

MEMORANDUM OF AGREEMENT
between
UNIVERSITY OF HAWAI'I, KAPI'OLANI COMMUNITY COLLEGE
and
UNIVERSITY OF HAWAI'I, JOHN A. BURNS SCHOOL OF MEDICINE

This Memorandum of Agreement, (hereinafter referred to as "Agreement") is entered into on this ____ day of _____, 2005, by and between the University of Hawai'i, Kapi'olani Community College, (hereinafter referred to as "KCC"), and the University of Hawai'i, John A. Burns School of Medicine (hereinafter referred to as "JABSOM"). The parties mutually agree as follows:

I. RESPONSIBILITIES OF KAPIOLANI COMMUNITY COLLEGE

1. KCC shall be the exclusive provider of food and beverage service for the food court operations located at the John A. Burns School of Medicine, (hereinafter referred to as the "Kūlia Grill" or Property) for all meal periods including breakfast, lunch and dinner. The Kūlia Grill will be leased by KCC on an ongoing basis for a period of three years, with an automatic rolling 3-year extension taking effect every year thereafter unless terminated by the written agreement of both parties.
2. KCC will take possession and operate all equipment and accessories attached thereto or used in connection therewith including those listed in Appendix A.
3. All of which are included in the term Property as used herein. KCC hereby acknowledges delivery and acceptance of the aforesaid Property upon the terms and conditions of this lease.
4. JABSOM, hereby leases to KCC said Property for the purpose of running a food and/or beverage operations; for the sale of any related products; for any instructional purposes; or for any internal and external banquet and catering efforts.
5. In consideration of said lease, KCC covenants and agrees as follows:
 - (a) To pay via journal voucher to JABSOM for the possession and use of the Kūlia Grill for the purpose aforesaid, 10 percent of the net proceeds for the first 2 years and 15 percent of the net proceeds during each year thereafter as verified by a monthly profit and loss statement issued by KCC on a monthly basis.
 - (b) To safely keep and carefully use the Property and not sell or attempt to sell, remove or attempt to remove, the same or any part thereof, except reasonably for the purpose aforesaid.
 - (c) KCC shall, during the term of this lease and until return and delivery of the Property to JABSOM, abide by and conform to, and cause others to abide by and conform to, all laws and governmental orders, rules and regulations, including any future amendments thereto, controlling or in any manner affecting operation, use or occupancy of said

Property or use of premises by said Property.

- (d) KCC accepts the Property in its present condition, and during the term of this lease and until return and delivery of the Property to JABSOM, KCC shall maintain it in its present condition, reasonable wear and tear occurring despite standards of good maintenance of Property excepted, and shall repair at his own expense and damages to said Property caused by operation or use by KCC or by others during the term of this lease and until delivery of the Property to JABSOM.
- (e) KCC shall return and deliver, at the expiration of the term herein granted, the whole of said Property to the JABSOM in as good condition as the same is, reasonable wear and tear excepted.
- (f) KCC shall establish an accrual account to which they will contribute \$50,000 or 5% of the gross receipts, whichever is less, each year of the lease effective as of year two. The proceeds of this account will be used solely for the purpose of purchasing restaurant equipment and/or other capital expenditures used to maintain and/or enhance the food and beverage operations.
- (g) KCC shall contract out to qualified individuals or companies for the proper servicing of:
 - i. Kitchen fire protection systems
 - ii. Grease trap pumping
 - iii. Waste oil removal and/or recycling
 - iv. Wet waste removal and/or recycling
 - v. Kitchen equipment maintenance
 - vi. Kitchen Hood and ventilation cleaning
 - vii. Dining Room window cleaning
 - viii. Trash removal from building to central facilities
 - ix. Recycled products removal from building to central facilities
 - x. Any unforeseen maintenance or repair that requires specialize expertise that is not capable to be covered by KCC or the University of Hawaii.
- (h) KCC shall operate the Kūlia Grill from 7 am till 4 pm Monday through Friday (excluding State holidays), while regular medical center credit classes are in session. Weekend and evening operational days and times shall be at the discretion of KCC management based upon forecasted business activity. KCC reserves the right to alter both days and times of service upon 1 week written notification to JABSOM management.

II. RESPONSIBILITIES OF JOHN A. BURNS SCHOOL OF MEDICINE

1. All costs and fees for the services or products rendered to JABSOM or any representative of JABSOM by KCC shall be payable upon demand.
2. JABSOM will provide KCC with a completely functional food court, with all equipment as described in Appendix A in new condition, properly installed and in good working order with original warranties in place.

3. Upon completion of all construction and F.F. & E. installation, JABSOM will provide representatives of KCC with a thorough walk-through of the Property together with representatives of the general contractor and all appropriate sub contractors. The purpose of this walkthrough is to generate a final punch list of items that need to be replaced, repaired or redone. The corrective actions required by the punch list must be completed to KCC's satisfaction prior to the acceptance of the facilities by KCC.
4. JABSOM will provide for all utilities and services necessary to run a safe and sanitary food service operation including:
 - (a) Custodial services of the dining room and all common areas including restrooms for the entire period of restaurant operations.
 - (b) All required utilities including: water, gas, electricity, telephone, fax, and broad-band access for internet and data transmittal.
 - (c) All required fire fighting and life saving equipment for the dining room and common areas.

III. MUTUAL AGREEMENTS

1. This Agreement may be amended through a mutually acceptable written statement. After the first three years of Agreement, termination of Agreement notification in writing by either party must be submitted a minimum of one year during any term of agreement.
2. This Agreement represents the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior and/or contemporaneous discussions, representations, understandings or agreements, whether oral or written, of the parties regarding this matter.
3. This Agreement may be executed by the parties in counterparts, all of which taken together shall be deemed one and the same instrument.

IV. INTERPRETATION OF THIS AGREEMENT AND RESOLUTION OF DISPUTES

1. This Agreement is made between two components of the University of Hawaii to clarify and memorialize in writing their respective responsibilities with respect to food and beverage operations at the JABSOM site in Kakaako, and thus enable effective planning and operation of the Kulia Grill.

This Agreement does not create any legally enforceable rights between the two parties, nor can any third party use this Agreement as the basis for any lawsuit or claim against either party to this Agreement or against the University of Hawaii.

If any disputes arise over the interpretation or implementation of any of the responsibilities set forth in this Agreement, the parties agree that they shall first attempt to resolve their disputes in good faith. If the parties are unable to reach a mutually satisfactory resolution, the parties agree to submit their disagreement to the President of the University.

The President may delegate this authority to any other person or committee of persons within the University.

The parties agree that the President, or his designee, has the exclusive authority to make a final determination that is binding on each party, and each party further agrees that neither party shall have recourse to the court or any dispute resolution forum external to the University.

In resolving any dispute, the President or his designee may, but is not required to, seek advice from the University General Counsel or any other University executive or manager. In resolving any dispute the President or his designee shall bear in mind that this Agreement is an internal planning and operations document between two components of the University, and not is not a legal contract. Any resolution shall strive to be fair to all parties, practical, and feasible, notwithstanding any specific responsibility set forth in this Agreement.

V. APPROVALS

By _____
Chancellor
Kapi'olani Community College

By _____
Dean
John A. Burns School of Medicine

Date _____

Date _____