the Abrogation, preparing and filing of plans, applications, reports and other documents, the execution, acceptance, delivery, and recordation of agreements, deeds and other instruments pertaining to the Abrogation and the implementation of the Abrogation, and the payment of any and all sums, fees, or costs incurred in connection with the Abrogation, including, the Abrogation Payment, the preparation of surveys, title searches, and appraisals, the establishment of an escrow, and the recordation of instruments.

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A copy of the Abrogation will be filed with the permanent minutes of the Board of Regents.

/S/

Jan N. Sullivan
Vice-Chair, Board of Regents
University of Hawai‘i

I, Kendra T. Oishi, hereby certify that I am the Executive Administrator and Secretary of the Board of Regents, University of Hawai‘i, and that the foregoing resolution is a true and correct copy of the resolution adopted by a vote of a majority of the members of said University of Hawai‘i Board of Regents present at a meeting of said Board on the 18th day of June, 2020, at which a quorum was present.

/S/

Kendra T. Oishi
Executive Administrator and Secretary of
the Board of Regents
University of Hawai‘i
2444 Dole Street
Honolulu, Hawai‘i 96822

Adopted by the Board of Regents
University of Hawai‘i
June 18, 2020