

EXECUTION COPY

GENERAL LEASE NO. 14-1

between

STATE OF HAWAII

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

and

KEWALO HARBOR, LLC

covering

KEWALO BASIN HARBOR

situated at

Kakaako, Oahu, Hawaii

Lot 1 as described on Exhibit A-1

34.877 Acres

[Being a Portion of Tax Map Key No. (1) 2-1-58: portion 128]

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STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
GENERAL LEASE NO. 14-1

THIS INDENTURE OF LEASE ("**Lease**"), is made as of the 1st day of August, 2014 ("**Effective Date**"), by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY** ("**LESSOR**"), a body corporate and a public instrumentality of the State of Hawaii, whose principal place of business is 461 Cooke Street, Honolulu, Hawaii 96813, and KEWALO HARBOR, LLC ("**LESSEE**"), a Hawaii limited liability company, whose principal place of business and mailing address is 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814 (each, a "**Party**", and collectively, the "**Parties**").

RECITALS

WHEREAS, LESSOR is the owner of the Premises (as defined in Section 1.1 below), which includes the Kewalo Basin Harbor (as defined in Section 7.21 below), and desires LESSEE to lease the Premises for the Term (as defined in Section 1.2 below), construct the Project (as defined in Section 5.1 below), and manage and operate the Harbor Facilities (as defined Section 6.1 below);

NOW, THEREFORE, in consideration of the terms, covenants, and conditions contained herein, LESSOR and LESSEE do hereby agree as follows:

ARTICLE I
DEMISE

1.1 **Lease.** LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, that certain real property commonly known as Kewalo Basin Harbor, located in Honolulu, Hawaii, and certain other real property, all of which are more particularly described in **Exhibit "A-1"** attached hereto and depicted in **Exhibit "A-2"** attached hereto and made a part hereof (the "**Premises**"), together with all easements, appurtenances, and other rights and privileges now or hereafter belonging or appertaining to the Premises. LESSOR shall ensure there is, at all times during the Term, reasonable access to the public roadways and highways from and to each portion of the Premises. LESSOR owns the Premises in fee simple absolute and has full legal right and ability to transfer to LESSEE the leasehold interest and exclusive right to use and enjoyment, along with all other rights, obligations and responsibilities as set forth herein.

1.2. **Term.** The Premises is demised unto LESSEE TO HAVE AND TO HOLD, together with all of the improvements and all appurtenant rights, but subject to the terms and conditions of this Lease, commencing at 12:00 pm Hawaii time on September 1, 2014

(hereinafter, such date is referred to as the "**Commencement Date**") through 11:59 p.m. Hawaii time on the day immediately preceding the thirtieth anniversary of the date of Substantial Completion, as defined in Section 7.21 hereof of the Project, but in no event later than August 31, 2049 (the "**Termination Date**"), unless this Lease is earlier terminated as provided herein (the "**Initial Term**", and together with the Extended Term (as defined in Section 1.3 below), if applicable, the "**Term**"). LESSOR shall deliver possession of the Premises to LESSEE at 12:00 pm Hawaii Time on the Commencement Date.

1.3. Option to Extend Lease Term.

(a) Subject to the terms in subsection (b) below, LESSEE shall have one (1) option to extend the Initial Term of this Lease for a period of ten (10) years commencing on the day after the Initial Term ends (hereinafter, such additional ten (10) year period is referred to as the "**Extended Term**"); provided that, notwithstanding anything to the contrary in this Lease, the option for the Extended Term may only be exercised by LESSEE or an Affiliate of LESSEE as defined in Section 4.13(b) and is not assignable to any other person or entity. Except as otherwise provided herein, the Extended Term shall be subject to the same terms and conditions of the Initial Term.

(b) LESSEE shall submit written notice to LESSOR indicating LESSEE's election to exercise this option to extend the Lease term no later than eighteen (18) months preceding the Termination Date. Should LESSEE fail to give timely written notice of its election to exercise this option, LESSEE shall be deemed to have elected not to exercise its option and this Lease shall terminate on the Termination Date. Even if this option is timely exercised, it shall be of no effect if:

(1) LESSEE commits a material breach hereof at any time before the Termination Date, if such material breach remains uncured beyond the applicable notice and cure period and remains uncured at the time of LESSEE's election to exercise the option; or

(2) At any time before the Termination Date, LESSOR terminates this Lease in accordance with the terms of this Lease.

1.4. Lease Fee Premium. Within thirty (30) days of the Commencement Date, LESSEE shall pay to LESSOR a lease fee premium (the "**Lease Fee Premium**") in an amount equal to FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$500,000.00).

1.5. Memorandum of Lease. This Lease shall not be recorded; however, to establish the status of LESSEE's title and to establish the priority of this Lease as a condition of title, LESSOR and LESSEE agree to execute and acknowledge a short form memorandum of this Lease, which shall be recorded following subdivision, or if no subdivision is required in order to record, then upon the request of either party including a summary of the provisions of Section 7.2 below. In addition, upon the request of LESSEE from time to time, LESSOR shall join in the execution of a short form memorandum for recordation purposes of any amendment or supplement to this Lease. Recordation of such

memoranda shall be at the expense of LESSEE. In the event of a discrepancy between the provisions of such memoranda and this Lease, the provisions of this Lease shall prevail.

ARTICLE II
RENT

2.1. Annual Rent. Annual rent shall be payable by LESSEE to LESSOR, without notice or demand, in legal tender of the United States of America, and shall be in addition to and over and above all other payments to be made by LESSEE as provided elsewhere in this Lease. It is the purpose and intent of LESSOR and LESSEE that the annual rent specified herein shall be net to LESSOR, except as otherwise provided in this Lease. For purposes of calculating rent under this Lease, the term "Lease Year" shall mean a consecutive twelve (12) month period, i.e., Lease Year 1 commences on the Commencement Date and ends 12 consecutive months thereafter. The annual rent to be paid by LESSEE to LESSOR shall be the sum of the applicable annual Base Rent and annual Percentage Rent, if applicable, set forth as follows:

(a) Base Rent - Initial Term (Lease Years 1 through 35). Except as otherwise provided in this Lease, for Lease Years 1 through 35, LESSEE shall pay to LESSOR annually in advance by January 1 for each calendar year during the Initial Term, an annual base rent ("Base Rent") of THREE HUNDRED THOUSAND and NO/100 DOLLARS (\$300,000.00) per calendar year. If the Initial Term commences on a day other than the first day of a calendar year or ends on a day other than the last day of a calendar year, Base Rent shall be prorated daily for such partial calendar years to reflect the actual number of days of such year and the first installment of Base Rent shall be due thirty (30) days from the Commencement Date. For illustrative purposes only, an example of the calculation of the first Base Rent payment amount pursuant to this Section 2.1(a) is shown in **Exhibit "B"** attached hereto.

(b) Base Rent - Extended Term (Lease Years 35 through 45, if applicable). Except as otherwise provided in this Lease, for Lease Years 35 through 45, if applicable, LESSEE shall pay to LESSOR annually in advance on January 1 of each calendar year during the Extended Term, an annual Base Rent for each calendar year as determined in accordance with this Section 2.1(b). If the Extended Term commences on a day other than the first day of a calendar year or ends on a day other than the last day of a calendar year, Base Rent shall be prorated daily basis for such partial calendar years to reflect the actual number of days of such year and the first installment of Base Rent shall be due thirty (30) days before the Reopening Date (as defined in subsection (i) below).

(i) Prior to the date of the commencement of the Extended Term (the "Reopening Date"), the annual Base Rent for the Extended Term may be negotiated and determined by mutual agreement of the Parties, provided that in no event shall the annual Base Rent for the Extended Term be less than the annual Base Rent for the Initial Term.

(ii) If the Parties fail to reach an agreement with respect to Base Rent for the Extended Term at least eighteen (18) months before the Reopening Date, then

the annual Base Rent for the Extended Term shall, subject to the remaining subsections in this Section 2.1(b), be determined by a real estate appraiser with the qualifications hereinafter specified whose services have been contracted for by LESSOR at LESSOR's sole cost and expense, and who shall determine the annual fair market base rental value of the Premises. The annual fair market base rental value of the Premises based on the highest and best use of the Premises and the then-existing improvements as permitted under this Lease, therefore taking into account any restrictions on use, pricing, or marketing in this Lease, the Kewalo Basin Rules (as defined in Section 7.21 below), or otherwise in effect or reasonably anticipated to be in effect as of the date of the Reopening Date and any other factors that affect the fair market base rental value of the Premises, but, for the sake of clarity, in determining fair market base rent, no value shall be attributable to any improvements planned, proposed or contemplated but not yet fully constructed, operational and approved for occupancy or use as of eighteen (18) months before the Reopening Date..

(iii) Not later than fifteen (15) months prior to the Reopening Date, LESSOR shall furnish a copy of its appraiser's annual fair market base rent value determination, together with the full appraisal report and the name and address of LESSOR's appraiser, to LESSEE by certified mail with return receipt requested and a copy by email sent on the same date to the email addresses indicated in Section 7.15 below. The determination shall be deemed received by LESSEE on the date LESSEE signs the return receipt or three (3) Business Days (as defined in Section 7.21 below) after mailing, whichever occurs first, provided that LESSEE has in fact received the determination and report. If LESSEE disagrees with the determination, LESSEE must notify LESSOR in writing within thirty (30) days after receipt of the determination and report that LESSEE disagrees with the determination by LESSOR's appraiser and that LESSEE has contracted its own appraiser, at LESSEE's sole cost and expense, with the qualifications hereinafter specified whose name and address shall be stated in the notice. Should LESSEE fail to notify LESSOR in writing within thirty (30) days after receipt of the determination that LESSEE disagrees with the determination of LESSOR's appraiser and that LESSEE has contracted its own appraiser, then the annual fair market base rental value as determined by LESSOR's appraiser shall be deemed to have been accepted by LESSEE and shall be the annual Base Rent as of the Reopening Date.

(iv) If LESSEE provides timely written notice to LESSOR that LESSEE disagrees with the determination of LESSOR's appraiser and that LESSEE has contracted its own appraiser, then not later than twelve (12) months prior to the Reopening Date, LESSEE shall furnish a copy of its appraiser's annual fair market base rent value determination, together with the full appraisal report, to LESSOR by certified mail with return receipt requested and a copy by email sent on the same date to the email addresses indicated in Section 7.15 below, which shall be deemed received by LESSOR on the date LESSOR signs the return receipt or three (3) Business Days after mailing, whichever occurs first, provided that LESSOR has in fact received the determination and report. If LESSOR disagrees with the determination, LESSOR must notify LESSEE in writing within thirty (30) days after receipt of the determination and report that LESSOR disagrees with the determination by LESSEE's appraiser. Should LESSOR fail to notify LESSEE in writing within thirty (30) days after receipt of the determination that LESSOR disagrees with the determination of LESSEE's appraiser, then the annual fair market base rental value

as determined by LESSEE's appraiser shall be deemed to have been accepted by LESSOR and shall be the annual Base Rent as of the Reopening Date.

(v) If LESSOR timely notifies LESSEE in writing that LESSOR disagrees with the determination by LESSEE's appraiser, within thirty (30) days after receipt of such notice by LESSEE, LESSOR's appraiser and LESSEE's appraiser shall appoint a third appraiser with the qualifications hereinafter specified, and in case of their failure to do so, either Party may apply to any person then sitting as a judge of the Circuit Court of the First Circuit of the State of Hawaii for appointment of the third appraiser. Not later than eight (8) months prior to the Reopening Date, the three appraisers shall then determine the annual fair market base rental of the Premises for the Extended Term as of the Reopening Date by arbitration in accordance with Chapter 658A, Hawaii Revised Statutes, as may be amended from time to time. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both Parties hereto provided that in no event shall the annual Base Rent as determined herein be less than the annual Base Rent for the Initial Term. The Parties shall each pay one-half (1/2) of all of the proper costs and fees of the third appraiser, provided that each Party shall pay its own attorneys' fees and costs. LESSEE may revoke its exercise of its renewal option within ten (10) Business Days after its receipt of the final fair market base rental.

(vi) Each appraiser, whether appointed by LESSOR or LESSEE, jointly by LESSOR's appraiser and LESSEE's appraiser, or by the Circuit Court, shall have the following minimum qualifications: at least ten (10) years' experience in appraising commercial real property in the State of Hawaii, currently hold and have held a current MAI or SREA designation during those ten (10) years and duly licensed to appraise property in the State of Hawaii.

(vii) Upon completion of the appraisal procedure, all appraisal reports shall become part of the public record of LESSOR.

(c) Percentage Rent. Subject to and in accordance with the remaining provisions of this Section 2.1(c), LESSEE shall pay to LESSOR a percentage rent ("**Percentage Rent**") equal to the total of (i) the amount by which SIXTEEN AND ONE-HALF PERCENT (16.5%) of Gross Receipts (as defined in Section 7.21 below) attributable to the Submerged Lands Area (as defined in Section 7.21 below) during the applicable period (as described below) exceeds the amount of Base Rent paid for the same period. Percentage Rent shall be payable for each full or partial calendar year during the Term commencing with the calendar year immediately following the first calendar year during the Term in which cumulative net cash flow (as defined in subsection (ii) below) is positive. Percentage Rent shall be paid annually in arrears by April 15 of the next calendar year for each full or partial calendar year during the Term for which Percentage Rent is payable and shall be calculated based on LESSEE's annual audited statement. For illustrative purposes only, examples of the Percentage Rent calculation pursuant to this Section 2.1(c) are shown in **Exhibit "B"** attached hereto. If the Term ends on a day other than the last day of a calendar year, Percentage Rent shall be prorated daily for such partial calendar year to reflect the actual number of days of such year.

(i) Each payment of Percentage Rent shall be accompanied by a written statement certified as correct by LESSEE, or a person duly authorized by LESSEE, setting forth the amount of Gross Receipts collected or received by LESSEE by category for the payment period. The form to be used for such written statements of Gross Receipts is attached hereto as **Exhibit "C"**.

(ii) For purposes of this Section 2.1(c), "**cumulative net cash flow**" shall mean all of LESSEE's gross revenues for the Submerged Lands Area minus all LESSEE operating, repair, and maintenance costs along with taxes, approved capital improvements, Project costs and other expenses, excluding in all events any debt service or other LESSEE financing costs. For clarity, operating costs shall include, without limitation, all LESSEE costs associated with the operation and management of the Premises and the Harbor Facilities in accordance with Article VI hereof, including but not limited to: all insurances, professional fees, asset management and other management fees, property maintenance, janitorial and similar on-going expenses. Until the commencement of Percentage Rent payments pursuant to this Section 2.1(c), LESSEE shall provide to LESSOR a written statement certified as correct by LESSEE, or a person duly authorized by LESSEE, setting forth the amount of cumulative net cash flow (calculated based on LESSEE's annual statement, as may be audited by LESSOR) for each calendar year during the Term by April 15 of the next calendar year.

(iii) LESSEE shall at all times keep and maintain accurate accounting records of all revenues and receipts generated at, by, from or upon the Premises, including accounting records of revenues received or collected by LESSEE from any slip users, sublessees, or vendors or any other businesses which are located in or upon the Premises (hereinafter collectively referred to as "**LESSEE's Records**") for a period of seven (7) consecutive years following the end of each calendar year in a location on Oahu, Hawaii which can be accessed by LESSOR upon twenty-four (24) hours' notice. Upon twenty-four (24) hours prior written notice to LESSEE, LESSOR shall have the right to inspect and make copies of LESSEE's Records, including copies of tax information or returns furnished to or by any Governmental Authority (as defined in Section 7.21) with respect to LESSEE's use of the Premises, at the Premises or at a mutually agreeable location, and to inspect the records, accounts and books in any way bearing on sales or business transactions of any other person or entity selling or furnishing goods or services at, in or upon any part of the Premises. LESSOR shall have the right to require LESSEE to prepare and furnish, at LESSEE's sole expense, financial statements prepared according to generally accepted accounting principles regularly employed by LESSEE and covering any fiscal year regularly employed by LESSEE for the maintenance of its financial statements. All such information shall be held by LESSOR, its agents, attorneys, and accountants in strictest confidence to the extent permitted by law.

(iv) If at any time LESSEE determines or discovers that LESSEE has underpaid the Percentage Rent due for any period, LESSEE shall immediately notify LESSOR in writing of such deficiency and the deficient amount shall be due and payable within five (5) Business Days after the date of the written notice. If at any time LESSOR determines that LESSEE has underpaid the Percentage Rent due for any period, LESSOR shall notify LESSEE in writing of such deficiency by certified mail with return receipt

requested and a copy by email sent on the same date to the email addresses indicated in Section 7.15 below. Within ten (10) Business Days after receipt of such notice from LESSOR, LESSEE shall either: (A) pay all of or the portion of the amount of the claimed deficiency that LESSOR agrees is deficient, and/or (B) explain in writing to LESSOR why LESSEE believes that all or any portion of the amount of the claimed deficiency is not deficient.

(v) LESSOR shall, within two (2) years after the receipt of any written statement of Gross Receipts from LESSEE, be entitled to an audit of such Gross Receipts during normal business hours of LESSEE. Any such audit shall be performed only by an accountant that charges on an hourly basis and not on a contingency or percentage of recovery basis. If an audit by LESSOR's accountant or by a licensed independent certified public accountant retained by LESSOR shall disclose that Percentage Rent has been underpaid by FIVE PERCENT (5%) or more for any period under examination, LESSOR, in addition to any other remedies available at law or under this Lease, shall be entitled to reimbursement by LESSEE of all costs and expenses incurred in completing any such audit, in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

(vi) If at any time LESSOR determines or discovers that LESSEE has overpaid the Percentage Rent due for any period, LESSOR shall immediately notify LESSEE in writing of such overpayment and the overfunded amount shall be refunded to LESSEE within twenty-one (21) Business Days after the date of the written notice.

ARTICLE III RESERVATIONS

3.1. Minerals, Waters, and Historic Remains. Subject to the rights of native Hawaiians and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law, including Hawaii Revised Statutes Chapter 6E (Historic Preservation), over prehistoric or historic remains found in, on, or under the Premises, LESSOR hereby reserves the following:

(a) Minerals. All minerals as hereinafter defined, in, on, or under the Premises and the right, on its own behalf or through person authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining; provided that as conditions precedent to the exercise by LESSOR of the rights reserved in this subsection (a), (i) LESSOR shall provide thirty (30) days prior written notice with details regarding access to the Premises and (ii) just compensation shall be paid to LESSEE for any of LESSEE's improvements taken. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any Premises, fast or submerged;

provided that "minerals" shall not include sand, gravel, rock or other material suitable for use in general construction in furtherance of LESSEE's permitted activities on the Premises and not for sale to others.

(b) Waters. All surface waters, ground waters, and storm water and other water systems appurtenant to the Premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as required in the exercise of this right reserved; provided that as a condition precedent to the exercise by LESSOR of the rights reserved in this subsection, just compensation shall be paid to LESSEE for any of LESSEE's improvements taken.

3.2. Ownership of Improvements. LESSOR hereby reserves the ownership of all improvements of whatever kind or nature, including but not limited to fences, if any, located on the Premises prior to or on the Commencement Date of this Lease, excluding those improvements constructed during the Term of this Lease unless provided otherwise.

3.3. Easements. LESSOR hereby reserves the right and option to create, designate, grant, and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity, cable television, communications, and other utilities under, across, and through the Premises, provided that LESSOR shall use best efforts to assure that: (a) such easements do not cross under, across, or through any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct or install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause as no disruption (or as minimal disruption as possible) to LESSEE's operations, construction or completion of the Project, the use, enjoyment, and operations of the Harbor Facilities, or the income to be derived from the Harbor Facilities. In no event shall LESSOR create, designate, grant, locate or relocate, construct or install any easement which would materially and adversely impact or affect LESSEE's operations, construction or completion of the Project, the use, enjoyment, and operations of the Harbor Facilities, or the income to be derived from the Harbor Facilities. If any work on or relating to an easement will temporarily materially and adversely impact or affect LESSEE's operations or construction of the Project or the use, enjoyment, and operations of the Harbor Facilities, including without limitation the paved parking areas or access lanes, LESSOR shall use its best efforts to expedite any work with respect to the easement. Upon completion of any such work by LESSOR, the Premises shall be returned, at LESSOR's sole cost and expense, to substantially the same condition as it was prior to installation of any such underground utility and/or services. In addition, LESSEE agrees to grant and maintain certain public rights of access over and across any public or private roadways located within the Premises that are providing direct access between (i) the Park Areas (as defined in Section 6.1) or (ii) any landlocked parcels and the nearest adjacent public street or roadway, sidewalk.

In conjunction with Act 15, 2012 Session Laws of Hawaii, LESSOR agreed to grant the Office of Hawaiian Affairs a non-exclusive access easement over the cantilevered deck by Fisherman's Wharf and a non-exclusive boat docking easement in Kewalo Basin Harbor fronting Honolulu Marine (collectively, "OHA Easements"), both of which are in the process of being memorialized and subsequently recorded in the Bureau of Conveyances,

State of Hawaii ("Bureau"). LESSEE expressly acknowledges that this Lease is subject to the OHA Easements. Upon execution and recordation in the Bureau, LESSOR shall transmit copies of the recorded grants of easement to LESSEE.

3.4. Subdivision. If, at any time during the Lease Term, LESSOR or LESSEE elects to subdivide the Premises to create a separate legally subdivided tax map key parcel, the other party shall cooperate with the filing of such application and shall work expeditiously to pursue such subdivision.

3.5. Withdrawal Areas. The parties acknowledge and agree that the Diamond Head Redevelopment Area (as depicted on **Exhibit "A-2"**) may be subject to future redevelopment and that such redevelopment may include areas identified herein as the "Potential Withdrawal Area" as depicted on **Exhibit "A-2"**. LESSOR shall have the right to withdraw certain portions or all of the Potential Withdrawal Area from the Premises in accordance with the provisions set forth herein. LESSOR shall provide notice to LESSEE outlining the following: (i) the metes and bounds of the boundary lines within the Potential Withdrawal Area that Lessor intends to withdraw (hereinafter, the "Withdrawal Area"); (ii) if any existing parking within the Premises is affected by the Withdrawal Area, the intended location of the substitute parking spaces, provided that the substitute parking spaces shall be of like kind and size and shall include, at a minimum, thirty-four (34) exclusive use parking spaces within the Diamond Head Redevelopment Area, with any generated parking revenues to be shared equally between LESSOR and LESSEE, and seventy-six (76) non-exclusive use parking spaces within the Diamond Head Redevelopment Area, and (iii) the proposed schedule for development of the Diamond Head Redevelopment Area. Thirty (30) days following LESSEE's receipt of notice satisfying the provisions hereof, the Premises shall be deemed to be immediately amended to exclude the Withdrawal Area without further action by the Parties, and all other terms and conditions of the Lease shall remain unchanged and in full legal force and effect. During the construction of the Diamond Head Redevelopment Area, Lessee may elect, in its sole discretion, to delineate or otherwise provide temporary parking spaces within the Premises.

ARTICLE IV LESSEE'S COVENANTS

Unless specifically provided otherwise in this Lease, the following covenants shall apply during the Term:

4.1. Payment of Rent. LESSEE shall pay rent to LESSOR at the times, in the manner and form provided in this Lease, and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

4.2. Taxes and Assessments. LESSEE shall pay or cause to be paid, when due or prior to delinquency, the amount of all taxes, rates, assessments of every description as to which the Premises or any portion thereof, or any improvements thereon, or as to which LESSEE is now or hereafter may be assessed or become liable for by authority of law

during the Term; provided that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest which may be charged thereunder, which become due and payable during the Term. LESSEE shall reimburse to LESSOR, within ten (10) days after receipt of invoices and/or reasonable supporting documentation, for any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document relating to this transaction to which LESSEE is a party, creating or transferring an interest or an estate in the Premises. LESSEE shall have the right to contest any tax, rate, assessment, or other charge imposed against the Premises, provided that such contest shall not result in a sale of, or a lien being attached to, the Premises. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment, or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE. To the extent that LESSOR shall receive the same, LESSOR agrees to submit to LESSEE all real property tax or assessment valuation notices within five (5) Business Days after receipt by LESSOR, and all real property tax or assessment invoices which are sent to LESSOR at least sixty (60) days prior to the last date the same may be paid without penalty or interest.

4.3. Utility Services. During the Term, LESSEE shall be responsible for obtaining any utility services and shall pay or cause to be paid when due, all utility charges, duties, and rates of every description, including water, sewer, gas, telephone, cable television, communications, refuse collection, relocation of utility poles and lines or any other charges relating to utility services for the Premises or any part thereof, or any improvements thereon, whether assessed to or payable by LESSOR or LESSEE.

4.4. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

4.5. Sanitation. During the Term, LESSEE shall keep the Premises and improvements in a reasonably sanitary and clean condition. LESSEE shall be responsible for the removal of all trash upon the Premises, whether or not placed on the Premises by LESSEE or with or without LESSEE's consent, and whether or not placed on the Premises prior to the Term of this Lease.

4.6. Waste and Unlawful, Improper or Offensive Use of the Premises. LESSEE shall not commit, suffer, or authorize to be committed any waste, nuisance, strip, or unlawful, improper, or offensive use of the Premises or any part thereof. Nor shall LESSEE cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises absent prior consent from LESSOR.

4.7. Compliance with Laws. LESSEE shall comply with the applicable requirements of all municipal, state, and federal authorities, and shall observe all municipal ordinances and state and federal statutes and rules and regulations properly promulgated thereunder ("Applicable Laws"), applicable to the Premises, now in force or that may hereafter be in force, including but not limited to, all applicable federal, state, and county

environmental impact regulations. LESSEE will at all times during the Term, and at its own expense, make, build, maintain and repair all fences, roads, curbs, sidewalks and parking areas that may be required under any Applicable Laws to be made, built, maintained or repaired upon the Premises.

4.8. Inspection of Premises. LESSEE shall permit LESSOR and its agents, at all reasonable times during the Term, to enter into and upon the Premises to inspect and examine the same and determine the state of repair and condition thereof, with prior written notice.

4.9. Improvements. Except for the Project as provided for in Section 5.1 below and any temporary facilities, including as set forth in Section 5.1(c), LESSEE shall not, at any time during the Term, construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind and description, or allow or permit any person, entity, or sublessee to construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind and description, except with the prior written consent of LESSOR and upon those conditions LESSOR may impose, including the adjustment of Base Rent. LESSEE shall own any improvements made in or on the Premises during the term of this Lease. Upon the expiration or termination of this Lease, the Project and any other improvements consented to by LESSOR as permanent improvements are to remain on the Premises and become the property of LESSOR and any improvements consented to by LESSOR as not permanent are to be removed by LESSEE at LESSEE's sole cost and expense.

4.10. Repairs to Improvements. Except as otherwise provided in Section 3.1(b) above and Section 4.16(a) below, LESSEE shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted.

4.11. Liens. LESSEE shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of LESSEE becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this Lease, and shall indemnify, defend, and hold harmless LESSOR from and against all such attachments, liens, charges, and encumbrances and all resulting expenses. Notwithstanding anything to the contrary in this Lease, LESSEE shall not be in default under this Lease with respect to any lien which LESSEE is contesting or has bonded or otherwise secured or intends to contest, bond, or otherwise secure within sixty (60) days after notice to LESSEE thereof.

The Parties expressly acknowledge that neither Party is responsible for payment of the tax liens (the "Existing Tax Liens"), as identified on Exhibit "A-3." Notwithstanding the foregoing, LESSOR agrees to use commercially reasonable efforts to effectuate the release of such tax liens.

4.12. Phase I Environmental Site Assessment. At least ninety (90) days prior to the expiration or termination of this Lease, LESSEE shall conduct a Phase I environmental site assessment and conduct a response action if necessary, of any LESSEE Environmental Condition (as defined in Section 7.21 below), in accordance with Applicable Laws. Failure

to comply with the provisions of this Section 4.12 shall not extend the Term of this Lease or automatically prevent the expiration or termination of this Lease. LESSOR, at its sole option, may refuse to approve termination or revocation unless the Phase I and response action have been performed. In addition, or in the alternative, LESSOR may, at its sole option if LESSEE fails to do so, arrange for the performance of the provisions of this Section 4.12, all costs and expenses of such performance to be charged to and paid by LESSEE.

4.13. Assignments; Transfer Fee. LESSEE shall not, without the prior written consent of LESSOR, which shall not be unreasonably withheld, assign this Lease, either voluntarily or by operation of law (except by way of devise, bequest, intestate succession, or transfer to trust), and any such assignment made shall be null and void. If LESSEE is a partnership, limited liability company, joint venture or corporation, the sale or transfer (except by way of devise, bequest, intestate succession, or transfer to trust) of more than FIFTY PERCENT (50%) of the ownership interest in any such partnership, limited liability company, joint venture, or corporation (whether accomplished through one or multiple transactions in which case only the transaction that triggers a 50% assignment or by dissolution, merger, or any other means shall be deemed an assignment for purposes of this Section 4.13). For purposes of this Lease, "**Transfer**" shall mean any assignment or deemed assignment of this Lease that requires the prior written consent of LESSOR. For any Transfer of this Lease (except as otherwise provided), LESSEE (or other assignor) and the proposed assignee shall be jointly and severally obligated to pay to LESSOR a fee ("**Transfer Fee**") equal to the percentages set forth on **Exhibit "F"** attached hereto of the amount by which the fair value of the consideration attributable to the leasehold interest (but excluding the value of any improvements made by or at the request of LESSEE) for the Transfer from the assigning LESSEE to a proposed assignee approved by LESSOR exceeds the costs and expenses of the Transfer incurred in connection with the Transfer, including but not limited to any selling or brokerage commissions, attorneys or accounting fees and costs, escrow fees and costs, and title fees and costs. The following are not Transfers and shall not require payment of a Transfer Fee: (i) subleases in accordance with Section 4.14 below; (ii) the granting of any Approved Mortgage in accordance with Section 7.1 below; and (iii) the foreclosure of any Approved Mortgage, or sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Approved Mortgage, or any conveyance of the leasehold estate hereunder from LESSEE to any Approved Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof or the acquisition of LESSEE's estate hereunder by any Approved Mortgagee or other third party as a result of a judicial or non-judicial foreclosure under an Approved Mortgage, or pursuant to a non-judicial power of sale in an Approved Mortgage, or by means of an assignment in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action as contemplated in Section 7.2 below or the first sale by the Approved Mortgagee or the first sale by any other party taking title pursuant to the scenarios described above, provided that any transfer thereafter, other than similar foreclosure sales or foreclosure-related transfers (or the first sale following a foreclosure sale or a foreclosure-related transfer) and any transfers that are not Transfers pursuant to this Lease, shall be a Transfer for which a Transfer Fee shall be payable.

(a) Concurrently with any request by LESSEE for consent to an assignment of this Lease, LESSEE shall provide LESSOR with a reasonable description of the proposed assignee(s), including but not limited to the proposed assignee's and/or its principal officers' experience in the marina industry, financial statements, and other relevant information, in order to allow LESSOR to adequately evaluate the capability of the proposed assignee(s) to operate the Premises in the manner provided herein. Although LESSOR's consent shall not be unreasonably withheld, LESSOR may refuse to consent to such assignment if, in LESSOR's reasonable judgment, the assignee: (i) is not a person or entity, duly registered and qualified to do business, and having offices, in Hawaii (which may be on the Premises), or an agent for service in Hawaii that is itself qualified to conduct business in Hawaii; (ii) cannot demonstrate to the reasonable satisfaction of LESSOR that assignee will be able to perform all of the obligations of this Lease as they become due; (iii) has previously monetarily or otherwise materially defaulted in the observance and performance of any lease or other agreement with LESSOR; or (iv) cannot demonstrate to the reasonable satisfaction of LESSOR that assignee is qualified and experienced to take over the management and operation of the Premises.

(b) Notwithstanding anything to the contrary in this Lease, the following shall be permitted and shall not require the consent of LESSOR or payment of a Transfer Fee: (i) the transfer of ownership of any ownership interests in LESSEE to any Affiliate of LESSEE (as defined later in this subsection (b)); (ii) the assignment of this Lease or any interest of LESSEE in this Lease or any sublease of the Premises or improvements to any Affiliate of LESSEE; and (iii) the reorganization of LESSEE or the merger, consolidation, restructuring, or sale of substantially all of the assets of LESSEE with or to any Affiliate of LESSEE, provided that the resulting entity has a net worth, calculated in accordance with generally accepted accounting principles, equal to or greater than Fifty Million Dollars (\$50,000,000.00). For purposes of this Lease, "**Affiliate of LESSEE**" means any entity: (1) that is directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, LESSEE, (2) that directly or indirectly owns TWENTY PERCENT (20%) or more of the equity interests of LESSEE, or (3) for which TWENTY PERCENT (20%) or more of its equity interests are directly or indirectly owned by LESSEE. For purposes of the foregoing sentence, "**control**" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(c) Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants, and conditions of this Lease. The assignee thereunder shall expressly assume and agree to all such terms, covenants, conditions, and obligations of LESSEE under this Lease, and shall be liable for the payment of rent, and for the performance of all of the terms, covenants, and conditions contained in this Lease on the part of LESSEE to be observed and performed thereunder arising from and after the date of such assignment. Upon a permitted Transfer, the assignor shall be fully relieved and released of all of its duties and obligations as lessee under this Lease.

4.14. Subletting.

(a) Except as provided in Section 4.13(b) above, LESSEE shall not sublet the whole or any portion of the Premises without the prior written consent of LESSOR, which shall not be unreasonably withheld; provided that the issuance of mooring and other permits pursuant to the Kewalo Basin Rules and other rental and fee activity on the Premises from temporary structures, or otherwise as permitted pursuant to Section 5.1 (c) or pursuant to the Kewalo Basin Rules along with the related agreements (such as boat slip rentals, dockage fees, parking rental and fees, office and storage space rentals, fuel sales, ocean related activities, harbor booking activities, equipment rental, maintenance or other service operations or any similar activities commonly associated with an operating boat harbor and marina area) shall not require any consent or approval of LESSOR. Prior to any consent, LESSOR shall have the right to review the terms and conditions of the sublease and request that amendments be made, including but not limited to, requesting that the sublessee defend, indemnify, and hold harmless LESSOR and the State of Hawaii, and obtain and maintain liability insurance of the kinds and in the amounts that LESSOR reasonably determines; provided that LESSOR shall not have the right to approve or request changes to the rent to be charged to the proposed sublessee. For good cause, LESSOR may waive the requirement that LESSEE obtain prior written consent to sublet all or any portion of the Premises. Any sublease executed without the prior written consent of LESSOR or without LESSOR's waiver of the consent requirement shall be null and void. For the avoidance of doubt, the rent paid by a sublessee, tenant, or boat slip renter, but not the receipts of a sublessee or boat slip renter, shall be included as part of LESSEE's Gross Receipts hereunder.

(b) Upon written request, LESSOR shall issue a commercially reasonable non-disturbance and attornment agreement to each sublessee requesting the same, which agreement shall provide that, notwithstanding a default under this Lease, LESSOR shall recognize the sublease and not disturb the sublessee's possession thereunder so long as the sublessee is not in default under its sublease and agrees to attorn to LESSOR, if applicable, for the balance of the term of such sublease with the same force and effect as though said sublease were originally made directly from LESSOR to the sublessee.

4.15. Indemnity.

(a) LESSEE shall indemnify, defend, and hold harmless LESSOR from and against any and all claims, actions, penalties, damages, liabilities, costs, and expenses for loss or damage, including property damage, personal injury and wrongful death, to the extent based upon, resulting from, or arising out of or in connection with: (i) any act or omission on the part of LESSEE relating to LESSEE's use, occupancy, maintenance, or enjoyment of the Premises or any part thereof; (ii) any failure on the part of LESSEE to maintain the Premises and sidewalks, roadways, and parking areas adjacent thereto in LESSEE's use and control, and including any accident, fire, or nuisance, growing out of or caused by any failure on the part of LESSEE to maintain the Premises in a safe condition; (iii) any and all actions, suits, damages, and claims by whomsoever brought or made by reason of LESSEE's non-observance or non-performance of any of the terms, covenants, and conditions of this Lease or Applicable Laws; (iv) any injury sustained or suffered by LESSEE while on the Premises; and (v) any other act or omission by LESSEE in any way

relating to or arising out of this Lease. This provision shall survive the termination or expiration of this Lease.

(b) LESSOR shall be responsible for any damage or personal injury sustained on the Premises resulting from the acts or omissions of LESSOR's agents and LESSOR's employees while acting within the scope of their agency or employment, to the extent that LESSOR's liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the State of Hawaii, and provided that funds have been authorized by the Legislature of the State of Hawaii for such purposes and funds have been allocated by the budget process. This provision shall survive the termination or expiration of this Lease.

4.16. Insurance. LESSEE shall procure, carry, and continuously maintain, or cause to procure, at all times during the Term and at its own cost and expense, and shall cause LESSEE's contractors to procure, carry, and continuously maintain, insurance coverage on an occurrence basis of the kinds equal to or greater than those specified hereunder, or, if greater, any coverage or limits of liability required by law. The insurance coverage shall be obtained from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A VII" or other comparable and equivalent industry rating. With the exception of workers' compensation insurance, the policy or policies of insurance shall name LESSOR and the State of Hawaii, and their respective officers, employees, and agents, as additional insureds, with the standard mortgage clause for any Approved Mortgagee. All liability and property damage policies shall contain a provision providing that LESSOR and the State of Hawaii, although named as additional insureds, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents, and employees by reason of the acts, omissions, and/or negligence of LESSEE which recovery would be possible if LESSOR and the State of Hawaii were not named as additional insureds. Neither LESSOR nor the State of Hawaii shall be responsible for any deductibles. The insurance obtained and maintained by LESSEE as required under this Lease shall be primary.

Failure of LESSEE to provide and keep in force such insurance shall be regarded as a material default under this Lease and LESSOR shall be entitled to exercise any or all of the remedies provided in this Lease for default of LESSEE. LESSOR reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in LESSOR's reasonable discretion, the above insurance does not provide adequate protection for LESSOR, LESSEE and LESSOR shall negotiate in good faith to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. During the term of the Lease, LESSEE shall maintain adequate insurance levels and may, in its sole discretion, elect to undertake periodic coverage reviews or assessments. LESSOR shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in LESSEE's insurance.

LESSEE, prior to entry and use of the Premises or no later than the Commencement Date of this Lease, whichever is sooner, shall furnish LESSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the Term, and furnish a like certificate(s) upon each renewal of the policy(ies). Acceptance of certificates

of insurance by LESSOR shall in no way limit or relieve LESSEE of its obligations and responsibilities under this Lease. LESSOR may at any time require LESSEE to provide LESSOR with copies of the insurance policy(ies) that are or were in effect during the Term. The procuring of such required policy or policies of insurance shall not be construed to limit LESSEE's liability under this Lease or to fulfill the indemnification provisions and requirements of this Lease except that payment of proceeds of pollution liability insurance pursuant to Section 4.16(g) below may be applied in accordance with Section 4.23(b) below. Any insurance maintained by LESSOR will apply in excess of, and not contribute with, insurance provided by LESSEE's policy.

(a) Commercial property insurance. LESSEE shall procure, carry and continuously maintain, at all times during the Term and at its own cost and expense, commercial property insurance and extended coverage insurance (to the extent not already covered by the commercial property insurance policy) covering, without limitation, all buildings, structures, structures under construction (except as the same may be covered by a builder's risk policy), improvements, furniture, fixtures, machinery, equipment, stock, and any other commercial or personal property owned, borrowed, or used by LESSEE on the Premises to the extent of LESSEE's interest therein. Additionally, LESSEE shall procure, carry, and continuously maintain, at all times during the Term and at its own cost and expense, commercial insurance coverage for risk of loss by hurricane, flood, tsunami, tidal wave, and earthquake, and such other hazards as is reasonably available in the market at a reasonable cost or risks a prudent person would insure against. All insurance coverages shall be in an amount equal to the full replacement cost at the time of loss, without deduction for depreciation, but with such deductibles as reasonably determined by LESSEE, provided that such deductibles shall not exceed TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00), except hurricane, flood, tsunami, and earthquake which limits and percentage deductible shall be reasonably determined by LESSEE. In the event of partial or total loss occurring during the Term, any proceeds derived from the above policies shall be used by LESSEE to rebuild, replace, or repair the damaged improvements according to plans and specifications approved in writing by LESSOR, which approval shall not be unreasonably withheld; provided that in the event of partial or total loss during the last five (5) years of the Initial Term or the Extended Term, as applicable, LESSEE shall have the option in its sole discretion to terminate this Lease upon sixty (60) days written notice to LESSOR provided all proceeds derived from the above policies are paid to LESSOR.

(b) Commercial general liability insurance. LESSEE shall procure, carry, and continuously maintain, or cause to be maintained, at all times during the Term and at its own cost and expense, commercial general liability insurance to protect against claims for bodily injury or death, or for damage to property, which may arise out of LESSEE's products, operations, use, maintenance, and contractual liability assumed by LESSEE, or by anyone employed by LESSEE, or by anyone for whose acts LESSEE may be liable.

LESSEE shall maintain in force and effect the following insurance coverages on an occurrence basis with minimum limits of liability as follows:

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General Aggregate Limit (other than (products-completed operations)	\$2,000,000.00
Products-Completed Operations Aggregate Limit	\$2,000,000.00
Personal and Advertising Injury Limit	\$2,000,000.00
Each Occurrence Limit	\$2,000,000.00

Except with LESSOR's prior written approval, which shall not be unreasonably withheld, the above shall not have a deductible amount in excess of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) for any one occurrence.

(c) Workers' compensation and employers' liability insurance. Workers' Compensation and Employers' Liability insurance as required by current Hawaii law and regulations thereunder, as the same may be amended from time to time, for all employees, if any, of LESSEE. LESSEE shall maintain in force and effect the following insurance coverages with minimum limits as follows (but only in the event LESSEE has employees, otherwise LESSEE will require its contractors to maintain):

<u>Workers' Compensation</u>	Hawaii statutory limits	
<u>Employer's Liability</u>		
Bodily Injury By Accident	\$2,000,000.00	Each Accident
Bodily Injury By Disease	\$2,000,000.00	Policy Limit
Bodily Injury By Disease	\$2,000,000.00	Each Employee

(d) Business automobile liability insurance. Insurance covering owned, non-owned, leased, and hired vehicles, including contractual liability, written on a current ISO Business Auto Policy form or its equivalent. LESSEE shall maintain in full force and effect the following insurance coverages with minimum limits as follows (but only in the event LESSEE has employees, otherwise LESSEE will require its contractors to maintain):

Bodily Injury each person	\$2,000,000.00
Bodily Injury each accident	\$2,000,000.00
Property Damage each accident	\$2,000,000.00
Personal Injury Protection/No-Fault Combined Single Limit	Hawaii statutory limits or \$2,000,000.00

(e) Umbrella/excess liability insurance. Umbrella/excess liability insurance providing excess coverage over Commercial General Liability limits, Liquor Liability (if applicable), Employer's Liability limits, and Automobile Liability Insurance limits. The Umbrella/Excess Liability policy shall be written on an "occurrence" basis with a limit of liability of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per policy year and a self-insured retention or deductible no greater than TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00). The umbrella/excess insurance coverage shall, at a minimum, "follow form" over Commercial General Liability Coverage, Business Automobile Policy Coverage, and Employers' Liability Coverage. Additionally, it shall specifically provide excess coverage for the same coverage and limits listed under the above subsections relating to Commercial General Liability Insurance, Employers'

Liability (but not Workers' Compensation), and Business Automobile Liability Insurance. LESSEE shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Occurrence Limit	\$5,000,000.00
Aggregate Limit	\$5,000,000.00

(f) Builder's Risk Policy. LESSEE shall procure and assume all responsibility for procurement of a Builder's Risk Policy. To the extent of coverage afforded by Builder's Risk or any other property or equipment floater insurance applicable to the Project or equipment used in construction of the Project, regardless of whether such insurance is owned by or for the benefit of LESSEE, LESSOR, LESSEE's contractor and subcontractors, or their respective agents, authorized representatives, and employees (each, a "**Beneficiary**", and collectively, the "**Beneficiaries**"), each Beneficiary waives all rights of recovery against each other for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance as per the terms of this Lease. If the policies of insurance referred to in this subsection (f) require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed. Any deductible amount applied to any loss payable under the Builder's Risk insurance shall be borne by the insured interests whose Project is damaged in direct proportion as their individual losses shall bear to the total loss, regardless of whether such loss is to work installed or complete, to materials stored on or off site, or to materials in transit. LESSOR neither represents nor assumes responsibility for maintaining property insurance on the entire Project or that such insurance, if any, is adequate to protect the interests of LESSEE, its contractor and subcontractors. LESSEE, its contractor and subcontractors agree that they will assume the responsibility to satisfy themselves as to whether Builder's Risk insurance in completed value is in force and that it shall be the obligation of LESSEE, its contractor and subcontractors to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Project.

(g) Pollution Legal Liability Insurance. Pollution liability insurance to cover claims for property damage, personal injury, and cleanup costs associated with environmental contamination shall be written on a "claims made" basis with a limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000.00) per claim and a self-insured retention or deductible no greater than TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00). LESSEE shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Incident Limit	\$2,000,000.00
Aggregate Limit	\$2,000,000.00

For the sake of clarity, the amounts paid by LESSEE for pollution liability insurance pursuant to this Section 4.16(g) shall be deemed operating expenses to be included in any calculations of cumulative net cash flow for purposes of determining Percentage Rent payments in accordance with Section 2.1 (c) of this Lease.

4.17. Right to Enter. LESSOR shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided that in the exercise of these rights, LESSOR shall not unreasonably interfere with LESSEE's use and enjoyment of the Premises.

4.18. Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this Lease, nor of LESSOR's right of reentry for breach of covenant, nor of LESSOR's right to declare and enforce a forfeiture for any breach, and the failure of LESSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

4.19. Notification of Certain Events. As soon as practicable after obtaining knowledge or notice thereof, LESSEE shall deliver to LESSOR, together with copies of all relevant documentation with respect thereto, notice of: (a) any loan default; (b) all summons, citations, directives, complaints, notices of violation or deficiency, and other communications from any Governmental Authority other than LESSOR, asserting a material violation of Governmental Requirements (as defined in Section 7.21 below) applicable to the Premises; and (c) any litigation or proceeding relating to the Premises in which LESSEE is a party if an adverse decision therein would, in LESSEE's reasonable opinion, have a material adverse effect on LESSEE's ability to perform its obligations hereunder.

4.20. Surrender and Termination of the Lease. At the expiration or termination of this Lease, LESSEE shall peaceably deliver unto LESSOR possession of the Premises, together with all buildings and improvements that are to remain on the Premises pursuant to Section 4.9 above in good order and condition, reasonable wear and tear excepted and except as otherwise provided in Section 4.16(a) above, and free and clear of all liens and encumbrances other than those matters as LESSOR and LESSEE may mutually agree upon. All inventory, trade fixtures, furniture, machinery, and equipment that LESSEE or LESSEE's tenants/sublessees use or install on the Premises and any other personal property, shall remain such party's property and may be removed by such party. Should LESSEE fail to remove any and all of LESSEE's personal property from the Premises, after notice thereof, LESSOR may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of LESSEE, and LESSEE agrees to pay all costs and expenses for disposal, removal, or storage of the personal property.

4.21. Processing Fees/Documentation. Notwithstanding anything to the contrary in this Lease, LESSEE agrees to pay to LESSOR a reasonable fee for LESSOR's processing of consents and assignments and for providing documents required, or authorized by the terms, covenants, and conditions of this Lease.

4.22. Condition of Premises. LESSOR has not made and does not make any warranties or representations of any kind, expressed or implied, as to the condition, merchantability, or state of repair of the Premises or fitness of the Premises for any

particular purpose, as to the soil and site condition (including without limitation suitability, stability, compaction, composition and drainage) of the Premises, the likelihood of appreciation in value of the Premises, the existence of any Hazardous Materials, the existence of gaps, gores, or encroachments or violations of easements, building setbacks, or building restrictions, or as to the compliance of the Premises with any applicable county, state, or federal statute, ordinance, rule, or regulation, or as to any other matter whatsoever pertaining to the Premises. The Premises are being leased as is.

4.23. Hazardous Materials. LESSEE shall not store or use Hazardous Materials (as defined in Section 7.21 below) in any manner not sanctioned by law nor bring onto the Premises any such Hazardous Materials except in the ordinary course of LESSEE's business, but only to the extent in compliance with all Hazardous Materials laws, and then, except with respect to fueling operations (e.g. pump and tank facilities as permitted and approved by law), only after written notice is given to LESSOR of the identity of such materials and upon LESSOR's consent, which consent may be withheld at LESSOR's sole and absolute discretion. LESSEE shall use commercially reasonable efforts to cause LESSEE's tenants/sublessees to comply with all hazardous materials provisions set forth in the harbor rules and regulations pursuant to Section 6.1(a)(v).

(a) Each Party shall immediately advise the other Party in writing of: (i) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory actions instituted, contemplated, or threatened pursuant to any Hazardous Materials laws affecting the Premises; (ii) all claims made or threatened by any third party relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) the discovery of any occurrence or condition on the Premises which could subject LESSEE, LESSOR, or the Premises to any restrictions on ownership, occupancy, transferability, or use of the Premises under any Hazardous Materials laws, except with respect to the Existing Conditions (as defined in Section 7.21 below).

(b) If any Hazardous Materials on or released from the Premises shall be discovered during the construction of LESSEE's improvements, LESSEE shall either: (i) remediate the Premises in accordance with and to the extent required by all applicable Hazardous Materials laws, or (ii) remove the Hazardous Materials from the Premises, which shall be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials or (iii) LESSEE may, at its option, terminate this Lease by giving written notice of such termination to LESSOR, and the Parties shall thereafter have no further obligations to each other under this Lease other than any obligations that survive the termination of this Lease. Except in emergencies or as otherwise required by law, LESSEE shall first consult with LESSOR prior to any such remediation or removal. In emergencies or as otherwise required by law, LESSEE may immediately take any remedial or removal action in response to the presence, release, or threatened release of any Hazardous Materials on or about the Premises without first consulting with LESSOR, provided that LESSEE shall

give LESSOR written notice of any such action promptly following any action by LESSEE. Notwithstanding anything to the contrary in this Lease, (1) LESSEE's costs and expenses for such remediation or removal shall be covered or reimbursed by proceeds of pollution liability insurance pursuant to Section 4.16(g) above to the maximum extent possible, and (2) LESSEE will pay any costs for such remediation or removal that are not covered by proceeds of pollution liability insurance pursuant to Section 4.16(g) above except with respect to the Existing Conditions (as defined in Section 7.21 below).

(c) LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree, or other compromise with respect to any Hazardous Materials Claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate as a party, if LESSOR so elects, in such proceedings. LESSEE shall be solely responsible for and shall indemnify, defend, and hold harmless LESSOR and LESSOR's employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on the Premises or elsewhere caused by LESSEE or persons acting under or on behalf of LESSEE, including without limitation those resulting from LESSEE's removal or construction of structures or improvements, on, under, or about the Premises, including the related costs of any required or necessary removal, repair, cleanup, or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial, or other required plans, and all reasonable costs and expenses incurred by LESSOR in connection therewith, including without limitation reasonable attorneys' fees, but expressly excluding the Existing Conditions. These covenants shall survive the expiration or earlier termination of this Lease.

4.24. Security of the Premises. LESSEE shall be solely responsible for the security of the Premises during the Term as deemed prudent by LESSEE acting in a commercially reasonable manner. LESSOR shall not be obligated to provide any security services, facilities, or equipment for the Premises during the Term, and LESSOR shall not be liable to LESSEE, its employees, officers, partners, members, invitees, agents, independent contractors, or such occupants, guests, and parties for any failure to provide security services during the Term or any loss, injury, or damage suffered as a result of such failure, and LESSEE shall indemnify, defend, and hold LESSOR harmless from any claim(s) for such loss, injury, or damage if the basis for such claim(s) arose during the Term.

4.25. Historic Preservation. In the event any historic properties or burial sites, as defined in Section 6E-2 of Hawaii Revised Statutes Chapter 6E, are found on the Premises, LESSEE shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with Hawaii Revised Statutes Chapter 6E. LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, protection, or removal of such sites or remains. LESSEE shall, at all times during the Term, comply fully with all Applicable Laws and regulations with respect to all

prehistoric or historic remains or sites of archaeological significance present or discovered at the Premises.

**ARTICLE V
IMPROVEMENTS TO PREMISES**

5.1 Project. LESSEE shall improve the Premises substantially in accordance with the plans attached hereto as **Exhibit "D-1"** (such improvements are referred to as the "**Project**"). For the avoidance of doubt, Project costs incurred pursuant to this Article V may include professional fees, permitting fees, architectural and consultants' fees and costs, development fees, attorneys' fees and any management fees to the extent the same are necessarily incurred in connection with the Project or other costs incident to the Project.

(a) If LESSEE desires to modify the plans for the Project in a manner that would materially affect the value of the Project as contemplated herein, LESSEE shall submit the proposed modifications to LESSOR for approval along with financial calculations identifying the estimated impact, if any, on the cumulative net cash flow calculation pursuant to Section 2.1(c), which approval may be withheld at LESSOR's sole and absolute discretion. If LESSOR does not notify LESSEE of LESSOR's non-approval within sixty (60) days after LESSEE submits such proposed modifications to LESSOR, LESSOR shall be deemed to have denied the modifications.

(b) The Parties acknowledge that LESSEE's construction of the Project on the Premises is a material consideration for this Lease and LESSEE's failure to achieve Substantial Completion (as defined in Section 7.21 below) of the Project by the date to be determined in accordance with Section 5.4 below, subject to any Force Majeure event (as defined in Section 7.7 below) and extensions agreed to by LESSOR, will constitute an Event of Default (as defined in Section 7.4 below).

(c) At no time shall LESSEE engage in or permit any of the Prohibited Uses (as defined in Section 7.21 below) to be performed on the Premises. Except for the Prohibited Uses, the parties hereby acknowledge and agree that the Premises may be used for any other lawful purpose, in compliance with Applicable Laws and upon receipt of all necessary Approvals, including but not limited to the following: boating for recreational, sport, fishing or any commercial purposes, including fueling, storage, maintenance and related services; rental of ocean equipment, including kayaks, surf boards, snorkel or scuba equipment; water-related commercial and other services including water taxi, boat trips and transportation; any temporary structures related to any of the before-mentioned uses (each a "Permitted Use" and collectively, the "Permitted Uses"); provided that LESSEE maintains all insurances and indemnity obligations set forth in Sections 4.15 and 4.16 of this Lease as the primary responsible party and does not transfer such obligation to any third-party owner/operator of such Permitted Use or Uses.

(d) In addition to the Project, the Parties acknowledge that LESSEE may elect, in its sole and absolute discretion, to propose additional phased improvements

to the Premises (the "**Phased Improvements**"), in substantially the form as shown on **Exhibit "D-2"**. LESSEE shall submit the proposed plans for the Phased Improvements to LESSOR for approval along with financial calculations identifying the estimated costs and projected revenues, which approval may be withheld at LESSOR's sole and absolute discretion. If LESSOR does not notify LESSEE of LESSOR's non-approval within sixty (60) days after LESSEE submits such proposed modifications to LESSOR, LESSOR shall be deemed to have denied the modifications. To the extent LESSOR approves the Phased Improvements, Percentage Rent for the Phased Improvements shall be calculated in accordance with Section 2.1(c), except that "cumulative net cash flow" for purposes of the Phased Improvements shall mean all of LESSEE's gross revenues from the Phased Improvements minus all approved capital improvements, construction, design and Project costs, along with all LESSEE operating, repair and maintenance costs along with taxes, and other expenses related to the Phased Improvements, excluding in all events any debt service or other LESSEE financing costs. For clarity, operating costs shall include, all LESSEE costs associated with operation and management of the Phased Improvements, including but limited to: all insurances, professional fees, asset management fees and other management fees, property maintenance, janitorial and similar on-going expenses.

(e) The Parties acknowledge and agree that the Project and the Phased Improvements, if any, shall be subject to the receipt of all necessary Approvals (as defined in Section 5.7 below).

5.2. Project Schedule. LESSEE shall have sole discretion to determine and change the schedule for completing the Project and any parts, portions, or phases thereof, provided that Substantial Completion is achieved as of the date identified in Section 5.4 below.

5.3. Fisherman's Wharf Improvements by LESSOR. LESSOR is presently undertaking the design and procurement of repair work to the deck along Fisherman's Wharf (hereinafter, "**FW Repairs**"). LESSOR shall inform LESSEE of the anticipated schedule for the FW Repairs and agrees to modify such schedule as requested by LESSEE to accommodate the construction schedule of the Project and minimize operating impacts on and allow maximum efficiency of construction workflow for the Project. LESSEE hereby agrees and covenants to allow LESSOR and LESSOR's contractor reasonable access to the Premises in order to perform the FW Repairs. Notwithstanding anything to the contrary in this Lease, LESSEE shall not be obligated to commence construction of the pier adjacent to the FW Repairs that is anticipated to be part of the Project until after LESSOR has completed the FW Repairs and the deadline for Substantial Completion shall be extended accordingly.

5.4. Time of Performance for Project. As soon as reasonably practicable following LESSEE's receipt of the necessary Approvals (as defined in Section 5.7 below), LESSEE shall commence work on the Project and shall provide LESSOR with written confirmation of the date on which work on the Project commences. For purposes of this Section 5.4, "**commence**" shall mean the day on which visible construction first begins on any part, portion, or phase of the Project for which the necessary building and/or

development permits and financing to begin construction for such part, portion, or phase has been obtained. Time being of the essence, LESSEE shall prosecute its work on the Project diligently and continuously. The Project shall be Substantially Completed by three (3) consecutive calendar years after LESSEE commences work on the Project. Such date shall be subject to any Force Majeure event. In addition, LESSEE may request in writing reasonable extensions of time to Substantially Complete the Project due to any events that do not constitute a Force Majeure event and LESSOR's consent to such request(s) shall not be unreasonably withheld.

5.5. Financing. LESSEE represents that, prior to any visible commencement of construction on any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, LESSEE will have secured the funds sufficient to complete that part, portion, or phase of the Project.

5.6. Performance of Project. LESSEE, at its own cost and expense, before visible commencement of construction on any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, shall procure and deposit with LESSOR a copy of the contractor's performance bond (HS/AIA Document A311 or its equivalent) and labor and materials payment bond (HS/AIA Document A311 or its equivalent) naming LESSOR and the State of Hawaii as additional obligees thereunder in an amount equal to ONE HUNDRED PERCENT (100%) of the construction cost of the part, portion, or phase of the Project pursuant to the construction contract for such part, portion, or phase, with a surety reasonably satisfactory to LESSOR and qualified to do business in the State of Hawaii, that assures the performance of such contract(s) by the contractor pursuant to the terms of the construction contract, and the completion of such part, portion, or phase by the contractor pursuant to the terms of such contract free and clear of all mechanics' and materialmens' liens and claims.

5.7. Approvals and Permits. Prior to any visible commencement of construction on any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, LESSEE shall have obtained all the necessary governmental approvals, permits and entitlements (collectively, the "Approvals") for such part, portion, or phase then sought to be commenced and shall have so certified to LESSOR in writing, along with copies of the Approvals obtained. LESSOR shall use its reasonable best efforts to cooperate with LESSEE in securing all necessary Approvals from Governmental Authorities; provided that nothing in this Lease shall adversely affect, influence, limit, restrict or reduce the right of LESSOR, as the redevelopment authority for the Kakaako Community Development District (the "Redevelopment Authority"), to exercise its governmental power and authority and act in regulatory matters in accordance with applicable Governmental Requirements. LESSEE expressly acknowledges that LESSOR, as the Redevelopment Authority for the Kakaako Community Development District, has not guaranteed, promised, or otherwise indicated that LESSEE will be granted any Approvals it may require from LESSOR, as the Redevelopment Authority. If, notwithstanding LESSEE's good faith, commercially reasonable efforts to obtain all necessary approvals from the Redevelopment Authority (at no cost to LESSOR), LESSEE has not obtained Approvals for LESSEE's intended use of the Premises prior to the date

that is one (1) year after the Commencement Date of this Lease (the "**Approvals Period**"), then LESSEE may, at its option, terminate this Lease by giving written notice of such termination to LESSOR prior to the expiration of the Approvals Period, and the Parties shall thereafter have no further obligations to each other under this Lease other than any obligations that survive the termination of this Lease.

5.8. Compliance with Americans with Disabilities Act of 1990. LESSEE shall cause to be performed, any construction, demolition, alteration, or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances, and regulations of all duly constituted authorities, including without limitation and to the extent applicable, the Americans with Disabilities Act of 1990 Title III Regulations, the ADA Accessibility Guidelines and the Minimum Guidelines and Requirements for Accessible Design promulgated by the Architectural and Transportation Barriers Compliance Board, Title II (Public Accommodations) of the Civil Rights Act of 1964, the Architectural Barriers Act of 1968, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended, or supplemented.

5.9. Construction Contract.

(a) At least fifteen (15) days prior to any visible commencement of construction on any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, LESSEE shall deliver to LESSOR a copy of the executed construction contract for such part, portion, or phase. LESSEE represents and warrants that it shall only contract with a contractor who is licensed and registered to do business as a contractor in the State of Hawaii, and who maintains such licensing and registration throughout the course of such part, portion, or phase of the Project. The construction contract shall describe the methods of construction that are designed to facilitate compliance with applicable Governmental Requirements relevant to the reduction of the negative impact of construction (e.g., dust control) on adjacent properties and on businesses in the vicinity of the construction, if any. These shall include policies regarding scheduling of certain activities (e.g., delivery of materials and equipment) that disrupt vehicular and pedestrian traffic, such activities being limited to off-peak hours to the extent possible; policies concerning the placement of temporary structures (e.g., field offices, scaffolding, hoists); and temporary utility connections (e.g., light, heat, power) that may adversely affect surrounding businesses, if any.

(b) LESSEE shall require that the contractor and any subcontractors, consultants, or independent contractors who furnish materials to be integrated into the Project or perform work on the Project, indemnify, defend, and hold LESSOR and the State of Hawaii harmless from and against any and all claims, actions, penalties, damages, liabilities, costs, and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon, resulting from, or arising out of or in connection with: (i) their non-observance or non-performance of any Applicable Laws; (ii) any injury sustained or suffered by them while on the Premises; (iii) any other act or omission on their behalf relating to the materials furnished to or work performed on the Project; and (iv) any materialman's or mechanic's liens arising from or relating to the Project.

(c) LESSEE shall also cause the construction contract to bind its contractors and any subcontractors to, comply with applicable laws and regulations, as amended, of the U.S. Department of Labor; safety and health regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Pub. L. 91-596); and any other safety and health regulations applicable to work on the Project, including without limitation the Hawaii Occupational Safety and Health Law (Hawaii Revised Statutes Chapter 396) and the rules and regulations promulgated thereunder and Hawaii Revised Statutes Chapter 104 (Wages and Hours of Employees on Public Works). Nothing in these laws and regulations shall be construed to supersede or in any manner affect any workers' compensation law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

(d) LESSEE shall require that the contractor and any subcontractors, consultants, or independent contractors who furnish materials or services to be integrated into the Project or perform work on the Project, add LESSOR and the State of Hawaii, and their respective officers, employees, and agents as additional insureds to their policy or policies of insurance.

5.10. Performance of Construction Contract. LESSEE shall take reasonably prudent precautions to protect from damage to property adjacent to, or in close proximity to, the Project, caused by the work or the actions or omissions of LESSEE and LESSEE's contractors and consultants, or their respective employees, agents, guests, or subcontractors. LESSEE shall be responsible for damage or injury to adjacent public and private property resulting from its construction operations. This applies, but is not limited, to public utilities, trees, lawn areas, buildings, dwellings, monuments, fences, pipes, underground structures, and public streets (except natural wear and tear of streets resulting from legitimate use thereof by LESSEE), and wherever such property is damaged due to the activities of LESSEE or LESSEE's contractors or consultants, or their respective employees, agents, guests, or subcontractors, it shall be restored or remedied promptly by LESSEE, at its own expense, to the same or better condition which existed immediately before such damage. In case of failure on the part of LESSEE to restore or remedy or take steps to restore or remedy and diligently prosecute such restoration and remediation, or make good such damage or injury, LESSOR may, upon thirty (30) days written notice to LESSEE and thereafter upon fifteen (15) days following a second written notice to LESSEE, proceed to repair, rebuild, or otherwise restore or remedy such property as may be necessary, and the cost thereof (including a reasonable administrative fee) shall be immediately due and payable by LESSEE to LESSOR. LESSEE shall confine the equipment, apparatus, materials, and supplies of LESSEE and LESSEE's contractors and consultants, or their respective employees, agents, guests, or subcontractors, to the Premises, or as otherwise permitted by law or by private agreement.

5.11. As-Built Drawings. Within six (6) months after issuance of a permanent certificate of occupancy with respect to any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, LESSEE shall

deliver to LESSOR two copies of the "as-built" plans and specifications for such part, portion, or phase.

**ARTICLE VI
OPERATION OF KEWALO BASIN HARBOR**

6.1. Operation of Kewalo Basin Harbor. Commencing as of 12:00 pm Hawaii Time on September 1, 2014, LESSEE shall be (and LESSOR shall have taken any actions necessary to make LESSEE) the exclusive manager and operator of all aspects (including but not limited to delegating to LESSEE full fiscal and physical harbor operations and management services) of Kewalo Basin Harbor as a marina, together with the parcels referred to in subsection (c) below (referred to as the "**Harbor Facilities**"), in accordance with the terms and conditions of this Lease and all Applicable Laws, including but not limited to, the Kewalo Basin Rules, as they may be amended from time to time and in such role, shall be the "harbor manager" referred to in the Kewalo Basin Rules; provided that where the Kewalo Basin Rules require a regulatory determination to be made by "HCDA", then LESSOR shall make such determination, not LESSEE, except as to any day-to-day management or operational decisions relating to the Harbor Facilities.

(a) LESSEE's operational and management responsibilities as harbor manager of Kewalo Basin Harbor shall include, but are not limited to: (i) timely collecting any rent or fees due and owing from any of the boat tenants or sublessees of the Harbor Facilities, (ii) timely and adequately responding to any complaints lodged or concerns noted by boat tenants or members of the public who utilize Kewalo Basin Harbor, (iii) disposing or ensuring the removal or disposal of any vessels which are not permitted to berth at Kewalo Basin Harbor in accordance with all applicable Governmental Requirements, (iv) managing the harbor, slip, ticket booth, and office facilities and tenants, and (v) enforcing harbor rules and regulations (including but not limited to parking rules), including, in LESSEE'S discretion, the right to run the regularly scheduled stakeholder meeting. Prior to the Commencement Date, LESSOR shall assign to LESSEE all of LESSOR'S rights and interests in all rents, revenues and reimbursements, security deposits and pre-paid rents and LESSEE shall assume all rights and obligations related thereto.

(b) During the Term, LESSEE shall be entitled to collect all revenues, income, or other receipts from the Harbor Facilities, which shall be included in LESSEE'S Gross Receipts.

(c) The Harbor Facilities comprise the real and personal property at and located on the Premises.

(d) On or before September 1, 2014 and for the duration of the Term and at no cost to LESSEE, LESSOR shall grant, license, convey, assign, or otherwise transfer, provide, or make available (or shall cause to be granted, licensed, conveyed, assigned, or otherwise transferred, provided, or made available) to LESSEE any and all rights necessary or appropriate for LESSEE to have in connection with managing and operating the Harbor Facilities, including without limitation, intellectual and intangible property rights. Any intellectual property created by or at the direction of LESSEE,

including but not limited to naming of portions or all of the Premises, naming and branding and all protected rights or trade-marks associated with activities, events, personalities, or services offered at the Premises or related in any way to the Premises (the "Protected IP") shall remain the exclusive property of LESSEE during the term of the Lease and neither LESSOR nor any other parties shall have a right to use such Protected IP without LESSEE's prior written consent.

6.2. Operation of Kewalo Basin Harbor Not Assignable. Except to an Affiliated Entity, LESSEE shall not enter into any agreement or contract that would assign the operation or management of Kewalo Basin Harbor or any portion thereof without LESSOR's prior written approval, which approval shall not be unreasonably withheld. LESSOR's approval of an assignment or sublease of this Lease pursuant to Section 4.13 or 4.14 shall also constitute LESSOR's approval under this Section 6.2. Unless provided pursuant to Section 4.13 or 4.14, LESSEE shall furnish LESSOR with all reasonably requested information regarding the proposed assignment and assignee or sublease and sublessee in order to allow LESSOR to adequately evaluate the proposed assignment or sublease and determine whether to approve the proposed assignment or sublease. Any consent by LESSOR under this Section 6.2 shall apply only to the specific transaction thereby authorized and shall not relieve LESSEE of LESSEE's obligation to operate and maintain the Harbor Facilities pursuant to this Lease. LESSOR hereby acknowledges and agrees that LESSEE may enter into a new operating agreement with Almar Management Inc. to perform certain operational and maintenance obligations set forth in this Article 6. In the event that an Approved Mortgagee, as defined in Section 7.1 becomes the lessee pursuant to Section 7.2(c)(v) or (vi), then LESSOR may either approve Approved Mortgagee to operate and manage the Kewalo Basin Harbor or may require that Approved Mortgagee select an Experienced Operator to operate and manage the same. For purposes of this Section, an Experienced Operator shall mean a person or entity possessing the experience in the operation of high quality harbor operations, qualifications, good reputation, financial resources and adequate personnel necessary for the proper performance of all the harbor management and harbor operations as set forth under this Lease, in a manner consistent with the quality, character, reputation and viability of the Kewalo Basin Harbor.

6.3. Delivery of Operational Materials.

(a) On or before the Effective Date, LESSOR shall deliver to LESSEE all plans, surveys, contracts, materials, keys, manuals, maintenance log-books, and records pertaining to the operation of Kewalo Basin Harbor within the possession or control of LESSOR, and LESSOR agree to use its best efforts to obtain such materials not in its possession, and deliver such materials to LESSEE. LESSOR shall also furnish (or cause to be furnished) all such information, take (or cause to be taken) all such other action, and shall cooperate with LESSEE as LESSEE shall reasonably require in order to effectuate an orderly and systematic termination of the duties and activities of LESSEE's predecessor as harbor manager of the Kewalo Basin Harbor and orderly and systematic transfer of duties to LESSEE. LESSOR shall provide a copy of all rent rolls and shall provide financial records to identify all amounts due and owing and all payment and other obligations.

(b) Upon the expiration or termination of this Lease, LESSEE shall deliver to LESSOR all plans, surveys, contracts, materials, keys, manuals, maintenance log-books, and records pertaining to the operation of Kewalo Basin Harbor within the possession or control of LESSEE, and LESSEE agrees to use reasonable efforts to obtain such materials not in its possession, and deliver such materials to LESSOR. LESSEE shall also furnish all such information, take all such other action and shall cooperate with LESSOR as LESSOR shall reasonably require in order to effectuate an orderly and systematic termination of LESSEE's duties and activities hereunder and orderly and systematic transfer of duties to LESSEE's successor.

ARTICLE VII MUTUAL COVENANTS

7.1. Mortgage. Upon due application and obtaining the prior written consent of LESSOR, which shall not be unreasonably withheld, LESSEE may mortgage this Lease, or any interest in this Lease, and/or create a security interest in the leasehold interest of LESSEE; provided that any mortgagee shall be registered to do business in Hawaii and provided further that LESSOR's consent is not required if the mortgage or security interest is to a Suitable Lender (as defined in Section 7.21 below). If the mortgage or security interest is to a Suitable Lender, the consent shall extend to foreclosure and sale of LESSEE's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "**holder**" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States. Any mortgage consented to by LESSOR pursuant to or otherwise permitted by this Section 7.1 shall be deemed an "**Approved Mortgage**" for purposes of all other provisions of this Lease and the mortgagee or holder of such Approved Mortgage shall be deemed an "**Approved Mortgagee**." LESSEE agrees that it shall not enter into any mortgage unless such mortgage shall substantively provide that if the Approved Mortgagee acquires, through foreclosure or otherwise, all or part of LESSEE's interest in the Premises, the Approved Mortgagee shall take subject to the terms, covenants, and provisions of this Lease to be kept, observed, and performed by LESSEE. Nothing contained in the Approved Mortgage shall release or be deemed to relieve LESSEE from the full and faithful observance and performance of LESSEE's covenants contained in this Lease or from any liability for the non-observance or non-performance thereof, nor be deemed to constitute a waiver of any rights of LESSOR under this Lease, and the terms, covenants, and conditions of this Lease shall control in case of any conflict with the provisions of the Approved Mortgage. The Approved Mortgagee shall have the right to perform any term, covenant, condition, or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by the Approved Mortgagee with the same force and effect as if furnished by LESSEE.

7.2. Rights of Approved Mortgagees. For purposes of this Section 7.2, "Approved Mortgagee" includes assignees of Approved Mortgagees.

(a) Every Approved Mortgagee shall have the right, but not the obligation, to: (i) make any payments due under this Lease, (ii) assign its Approved Mortgage; and (iii) enforce its Approved Mortgage.

(b) No Approved Mortgagee shall have any duty, obligation, or liability under this Lease prior to the time of its entry into physical possession of the Premises or its commencement of performance of LESSEE's obligations under this Lease.

(c) Provided that an Approved Mortgagee provides LESSOR with its name and current address, LESSOR hereby covenants and agrees to faithfully perform and comply with the following provisions in this subsection (c) with respect to the corresponding Approved Mortgage.

(i) No action by LESSEE or LESSOR to voluntarily cancel or surrender (except in accordance with the terms herein) or materially modify the terms of this Lease or the provisions of this Section 7.2 shall be binding upon an Approved Mortgagee without its prior written consent.

(ii) If LESSOR shall give any notice, demand, election, or other communication which may adversely affect the security for an Approved Mortgage, including without limitation a notice of an Event of Default hereunder, to LESSEE, LESSOR shall simultaneously give a copy of each such notice, demand, election, or other communication to the Approved Mortgagee.

(iii) In the event of an Event of Default by LESSEE in the payment of any monetary obligation hereunder, LESSOR agrees not to terminate this Lease unless and until LESSOR provides written notice of such Event of Default to any Approved Mortgagee and such Approved Mortgagee shall have failed to cure such Event of Default within thirty (30) days after delivery of such notice.

(iv) In the event of an Event of Default by LESSEE in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, LESSOR agrees not to terminate this Lease unless and until LESSOR provides written notice of such Event of Default to any Approved Mortgagee and such Mortgagee shall have failed to cure such Event of Default within sixty (60) days following the expiration of any grace or cure periods granted LESSEE in this Lease; provided that if such Event of Default cannot practicably be cured by the Approved Mortgagee without taking possession of the Premises, or such Event of Default is not susceptible of being cured by the Approved Mortgagee, then LESSOR shall not terminate this Lease if and as long as:

(A) In the case of an Event of Default which cannot practicably be cured by the Approved Mortgagee without taking possession of the Premises, the Approved Mortgagee has delivered to LESSOR, prior to the date on which LESSOR shall be entitled to give notice of termination of this Lease, a written undertaking

wherein the Approved Mortgagee agrees that it will attempt to cure such Event of Default and the Approved Mortgagee proceeds diligently to obtain possession of the Premises as a mortgagee or holder (including, at its option, possession by receiver), and, upon obtaining such possession, proceeds diligently to cure such Event of Default in accordance with said undertaking in no event later than one hundred eighty (180) days after obtaining possession, and

(B) In the case of an Event of Default which is not susceptible to being cured by the Approved Mortgagee, the Approved Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire this Lease either in its own name or through a nominee by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured. If the Approved Mortgagee, its nominee, or a purchaser in the foreclosure sale shall acquire title to LESSEE's estate hereunder and shall cure all Events of Default which are susceptible of being cured by the Approved Mortgagee or said purchaser, as the case may be, then prior Events of Default which are not susceptible to being cured by the Approved Mortgagee or said purchaser shall no longer be deemed Events of Default under this Lease.

(v) Foreclosure of any Approved Mortgage, or sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Approved Mortgage, or any conveyance of the leasehold estate hereunder from LESSEE to any Approved Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of LESSOR or constitute a breach of any provision or a default under this Lease, and upon such foreclosure, sale, or conveyance LESSOR shall recognize the Approved Mortgagee or such designee as the lessee hereunder. If any Approved Mortgagee or other third party shall acquire LESSEE's estate hereunder as a result of a judicial or non-judicial foreclosure under an Approved Mortgage, or pursuant to a non-judicial power of sale in an Approved Mortgage, or by means of an assignment in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Approved Mortgagee or such other third party purchaser shall thereafter have the right to further assign or transfer LESSEE's estate hereunder to an assignee in accordance with Section 4.13 above. Upon such acquisition of LESSEE's estate hereunder as described in the immediately preceding sentence by such Approved Mortgagee or its designee, LESSOR shall immediately execute and deliver an acknowledgement of the Premises to such Approved Mortgagee in the form of a lease amendment, upon the written request therefor by such Approved Mortgagee or its designee given not later than one hundred twenty (120) days after such party's acquisition of LESSEE's estate hereunder (for purposes of this section 7.2(c)(v), the "amended lease"). Such amended lease shall confirm the provisions of this Lease, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining term hereof), and the elimination of any requirements which have been fulfilled by LESSOR prior thereto, and such amended lease shall have priority equal to the priority of this Lease.

(vi) LESSOR agrees that in the event of termination of this Lease by reason of any Event of Default by LESSEE, or by reason of the disaffirmance or

rejection hereof by LESSEE or a receiver, liquidator, or trustee for LESSEE or its property, LESSOR will execute an amendment and/or reinstatement of the lease (for purposes of this section 7.2(c)(vi), an "amended lease") with the most senior Approved Mortgagee requesting an amended lease for the remainder of the term of this Lease, effective as of the date of such termination, confirming the rent, and the terms, provisions, covenants, and agreements as herein contained and subject to the rights, if any, of the parties then in possession of any part of the Premises, provided that: (A) the senior Approved Mortgagee shall make written request upon LESSOR for the amended lease within sixty (60) days after the date of termination; (B) the senior Approved Mortgagee shall pay to LESSOR at the time of execution and delivery of the amended lease any and all sums which would, at the time of execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which LESSOR shall have incurred by reason of the Event of Default; (C) the senior Approved Mortgagee shall perform and observe all covenants herein contained on LESSEE's part to be performed which are susceptible to being performed by the senior Approved Mortgagee, and shall further remedy any other conditions which LESSEE was obligated to perform, to the extent the same are curable or may be performed by the senior Approved Mortgagee; and (D) the lessee under the amended lease shall have the same right, title, and interest in and to all improvements located on the Premises as LESSEE. Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any amended lease made pursuant to this Section 7.2(c)(vi) shall be prior to any Approved Mortgage or other lien, charge, or encumbrance on the Premises, to the same extent as the prior Lease, and shall be accompanied by a conveyance of title to the existing improvements (free of any mortgage, lien, charge, or encumbrance created by LESSOR) for a term of years equal to the term of the amended lease, subject to the reversion in favor of LESSOR upon expiration or sooner termination of the amended lease. The rights to an amended lease granted in this Section 7.2(c)(vi) to any Approved Mortgagee shall survive any termination of this Lease. If an Approved Mortgagee shall elect to demand an amended lease under this Section 7.2(c)(vi), LESSOR agrees, at the request of, on behalf of, and at the sole cost and expense of the Approved Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove LESSEE from the Premises, and those sublessees actually occupying the Premises, or any part thereof, as designated by the Approved Mortgagee and subject to any non-disturbance or attornment agreements with such sublessees. Unless and until LESSOR has received notice from all Approved Mortgagees that the Approved Mortgagees elect not to demand an amended lease as provided in this Section 7.2(c)(vi), or until the period therefor has expired, LESSOR shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Approved Mortgagees. Nothing in this Lease shall require any Approved Mortgagee to enter into an amended lease pursuant to this Section 7.2(c)(vi).

(vii) In the event any Approved Mortgagee or its designee becomes the lessee under this Lease or under any amended lease obtained pursuant to Sections 7.2(c)(v) or (vi) above, the Approved Mortgagee or its designee shall be personally liable for the obligations of LESSEE under this Lease or any amended lease only for the period of time that the Approved Mortgagee or its designee remains the actual beneficial holder of LESSEE's estate hereunder, and only to the extent provided in this

Lease or such amended lease. No Approved Mortgagee shall have any personal liability beyond its interest in the Premises for the performance or payment of any covenant, liability, warranty, or obligation hereunder or under any amended lease, new agreement, or other agreement entered into in connection herewith, and LESSOR agrees that it shall look solely to the interests of such Approved Mortgagee in the Premises for payment or discharge of any such covenant, liability, warranty, or obligation.

(viii) The Parties shall give all Approved Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims, as each may relate to the Premises, and any Approved Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The Parties hereby consent to such intervention. In the event that any Approved Mortgagee shall not elect to intervene or become a party to the proceedings, such Approved Mortgagee shall receive notice of and a copy of any award or decision made in connection therewith.

(ix) LESSOR shall upon reasonable request sign such reasonable confirmations as may be requested by an Approved Mortgagee confirming the provisions hereof.

(x) So long as any Approved Mortgage remains outstanding, (A) the insurance policies required to be maintained by LESSEE pursuant to this Lease shall name the Approved Mortgagee as an additional named insured and loss payee/mortgagee; (B) except as provided in Section 4.16(a) above, all proceeds of such insurance policies shall be payable first to such Approved Mortgagee as loss payee to be applied by such Approved Mortgagee in accordance with the terms of the applicable loan documents; (C) any and all awards payable to LESSOR or LESSEE in connection with any taking or condemnation shall be payable to such Approved Mortgagee and disbursed as follows: (1) first, to such Approved Mortgagee for the value of the leasehold estate created by this Lease and the value of the improvements located on the Premises up to an amount equaling the outstanding principal balance of any loan secured by such Approved Mortgage, and any interest accrued thereon and reasonable collection costs, and (2) second, to LESSOR and LESSEE in accordance with the terms of this Lease. In the event of a partial or total loss as set forth in Section 4.16(a) occurring during the Term, proceeds shall be payable first in accordance with Section 4.16(a) and then in accordance with the steps set forth herein.

(xi) LESSOR and LESSEE agree to cooperate in including in this Lease by suitable amendment (or in such other documents containing terms and provisions customarily required by mortgagees in connection with their financing) from time to time any provision which may reasonably be requested by any Approved Mortgagee or proposed Approved Mortgagee for the purposes of: (A) allowing such Approved Mortgagee or proposed Approved Mortgagee reasonable means to protect or preserve the lien of the Approved Mortgagee or proposed Approved Mortgagee, or (B) implementing the Approved Mortgagee protections contained in this Lease; provided that any such amendments or documents shall not in any way affect the Term of or rent under this Lease, nor otherwise in any material respect adversely affect any rights of LESSOR under this Lease.

7.3. Estoppel Certificates. LESSEE agrees promptly following request by LESSOR to execute and deliver an Estoppel Certificate (as defined later in this Section 7.3) to whichever of them has requested the same. LESSOR agrees promptly following request by LESSEE or an Approved Mortgagee to execute and deliver an Estoppel Certificate to whichever of them has requested the same. "**Estoppel Certificate**" means an estoppel certificate certifying: (a) that this Lease is unmodified, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any; (b) that there are no uncured defaults on the part of LESSOR and LESSEE, as applicable, under this Lease, or if there exist any uncured defaults on the part of LESSOR or LESSEE, as applicable, under this Lease, stating the nature of such uncured defaults; and (c) the correctness of such other information regarding the status of this Lease as may be reasonably required by the party requesting execution of such Estoppel Certificate. A Party's failure to so execute and deliver an Estoppel Certificate within thirty (30) days after receiving a written request for an Estoppel Certificate shall be conclusive upon such Party that as of the date of such written request: (i) this Lease is in full and force and effect without modification, except as may be represented by the party requesting execution of such Estoppel Certificate, (ii) there are no uncured defaults of LESSOR's or LESSEE's obligations, as applicable, under this Lease except as may be represented by the party requesting execution of such Estoppel Certificate, and (iii) no rent has been paid in advance, except as may be represented by the party requesting execution of such Estoppel Certificate.

7.4. Breach and Events of Default. Time is of the essence of this Lease, and following the notice and cure provisions described in this Section 7.4 or in Section 7.5 below, as applicable, any one or more of the following events shall constitute an "**Event of Default**" by LESSEE under this Lease:

- (a) If LESSEE shall fail to make any required rent payment within five (5) days after due and such failure shall not have been cured within fifteen (15) days after receipt of written notice from LESSOR respecting such overdue payment;
- (b) If LESSEE shall fail to make any other payment when due;
- (c) If LESSEE shall abandon the Premises, except in accordance with Section 4.20 above or Section 7.6 below;
- (d) If this Lease and the Premises shall be attached or taken by operation of law, if not released or appropriately bonded within ninety (90) days after receipt of written notice by LESSOR;
- (e) If LESSEE shall fail to observe, perform, or comply with any material non-payment term, covenant, agreement, or condition of this Lease;
- (f) If LESSEE fails to Substantially Complete the Project by the date to be determined in accordance with Sections 5.3 and 5.4 above, subject to any Force Majeure event and extensions agreed to by LESSOR;

(g) An Event of Default pursuant to Section 7.11 below; and

(h) If LESSEE shall fail to observe, perform, or comply with the Applicable Laws described in Section 4.7 above.

7.5. Remedies Upon Event of Default; Termination of the Lease.

(a) Notice of Default. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 7.4(a) above), LESSOR shall deliver a written notice of the occurrence of such event in accordance with Section 7.15 below, making demand upon LESSEE to cure or remedy such event within thirty (30) days from the date of receipt of the notice. In the event LESSEE shall fail to cure such noticed event within thirty (30) days following receipt of LESSOR's written notice or, in the case of any non-monetary event which cannot reasonably be cured within thirty (30) days following receipt of LESSOR's written notice, LESSEE shall fail to commence the cure of such non-monetary event and diligently prosecute such cure to completion, an Event of Default shall be deemed to have occurred and LESSOR may pursue its rights and remedies. In the case of an Event of Default described in Section 7.4(a) above, an Event of Default shall be deemed to have occurred and LESSOR may pursue its rights and remedies if any required rent payment is not made within the cure period provided for in Section 7.4(a) above.

(b) LESSOR's Remedies. Upon an Event of Default and following expiration of the applicable notice and cure periods, LESSOR shall have the absolute unconditional right if it so elects: (i) to any and all remedies available at law or in equity; (ii) to terminate this Lease after having provided a second written notice to LESSEE stating that LESSOR intends to terminate the Lease unless LESSEE cures such Event of Default within fifteen (15) days from the date of such second notice or commences and diligently pursues such cure where the cure is not reasonably susceptible to cure within fifteen (15) days; (iii) to receive liquidated damages as and to the extent set forth in this Lease; (iv) to institute and prosecute proceedings to enjoin or restrain LESSEE from commencing or continuing said breach, and/or to cause by injunction LESSEE to correct and cure said breach or threatened breach; (v) to recover from LESSEE all rent due through the date this Lease is terminated (with interest at the Default Rate (as defined in Section 7.21 below) until paid), plus any amount necessary to compensate LESSOR for the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom which shall include, without limitation: (A) court and all other costs and reasonable attorneys' fees for services in connection with an Event of Default, in recovering possession, or for prosecuting any action or proceeding against LESSEE in which LESSOR prevails, (B) all reasonable costs and expenses of any re-letting, including without limitation all reasonable costs of alterations and repairs, and (C) all reasonable brokerage commissions or other similar expenses of LESSOR in connection with such re-letting; plus, at the sole option of LESSOR, the present worth at the time of termination of this Lease of the excess, if any, of the total rent payable under this Lease for the remainder of the Term, over the then reasonable rental value of the Premises for the same period and all of the foregoing amounts shall be immediately due and payable by LESSEE to LESSOR upon demand; and (vi) LESSOR may, but is not required to, pay any amounts which LESSEE is required to pay

under this Lease, and if LESSOR makes any such payment, LESSOR may collect interest on the amount paid at the Default Rate. In the event of termination of this Lease, all improvements made by LESSEE shall remain and become part of the Premises of LESSOR, and LESSOR may retain all rent paid in advance as payment toward LESSOR's damages. Except as otherwise provided herein, none of the remedies enumerated herein is exclusive, and nothing herein shall be construed as prohibiting LESSOR from pursuing any other remedies at law, in equity, or otherwise available to it under this Lease.

(c) Cumulative Remedies. The rights and remedies of LESSOR, whether provided by law or by this Lease, shall be cumulative, and the exercise by LESSOR of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, to the extent permitted by law. No waiver made by LESSOR shall apply to obligations beyond those expressly waived in writing.

(d) LESSOR's Right to Act. If LESSEE shall fail or neglect to do or perform any covenant or condition required under this Lease and such failure shall not be cured with any applicable cure period, then without limiting any of LESSOR's rights under this Lease, LESSOR may, but shall not be required to, make any payment payable by LESSEE under this Lease, discharge any lien, take out, pay for and maintain any insurance required under this Lease, or do or perform or cause to be done or performed any such other act or thing (including but not limited to entering upon the Premises for such purposes). LESSEE shall repay to LESSOR upon demand the entire out-of-pocket cost and expense incurred by LESSOR in connection with the cure, including without limitation compensation to the agents, consultants, and contractors of LESSOR and reasonable attorneys' fees and expenses. LESSOR may act upon shorter notice or no notice at all if necessary, in LESSOR's reasonable judgment, to address any emergency situation related to health or safety or governmental or municipal time limitation, or to protect LESSOR's interest in any portion of the Premises. LESSOR shall not be required to inquire into the correctness of the amount or validity of any tax or lien that may be paid by LESSOR, and LESSOR shall be duly protected in paying the amount of any such tax or lien claimed and in such event LESSOR also shall have the full authority, in LESSOR's sole judgment and discretion and without prior notice to or approval by LESSEE, to settle or compromise any such lien or tax. Any act or thing done by LESSOR pursuant to the provisions of this subsection (d) shall not be or be construed as a waiver of any such failure by LESSEE, or as a waiver of any term, covenant, agreement, or condition contained in this Lease, or of the performance of any term, covenant, agreement, or condition contained in this Lease.

7.6. Condemnation. If at any time, during the term of this Lease, any portion of the Premises should be condemned or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the Premises condemned. LESSEE shall be entitled to receive from the condemning authority the proportionate value of LESSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. The LESSEE shall not by reason of the condemnation be entitled to any claim against LESSOR for condemnation or indemnity for leasehold interest and all

compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of LESSOR. The foregoing rights of LESSEE shall not be exclusive of any other rights to which LESSEE may be entitled by law. In the event that LESSOR and LESSEE, acting reasonably and in accordance with Applicable Laws, mutually agree that the portion taken renders the remainder unsuitable for the use or uses for which the Premises were leased, then LESSEE shall have the right to surrender the Premises and terminate this Lease upon the delivery of written notice to LESSOR and be discharged and relieved from any further liability.

7.7. Force Majeure. A failure or delay in performance by either Party shall not be a breach of this Lease and shall not be an event of default under this Lease if such failure or delay arises out of or results from an event of Force Majeure. An event of "Force Majeure" shall mean the following events or circumstances:

(a) Strikes, lockouts, labor disputes, failures or delays in transportation, or freight embargoes;

(b) Acts of God, tornadoes, hurricanes, floods, earthquakes, fire or other hazards of the kind typically covered by property damage or business interruption insurance, tsunami, epidemics, quarantine, pestilence, drought or other water shortages, or abnormal or unusually severe weather;

(c) Acts of a public enemy, acts of war, rebellion, sabotage, terrorism, effects of nuclear radiation, hostilities, civil commotions or disturbances, mob violence or malicious mischief, unavoidable casualties, blockades, insurrections, or riots; and

(d) Acts, rules, regulations, orders, or other directives of any Governmental Authority or agency or the order of any court of competent jurisdiction, including any requirements of law related to historic remains or sites of archaeological significance present or discovered at the Premises.

In the event that LESSEE shall be delayed in completing the construction of the Project due to an event of Force Majeure, LESSEE shall be excused until the cessation of such Force Majeure event, provided that LESSEE has previously notified LESSOR of such fact in writing and LESSOR concurs that one or more Force Majeure events have occurred and that but for the Force Majeure event(s), LESSEE's progress and performance would not have been delayed. Notwithstanding anything to the contrary in this Lease, in no event shall the Term be extended as a result of the occurrence of an event of Force Majeure.

7.8. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants, and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess, and enjoy the Premises for the Term of this Lease, without hindrance or interruption by LESSOR or any other person or persons by, through, or under it, unless otherwise provided in this Lease. LESSOR's covenant of quiet enjoyment, however, shall not in any way obligate LESSOR to defend or protect the Premises from political protests.

7.9. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rental payments shall be the Default Rate. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay to LESSOR, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

7.10. LESSEE's Waiver. LESSOR shall not be responsible for or liable to LESSEE and LESSEE does hereby release LESSOR, waive all claims against LESSOR, and assume the risk for any injury, loss, or damage to any person, Premises or property in, on, over, or under the Project, by or from any cause whatsoever (except to the extent caused by LESSOR's acts or omissions or those of LESSOR's affiliates, agents, representatives, employees, consultants, or advisors and except as provided in Section 4.15 above).

7.11. Representation of LESSEE Regarding State and City Obligations. LESSEE hereby represents that, as of the Effective Date of this Lease, it has not been notified of any delinquency in the payment of taxes, rents, or other obligations owing the State of Hawaii or any county in the State of Hawaii in which it is conducting business, which may include without limitation, the City and County of Honolulu. If it is later determined that this representation is untrue or incorrect in any material respect, this shall constitute an Event of Default occurring on the Effective Date of this Lease entitling LESSOR to all remedies available to it under and pursuant to the terms of this Lease.

7.12. Hawaii Law. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

7.13. Recitals and Exhibits – Incorporation in Lease. All recitals first above set forth and exhibits referenced in or attached to this Lease are hereby deemed incorporated by reference into and made part of this Lease.

7.14. Partial Invalidity. If any term, provision, covenant, or condition of this Lease should be held to be invalid, void, or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

7.15. Notice. Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other Party shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service as follows (or as updated pursuant to a written notice sent in accordance with this Section 7.15):

EXECUTION COPY

If to LESSEE: Kewalo Harbor, LLC
c/o The Howard Hughes Corporation
1240 Ala Moana Boulevard, Suite 200
Honolulu, Hawaii 96814
Attention: General Manager and Legal Department
Telephone: (808) 791-2998
With a copy by email sent on the same date to:
Email: Bobbie.Lau@howardhughes.com

And copies to: The Howard Hughes Corporation
13355 Noel Road, 22nd Floor
Dallas, Texas 75240
Attention: President
Telephone: (214) 741-7744

The Howard Hughes Corporation
13355 Noel Road, 22nd Floor
Dallas, Texas 75240
Attention: General Counsel
Telephone: (214) 741-7744

If to LESSOR: Hawaii Community Development Authority
461 Cooke Street
Honolulu, Hawaii 96813
Attention: Executive Director
Telephone: (808) 594-0300

And a copy to: Department of the Attorney General
Public Safety Hawaiian Home Lands and Housing Division
425 Queen Street
Honolulu, Hawaii 96813
Attention: Lori N. Tanigawa
Telephone: (808) 587-2978

or at such other address as may be specified from time to time in writing by either Party and delivered to the other Party in accordance with this Section 7.15. Unless otherwise provided in this Lease, all such notices hereunder shall be deemed to have been given on the date personally delivered or faxed or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of first attempt at delivery (as depicted on any return receipt, as an example) shall be deemed the date notice has been given.

7.16. Consents. In any case where the consent or approval of a Party is required under this Lease, except in any instance wherein a Party has expressly reserved the right to grant or withhold or approval in its sole judgment or discretion, such consent or approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the

foregoing, nothing in this Lease shall preclude LESSOR, in its capacity as the redevelopment agency for the Kakaako Community Development District pursuant to Hawaii Revised Statutes Chapter 206E (Hawaii Community Development Authority), from undertaking the review and approval of any required permitting, licensing, or other regulatory matters in accordance with the established procedures and requirements of LESSOR with respect to similar projects, and in no event shall LESSOR by virtue of any provision of this Lease be obligated to take any actions concerning regulatory approvals except through its established processes. Each Party shall use its reasonable best efforts to cooperate with the other Party in expediting all reasonable requests for consent or approval, and, if such consent or approval is refused, the applicable Party shall so state in writing and give its reasons therefor. If a Party shall fail to so approve or disapprove any requested approval of consent within thirty (30) days after such Party shall have received from the other Party all documents and information reasonably necessary for such Party to determine such matter together with a written notice to such Party that a response is due within thirty (30) days pursuant to this Section 7.16, such request shall be deemed approved and such consent shall be deemed given.

7.17. Counterparts. This Lease may be executed in counterparts (including counterparts transmitted by facsimile or email), each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and the same Lease, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts.

7.18. Section Headings. Section headings are inserted only for convenience and reference and in no way define, limit, extend or describe the scope of intent of this Lease, as hereby amended, or any provision hereof.

7.19. Time is of the Essence. Time is expressly declared to be of the essence of this Lease and the performance and observance of all of the terms, covenants and conditions of this Lease. Notwithstanding the foregoing and all other statements in this Lease that time is of the essence, the obligations under this Lease are subject to the provisions for extension in Section 5.4 above, and the provisions for Force Majeure events in Section 7.7 above.

7.20. Entire Agreement; Amendments. This Lease contains the entire agreement of LESSOR and LESSEE and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the leasing of the Premises and the operation and management of the Harbor Facilities by LESSEE. The Lease may only be amended by a written agreement signed by both LESSOR and LESSEE.

7.21. Definitions. In addition to any definitions set forth above, as used herein, unless clearly repugnant to the context:

- (a) "Applicable Laws" has the meaning set forth in Section 4.7 above.

(b) "**Business Day**" means a day other than a Saturday, Sunday, or other day on which banks are closed for business in Honolulu, Hawaii.

(c) "**day**" or "**days**" shall mean a calendar day or calendar days unless otherwise indicated.

(d) "**Default Rate**" means FIVE PERCENT (5%) per annum, prorated daily based on the actual number of days in such calendar year.

(e) "**Existing Conditions**" means the Hazardous Materials and environmental conditions existing upon and in the vicinity of the Premises as identified in the Phase I Environmental Site Assessment, Kewalo Basin Harbor, prepared by EnviroServices & Training Center, LLC and dated March 2014, as amended by the updated report dated May 2014. Without limitation, the Existing Conditions include the marine sediments throughout the Kewalo Basin Harbor which contain petroleum constituents, pesticides, PCBs, and heavy metals; the on-going storm drainage system outfalls; and various heavy metals and petroleum related constituents detected in soil and groundwater, including benzene.

(f) "**Governmental Authority**" or "**Governmental Authorities**" means any federal, state, county, or municipal governmental authority, including all executive, legislative, judicial, and administrative departments and bodies thereof having jurisdiction over LESSEE or the Project.

(g) "**Governmental Requirements**" means all laws, ordinances, statutes, executive orders, rules, zoning requirements, and agreements of any Governmental Authority that are applicable to the acquisition, remediation, renovation, demolition, development, construction, use, and operation of Kewalo Basin Harbor including without limitation all required permits, approvals and any rules, guidelines, or restrictions enacted, promulgated, or imposed by Governmental Authorities.

(h) "**Gross Receipts**" means any and all revenues, income, or other receipts received or collected by LESSEE with respect to all business conducted at, in, from, or upon the Premises and from any support facilities managed by LESSEE pursuant to Section 6.1 above, but not including the following:

(i) To the extent that the amount of any tax or assessment imposed by any Governmental Authority shall be separately charged as tax to a customer or consumer or absorbed by LESSEE, and actually paid by LESSEE to the respective government authority, it shall not be included in the calculation of gross receipts of LESSEE.

(ii) There shall also be deducted from any gross receipts any cash or credit refunds made to a customer or consumer to the extent such sale is or has been included in LESSEE's computation of gross receipts.

(iii) There shall also be deducted from any gross receipts any receipts which are: (A) reimbursements (e.g., taxes, utilities); (B) deposits from customers,

until applied to a sale, and security deposits received from subtenants or sublessees, except when and to the extent actually applied toward the payment of rent owed or owing by such subtenants or sublessees; (C) uncollected or uncollectible credit accounts or reserves therefor; (D) fees paid to third-party credit or debit card companies; (E) extraordinary receipts, including condemnation or insurance proceeds, amounts recovered in legal actions for tortious conduct and punitive damages, and proceeds of any capital transaction, including without limitation proceeds of any sale, financing, or refinancing of any interest in LESSEE in the Premises and any capital contribution or loan made by any Affiliate of LESSEE (as defined in Section 4.13(b) above); (F) interest on bank accounts and investment earnings with respect to any capital or operating reserves held with respect to the Premises; (G) interest, financing, and installment sales charges or other charges, however denominated, paid by customers for extension of credit on sales; (H) amounts paid to sublessees, licensees, or concessionaires for the sale of goods, services, or merchandise by them; (I) all currency conversion transactions; (J) merchandise returned to sources (such as manufacturers, suppliers, and shippers), exchanged between stores, or transferred to another store or warehouse; (K) sums and credits received in the settlement of claims for loss of or damage to merchandise, inventory, or equipment; (L) delivery and installation charges or any service charge rendered on a non-profit basis for the convenience of customers; (M) receipts from coin-operated devices, such as public telephones, stamp machines, public toilet locks, or vending machines; (N) sales of fixtures, equipment, or property which are not retail merchandise; (O) gift certificates, gift cards, or like vouchers, until such time as the same shall have been converted into a sale by redemption; (P) amounts credited for discounts, promotion coupons, other promotional credits, or other sales allowances; (Q) tips or gratuities; (R) accommodation sales, such as stamps and money orders; (S) going out of business, salvage, and loss leader sales; (T) mail order catalog and Internet sales; (U) bulk transfer or sale of products or merchandise; (V) sales of promotional items at cost; and (W) merchandise, services, or meals sold or given to employees or offered for promotional purposes.

(i) "**Hazardous Materials**" means the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product, or constituent regulated under the Comprehensive Environmental Response, Compensation, and Liability Act; oil and petroleum products, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act; asbestos and asbestos-containing materials, polychlorinated biphenyls, and other substances regulated under the Toxic Substances Control Act; source material, special nuclear material, by-product material, and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the Occupational Safety and Health Administration Hazard Communication Standard, 29 C.F.R. § 1910.1200 et seq.; solid wastes whether or not hazardous within the meaning of Resource Conservation and Recovery Act of 1976; and any other hazardous substance, pollutant, or contaminant regulated under any other environmental law.

(j) "**Kewalo Basin Harbor**" means that certain small boat commercial harbor which substantially comprises the Premises subject to this Lease.

(k) "**Kewalo Basin Rules**" means those rules contained in Chapters 211, 212, 213, and 214 of Title 15 of the Hawaii Administrative Rules, as amended from time-to-time.

(l) "**LESSEE Environmental Condition**" means any environmental condition caused by LESSEE or its employees, agents or contractors.

(m) "**Person**" means any individual, partnership, corporation, limited liability company, association, unincorporated organization, trust, or other entity, including but not limited to, any government or agency or subdivision thereof, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits.

(n) "**Premises**" has the meaning set forth in Section 1.1 above.

(o) "**Prohibited Uses**" means and includes: (i) any establishment featuring explicitly-sexual, adults-only entertainment (including without limitation stores offering adult books or films, adults-only theaters, or nude or semi-nude entertainment facilities); (ii) any illegal activity or conduct, including without limitation any establishment that offers illegal or illicit services under the guise of therapeutic massage; (iii) sale or offering of sale of paraphernalia for use with illegal drugs; (iv) gambling facilities or operations; (v) storage or stockpiling of supplies and materials on exterior parking lots or other areas where they are visible from properties surrounding the Project, except for the temporary stockpiling of construction material for use in the construction of any part, portion, or phase of the Project, as such parts, portions, or phases are determined by LESSEE in its sole discretion, provided that the same is stored in a safe manner and does not pose a hazard to the public or others who may visit or work on the Premises; and (vi) obnoxious bright lights, odors, dust, smoke, or other noxious agents which could unreasonably disrupt surrounding properties.

(p) "**Project**" has the meaning set forth in Section 5.1 above.

(q) "**State**" means the State of Hawaii.

(r) "**Substantial Completion**" or "**Substantially Complete**" means the issuance of a permanent certificate or certificates of occupancy for the entire Project.

(s) "**subcontractor**" means a person hired by LESSEE's contractor to do or perform part of the construction of the Project.

(t) "**Submerged Lands Area**" means the portion of the Premises depicted on **Exhibit "E"** attached hereto together with any LESSEE fueling operations conducted upon the Premises.

(u) "**Suitable Lender**" means (i) any recognized lending institution, such as a commercial bank or trust company, in the State of Hawaii or elsewhere in the United States, (ii) The Howard Hughes Corporation or an Affiliate of LESSEE (as defined in Section 4.13(b) above), (iii) a foreign chartered bank or other financial institution

qualified to make loans in the State of Hawaii, (iv) a diversified financial services company that is a subsidiary of a Fortune 1000 company (such as General Electric Capital Corporation), (v) a federal, state, or local governmental or quasi-governmental agency, (vi) an educational or charitable institution, (vii) an employee profit-sharing, pension, welfare, or retirement fund, (viii) an insurance company duly organized or licensed to do business in the State of Hawaii, (ix) a real estate mortgage investment conduit or securitization trust (or other securitization vehicle) or real estate investment trust, (x) a trustee or issuer of collateralized real property mortgage obligations or similar investment entity, (xi) an investment or savings bank, or (xii) a corporation, other entity, or joint venture that is a subsidiary, affiliate, or combination of any one or more of the foregoing.

7.22. Payments on Business Days Only. Any payments due under this Lease on a day other than a Business Day shall be due on the first Business Day immediately following such day.

7.23. Execution.

(a) LESSOR represents and warrants to LESSEE, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSOR is authorized to do so, (ii) LESSOR has full right and authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSOR, and (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSOR according to the terms of this Lease.

(b) LESSEE represents and warrants to LESSOR, which representations and warranties shall survive the Commencement Date of this Lease, that: (i) each of the persons signing this Lease on behalf of LESSEE is authorized to do so, (ii) LESSEE has full right and authority to enter into and perform this Lease, (iii) the execution, consent, or acknowledgment of no other person is necessary in order to validate the execution of this Lease by LESSEE, and (iv) upon full execution, this Lease shall be valid, legally binding, and enforceable against LESSEE according to the terms of this Lease.

(The remainder of this page is intentionally left blank; signature page follows.)

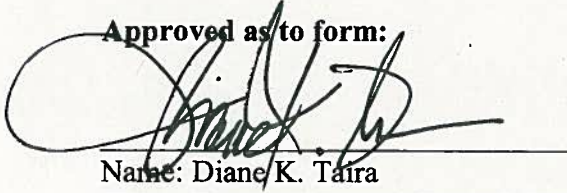
EXECUTION COPY

IN WITNESS WHEREOF, the parties hereto have caused this General Lease No. 14-1 to be executed as of the day and year first above written.

Approved by Hawaii Community Development Authority at its meeting held on:

June 27, 2014

Approved as to form:



Name: Diane K. Taira

Title: Deputy Attorney General, State of Hawaii

LESSOR:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

By: _____

Name: Brian Lee

Title: Chairperson

LESSEE:

KEWALO HARBOR, LLC

By: _____

Name:

Title: Authorized Signatory

EXECUTION COPY

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Title: Deputy Attorney General, State of Hawaii

LESSOR:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

By: _____
Name: Brian Lee
Title: Chairperson

LESSEE:

KEWALO HARBOR, LLC

By: _____
Name: _____
Title: Authorized Signatory

**Grant Herlitz
President**

Lot 1

Being portions of Royal Patent 4483, Land Commission Award 7712, Apana 6, Part 1, to M. Kekuanaoa (No V. Kamamalu), the Former Sea Fishery of Kukuluaeo and Ala Moana Reef Area (C.S.F. 12,695).

Situate at Kaakaukukui and Kukuluaeo, Honolulu, Oahu, Hawaii.

Beginning at the North corner of this parcel of land, being also the Northeast corner of Lot 5 of Ward Avenue Extension Kakaako Improvements District 6 (File Plan 2351), on the Southwest side of Ala Moana Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,355.96 feet South and 2,859.52 feet West, thence running by azimuths measured clockwise from true South:

1. 291° 50' 271.04 feet along the Southwest side of Ala Moana Boulevard;
2. 296° 05' 293.72 feet along the Southwest side of Ala Moana Boulevard;
3. 302° 55' 143.01 feet along the Southwest side of Ala Moana Boulevard;
4. 32° 55' 67.81 feet along Lot 2;
5. 302° 55' 192.16 feet along Lot 2;
6. 212° 55' 67.81 feet along Lot 2;
7. 302° 55' 180.46 feet along the Southwest side of Ala Moana Boulevard;
8. Thence along Lot 3, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
59° 49' 20" 20.00 feet;
9. Thence along Lot 3, on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:
27° 40' 28" 26.33 feet;
10. 15° 00' 23.15 feet along Lot 3;
11. 7° 04' 23.44 feet along Lot 3;

12. Thence along Lot 3, on a curve to the right with a radius of 125.00 feet, the chord azimuth and distance being:

15° 04' 38" 34.84 feet;

13. Thence along Lot 3, on a curve to the left with a radius of 60.00 feet, the chord azimuth and distance being:

16° 27' 38" 13.85 feet;

14. Thence along Lot 3, on a curve to the right with a radius of 225.00 feet, the chord azimuth and distance being:

19° 47' 30" 77.82 feet;

15. 29° 45' 198.93 feet along Lot 3;

16. Thence along Lot 3, on a curve to the left with a radius of 145.00 feet, the chord azimuth and distance being:

20° 22' 30" 47.24 feet;

17. 11° 00' 19.71 feet along Lot 3;

18. Thence along Lot 3, on a curve to the right with a radius of 175.00 feet, the chord azimuth and distance being:

20° 20' 56.76 feet;

19. 29° 40' 73.84 feet along Lot 3;

20. 353° 07' 4.89 feet along Lot 3;

21. 29° 37' 9.52 feet along Lot 3;

22. 54° 55' 7.17 feet along Lot 3;

23. 28° 58' 3.56 feet along Lot 3;

24. 299° 29' 83.18 feet along Lot 3;

25. 32° 55' 285.92 feet along Ala Moana Park (C.S.F. 4,838) and remainder of the Former Sea Fishery of Kukuluaeo;

26. 123° 52' 61.41 feet along Lot 6;

27. 30° 05' 22.46 feet along Lot 6;

28. Thence along Lot 6, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:

74° 54' 45" 42.30 feet;

29. 119° 44' 30" 292.01 feet along Lot 6;
30. 29° 44' 30" 20.21 feet along Lot 6;
31. 119° 44' 30" 99.04 feet along Lot 6;
32. 209° 44' 30" 20.21 feet along Lot 6;
33. 119° 44' 30" 115.92 feet along Lot 6;
34. 29° 44' 30" 20.21 feet along Lot 6;
35. 119° 44' 30" 35.99 feet along Lot 6;
36. 209° 44' 30" 20.21 feet along Lot 6;
37. 119° 44' 30" 43.97 feet along Lot 6;
38. 29° 44' 30" 15.62 feet along Lot 6;
39. 119° 44' 30" 51.92 feet along Lot 4;
40. 29° 44' 30" 8.74 feet along Lot 4;
41. 119° 44' 30" 217.65 feet along Lot 4, Lot 7 and again Lot 4;
42. 45° 45' 30" 63.21 feet along Lot 4;
43. 39° 02' 322.97 feet along Lot 4 and Lot 5;
44. 127° 54' 17.50 feet along Lot 6;
45. 39° 02' 219.01 feet along Lot 6;
46. Thence along Lot 6, on a curve to the left with a radius of 17.91 feet, the chord azimuth and distance being:
- 354° 02' 25.33 feet;
47. 77° 42' 571.29 feet along Lot 8;
48. 207° 18' 22.90 feet along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);

49.	192° 28'	27.60 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);
50.	210° 04'	6.45 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);
51.	223° 46'	17.90 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);
52.	213° 05'	106.75 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);
53.	212° 09'	33.00 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);
54.	236° 52'	42.80 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490);
55.	213° 30'	246.87 feet	along Lot 5 of Kakaako Land Transfer Subdivision (F.P. 2490), Lot 4 of Kakaako Land Transfer Subdivision (F.P. 2490) and Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
56.	209° 37'	17.24 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
57.	244° 21'	2.28 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
58.	213° 30'	16.58 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
59.	302° 30'	11.94 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
60.	288° 10'	9.43 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
61.	297° 55'	28.35 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
62.	263° 59'	4.90 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
63.	217° 03'	31.30 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);

64.	210° 34'	22.70 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
65.	237° 43'	6.00 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
66.	209° 16'	3.60 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
67.	248° 16'	1.90 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
68.	197° 29'	8.60 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
69.	203° 31'	20.83 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
70.	116° 14'	3.92 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
71.	113° 35'	44.52 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
72.	112° 47'	69.52 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
73.	206° 31'	6.24 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
74.	116° 14'	20.91 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
75.	232° 17'	25.03 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
76.	213° 42'	12.99 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
77.	111° 32'	1.45 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
78.	202° 52'	39.60 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
79.	222° 25'	8.65 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);

80.	203° 31'	73.20 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
81.	256° 32'	2.85 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
82.	202° 50'	20.27 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
83.	292° 50'	130.02 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
84.	207° 07'	136.13 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
85.	290° 58'	17.30 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
86.	203° 25'	85.50 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
87.	203° 11'	43.90 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
88.	202° 39'	97.10 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
89.	113° 01'	70.70 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
90.	112° 57'	45.59 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
91.	202° 40'	0.84 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
92.	112° 40'	75.20 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
93.	202° 54'	48.10 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
94.	293° 13'	59.45 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
95.	292° 22'	16.15 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);

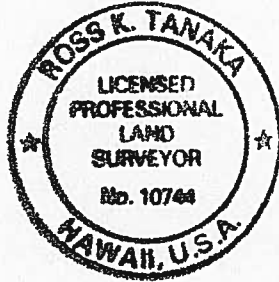
96.	300° 27'	17.15 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
97.	288° 05'	35.90 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
98.	292° 10'	9.95 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
99.	282° 30'	25.60 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490);
100.	286° 46'	34.30 feet	along Lot 2 of Kakaako Land Transfer Subdivision (F.P. 2490) and Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
101.	288° 38' 38"	26.07 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
102.	280° 00'	54.89 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
103.	225° 51' 40"	174.57 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
104.	315° 39'	25.79 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
105.	296° 45'	6.36 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
106.	225° 38'	462.85 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
107.	315° 35' 30"	17.83 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
108.	167° 20' 58"	94.83 feet	along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490);
109.	Thence along Lot 1 of Kakaako Land Transfer Subdivision (F.P. 2490), on a curve to the left with a radius of 40.00 feet, the chord azimuth and distance being:		
		139° 35' 29"	37.26 feet;
110.	291° 50'	9.98 feet	along Lot 5 of Ward Avenue Extension Kakaako Improvement District 6 (F.P. 2351);

111. 201° 50'

8.00 feet along Lot 5 of Ward Avenue Extension
Kakaako Improvement District 6 (F.P. 2351)
to the point of beginning and containing an
area of 34.877 Acres.

ControlPoint Surveying, Inc.

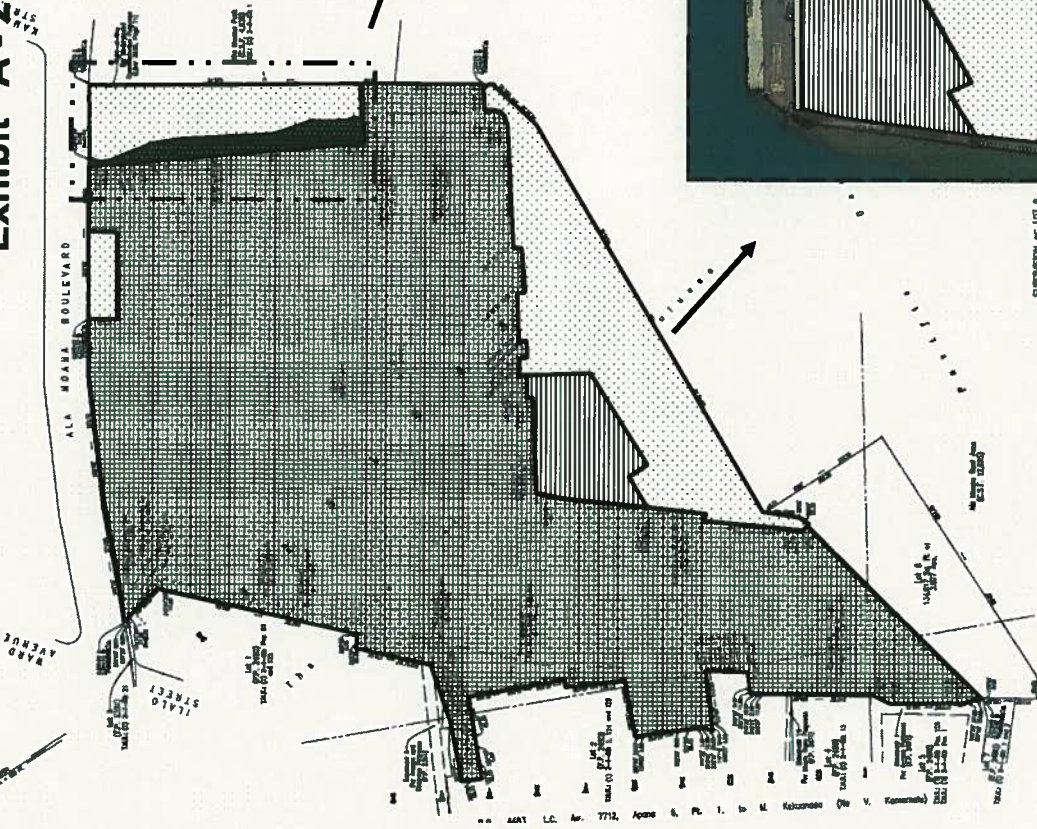
July 31, 2014
Honolulu, Hawaii



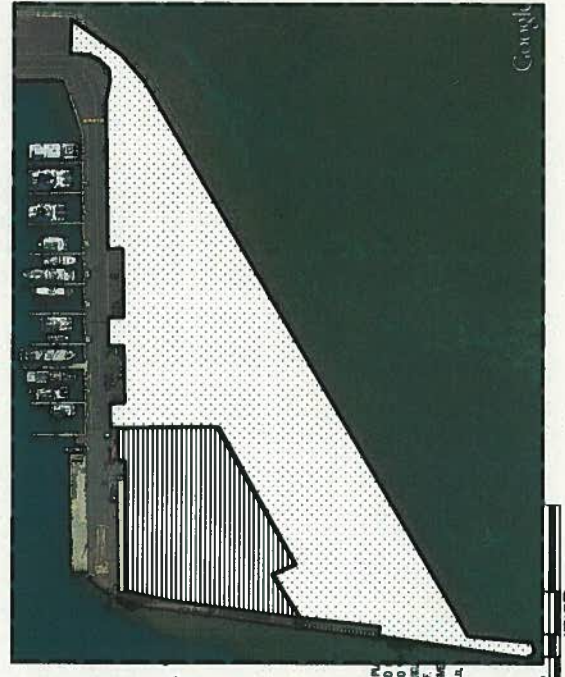
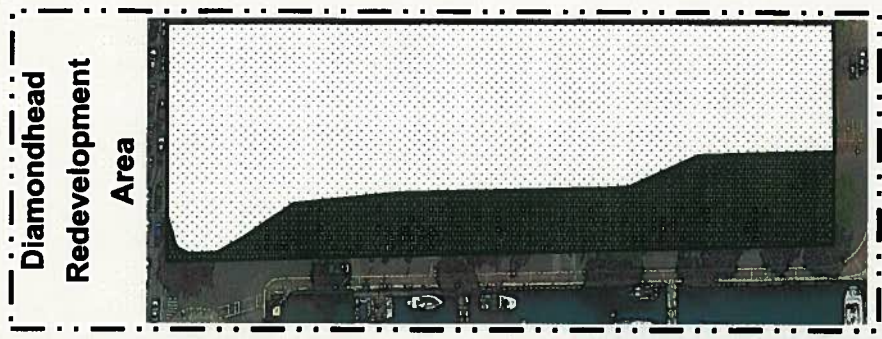
Ross K. Tanaka

Ross K. Tanaka
Licensed Professional Land Surveyor
Certificate Number 10744
Expiration Date 04/16

Exhibit "A - 2"



	Lease Area
	Excluded Areas
	Potential Withdrawal Area
	NOAA Parcels (Excluded)



SUBDIVISION OF LOT 6 OF KAWAHOE LAND TRANSFER (TILE PL. BEING ALSO PORTIONS OF ROYAL PRIORITY AREA, LAND AND WATER RESOURCES DEPARTMENT, HAWAII, AND AIA MOANA REEF AREA (U.S.F. AND AIA MOANA REEF AREA (U.S.F. INTO LOTS 1 TO 6, INCLUDING AT KAWAHOE AND KAWAHOE, HAWAII.

Scale of map 1" = 100 feet
 Date of map 1/1/2000
 Prepared by [unreadable]

1. This map was prepared for the purpose of [unreadable] and should not be used for any other purpose.
 2. The map is not to be construed as a warranty of any kind.

Exhibit "A-3"
Existing Tax Liens

4/13/1995	Mary "I", Inc.	\$134.31
4/13/1995	Aikane Catamaran Cruises	\$1,392.19
10/17/1995	Kono Charters Ltd	\$122.10
2/16/2005	Island Charters Inc	\$166.10
5/4/2010	Nautilus Subsea Adventures	\$383.91
5/14/2010	Pacific - TMR dba Kewalo Marine	\$13,703.14
6/25/2010	Oceanic Catch Inc.	\$6,037.38
7/16/2010	Dream Cruises	\$1,107.15
4/13/2011	Waikiki Marine Sales Inc.	\$508.20
6/2/2011	Roberts Ilima Charter Boat	\$275.00
10/5/2010	Niitaku Investments, Inc.	\$49,001.42
		\$72,830.90

Exhibit "B"

Examples of Base Rent and Percentage Rent Calculations for Submerged Lands

1. **Example of first Base Rent payment amount calculation during the Initial Term**

- **September 1, 2014 Commencement Date**
- **Annual Base Rent of \$300,000.00**

$\$300,000.00 \div 365 \text{ days} = \821.92 per day

$\$821.92 \text{ per day} \times 122 \text{ days} = \$100,274.24$

⇒ First Base Rent payment of \$100,274.24 is due no later than October 1, 2014 (thirty (30) days following the Commencement Date).

2. **Example of Percentage Rent calculation during the Initial Term once the cumulative net cash flow is positive.**

- **Annual Base Rent of \$300,000.00**

"Gross Receipts" for a calendar year during which Percentage Rent applies = \$2,500,000.00

Gross Receipts x 16.5% = \$412,500.00

$\$412,500.00 - \$300,000.00$ (Base Rent "paid" for the same year in accordance with Section 2.1(a) above) = **\$112,500.00**

⇒ Base Rent of \$300,000.00 is due in advance by the first Business Day of the calendar year. With respect to the same calendar year, Percentage Rent of \$112,500.00 is due by April 15 (or the first Business Day following April 15) of the next calendar year.

3. **Example of Percentage Rent calculation during the calendar year in which the Initial Term ends and the Extended Term begins**

- **Estimated Reopening Date of September 1, 2049**
- **Annual Base Rent of \$300,000.00 during the Initial Term**
- **Hypothetical annual Base Rent of \$400,000.00 during the Extended Term**

"Gross Receipts" for the calendar year = \$4,000,000.00

Gross Receipts x 16.5% = \$660,000.00

$\$300,000.00 \div 365 \text{ days} = \821.92 per day

$\$821.92 \text{ per day} \times 243 \text{ days} = \$199,726.56$

$\$400,000.00 \div 365 \text{ days} = \1095.89 per day

$\$1095.89 \text{ per day} \times 122 \text{ days} = \$133,698.58$

$\$660,000.00 - \$333,425.14 \text{ (Base Rent "paid" for the same year in accordance with Sections 2.1(a) and 2.1(b) above)} = \underline{\$326,574.86}$

⇒ For the remainder of the Initial Term in 2049, a Base Rent payment of **\$199,726.56** is due by January 4. For the beginning of the Extended Term in 2049, a Base Rent payment of **\$133,698.58** is due by August 2, 2049. Percentage Rent of **\$326,574.86** for 2049 is due by April 15 (or the first Business Day following April 15), 2050.

4. **Example of Percentage Rent calculation during the Extended Term**

- **Hypothetical annual Base Rent of \$400,000.00**

"Gross Receipts" for a calendar year = \$4,500,000.00

Gross Receipts x 16.5% = \$742,500.00

$\$742,500.00 - \$400,000.00 \text{ (Base Rent "paid" for the same year in accordance with Section 2.1(b) above)} = \underline{\$342,500.00}$

⇒ Base Rent of \$400,000.00 is due by the first Business Day of the calendar year. Percentage Rent of \$342,500.00 is due by April 15 (or the first Business Day following April 15) of the next calendar year.

Exhibit "C"
Form of Written Statement to be Used for Gross Receipts

KEWALO HARBOR

ANNUAL PERCENTAGE RENT for [redacted] (year)

Tenant Kewalo Harbor, LLC

Gross Revenue	[redacted]	(1)
Less: Expenses defined in Section 7.21(h)(iii)	([redacted])	(2)
Sales Subject to % Rent	<u>0.00</u>	(3) = (1) - (2)
Percentage Rent Rate	<u>16.50%</u>	(4)
Percentage Rent Rate	<u>0.00</u>	(5) = (3) x (4)
Less: Base Rent	(<u>300,000.00</u>)	(6)
TOTAL AMOUNT DUE	<u>0.00</u>	(7) = (5) - (6)

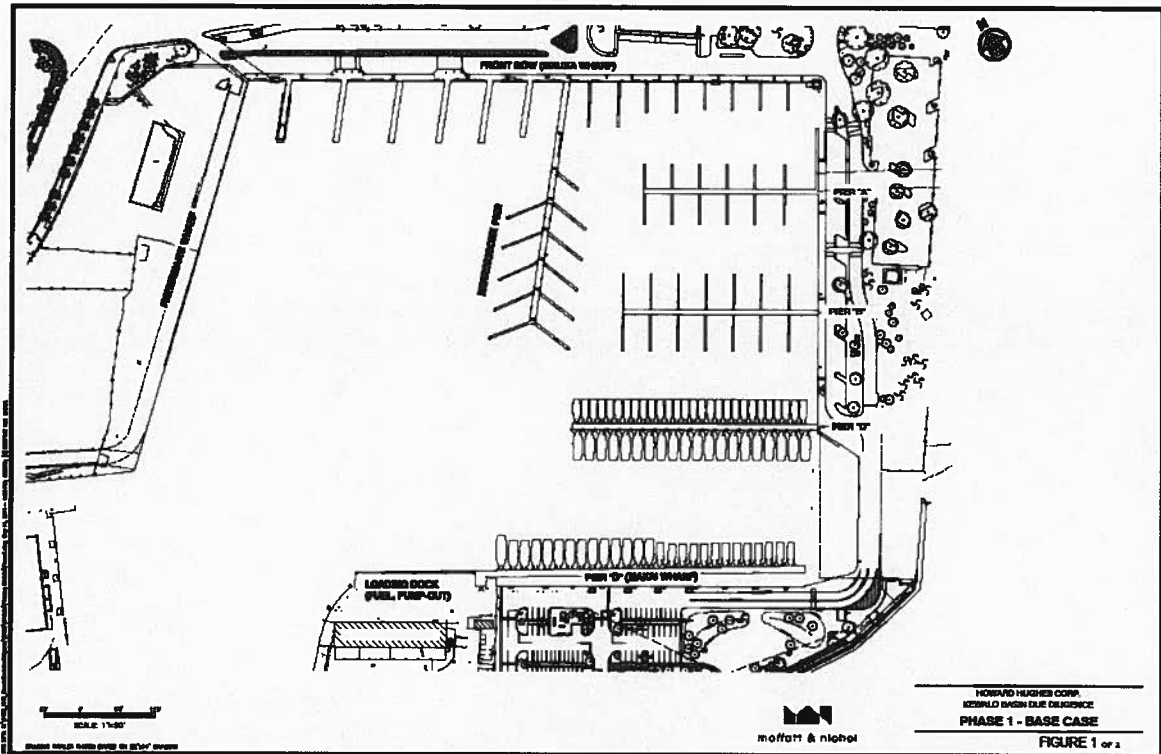
I, the undersigned, hereby certify that to the best of my knowledge and belief, the above statement is true and correct.

Name

Title

Date

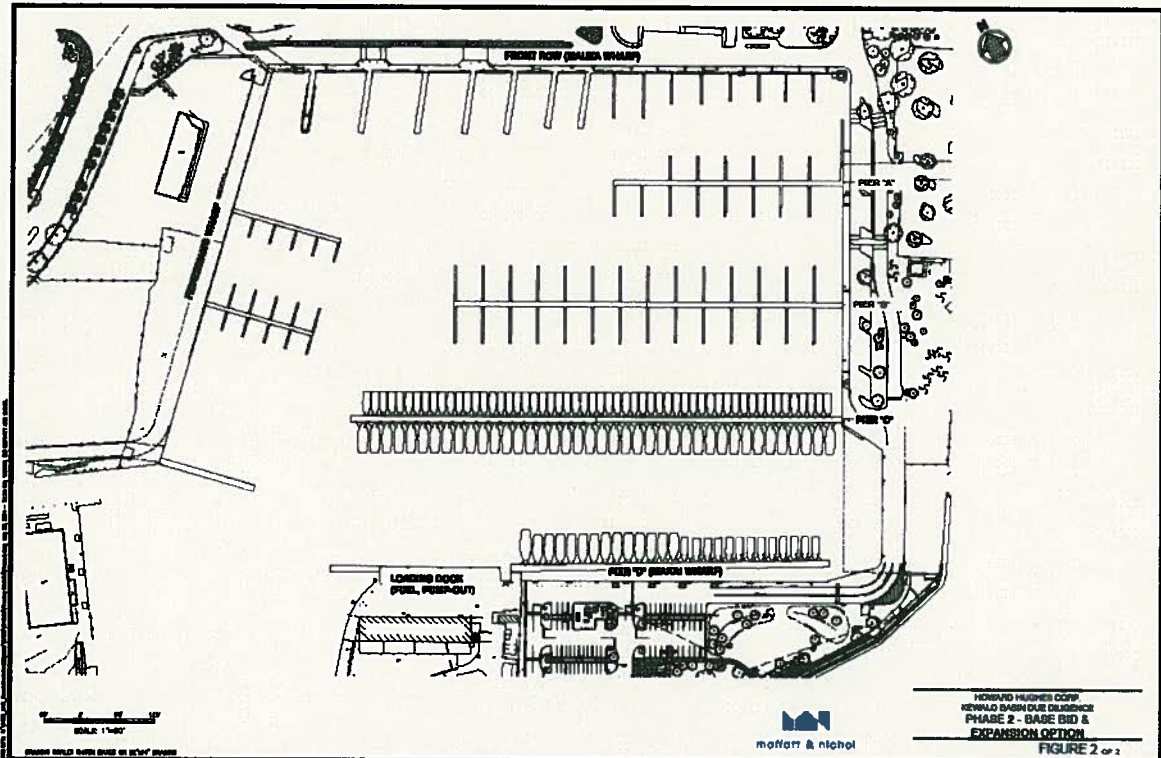
Exhibit "D-1"
Schematic Plans for the Project



- **Pier A:** Concrete repairs, electrical upgrades, mechanical upgrades, cleat and fender upgrades, security gate
- **Pier B:** Re-decking, repair pile caps, electrical upgrades, mechanical upgrades, cleat and fender upgrades, security gate
- **Pier C:** Re-decking, repair pile caps, electrical upgrades, mechanical upgrades, Mediterranean moorings, security gate
- **Pier D:** Demolish finger piers, install floating dock system, electrical upgrades, mechanical upgrades, Mediterranean moorings, security gate
- **Loading Dock:** Re-decking, repair pile caps, electrical upgrades, mechanical upgrades, cleat and fender upgrades, fueling system (above ground tanks, mechanical equipment, safety equipment) and sewage pump out added
- **Herringbone Pier:** Concrete repairs, electrical upgrades, mechanical upgrades, cleat and fender upgrades, security gate
- **Front Row:** Concrete repairs, electrical upgrades, mechanical upgrades, cleat and fender upgrades
- **Fisherman's Wharf:** Electrical upgrades, mechanical upgrades
- **Facility Upgrades:** Bulkhead repairs, pile replacement where required, accessibility improvements, potable water maintenance and upgrade, fire protection update, landside repair and maintenance, signage, lighting.

Exhibit "D"

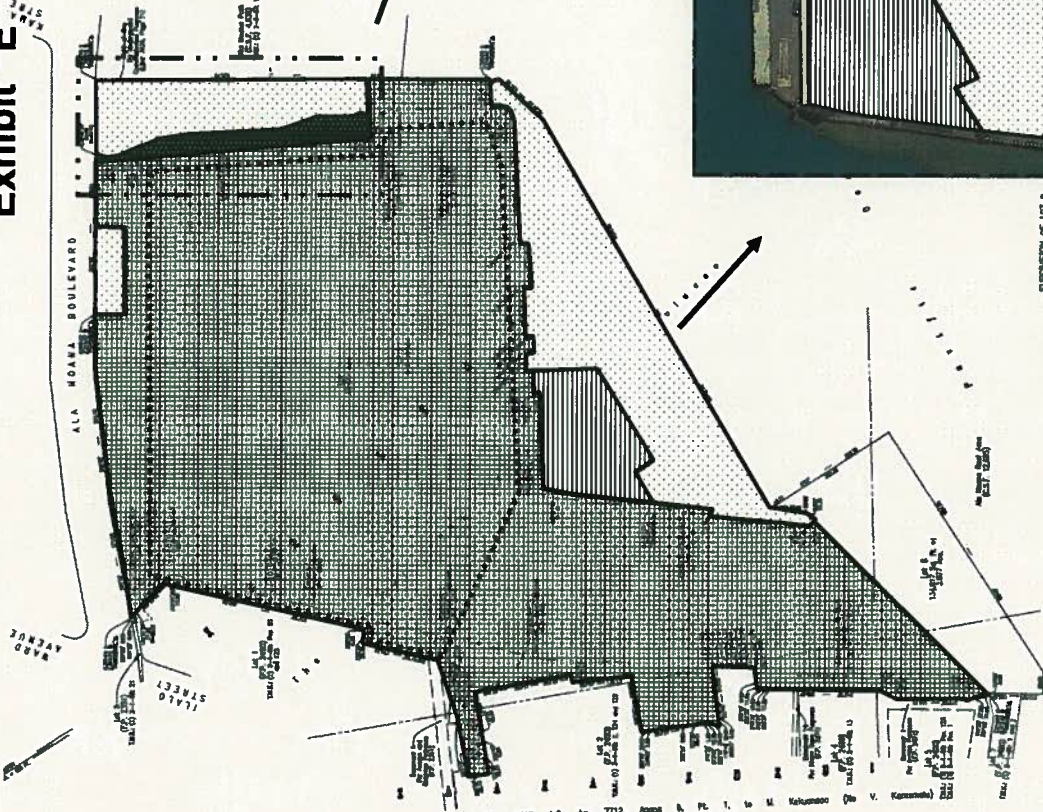
Exhibit "D-2"
Potential Phased Improvements



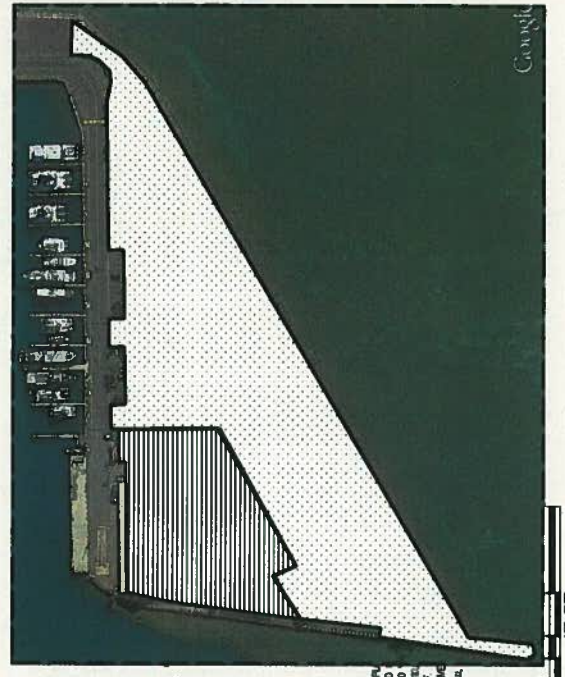
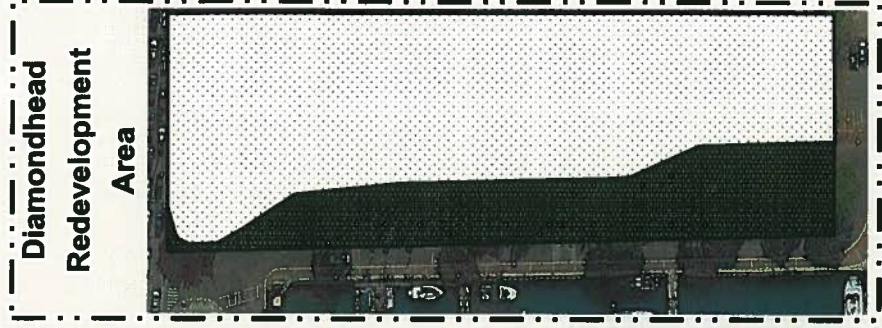
- **Pier A:** Concrete repairs, extend with floating dock, electrical upgrades, mechanical upgrades, cleat and fender upgrades, security gate
- **Pier B:** Re-decking, repair pile caps, extend with floating dock, electrical upgrades, mechanical upgrades, cleat and fender upgrades, security gate
- **Pier C:** Re-decking, repair pile caps, extend with floating dock, electrical upgrades, mechanical upgrades, Mediterranean moorings, security gate
- **Pier D:** Demolish finger piers, install floating dock system, electrical upgrades, mechanical upgrades, Mediterranean moorings, security gate
- **Loading Dock:** Re-decking, repair pile caps, jetty and wave wall (additional permitting/entitlements required), electrical upgrades, mechanical upgrades, cleat and fender upgrades, fueling system (above ground tanks, mechanical equipment, safety equipment) and sewage pump out added
- **Herringbone Pier:** Demolish
- **Front Row:** Concrete repairs, electrical upgrades, mechanical upgrades, cleat and fender upgrades
- **Fisherman's Wharf:** Electrical upgrades, mechanical upgrades, jetty and wave wall (additional permitting/entitlements required), extend with floating dock
- **Facility Upgrades:** Bulkhead repairs, pile replacement where required, accessibility improvements, potable water maintenance and upgrade, fire protection update, landside repair and maintenance, signage, lighting.

Exhibit "D"

Exhibit "E"



	Lease Area
	Excluded Areas
	Potential Withdrawal Area
	NOAA Parcels (Excluded)
	Submerged Lands



SUBDIVISION OF LOT 9 OF KAHAWA LAND TRANSFER (FILE # 4885 L.C. No. 7712, Apone A, Pt. 1, to M. Makunuihau & V. Kapunuihau) BEING ALSO PORTIONS OF ROYAL PRIORITY AREA, LAND BEING PART OF THE ROYAL PRIORITY AREA, AND APONE A, THE PORTION OF THE ROYAL PRIORITY AREA AND ALA MOANA REEF AREA (FILE # 4885 L.C. No. 7712, Apone A, Pt. 1, to M. Makunuihau & V. Kapunuihau) INTO LOTS 1 TO 8, INCLUDING OF KAHAWA AND KAHAWA, HONOLULU.

Scale: 1" = 100'

North Arrow

1. This map was prepared by the Office of the Surveyor General, State of Hawaii, Honolulu, Hawaii, on 10/10/00.

2. The map was prepared by the Office of the Surveyor General, State of Hawaii, Honolulu, Hawaii, on 10/10/00.

Exhibit "F"
Transfer Fee

Transfer Fee Schedule:

Years 1 to 18: **25%**
Thereafter: **25%**