

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

PUBLIC AUCTION BID PACKET

FOR
PUBLIC AUCTION SALE
OF ONE (1) STATE OF HAWAII LEASE
ISLAND OF Maui

PUBLIC AUCTION DATE
July 30, 2020

TABLE OF CONTENTS

NOTICE OF SALE	i - iii
INSTRUCTIONS TO BIDDERS	
1. PURPOSE	1
2. SIGNIFICANT DATES	1
3. GENERAL QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS	1
4. PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS	2
5. APPLICATION PROCEDURES	2
6. REVIEW OF APPLICATIONS	3
7. MODIFICATION OF THE APPLICATION	3
8. RECONSIDERATION OF DISQUALIFICATION	3
9. AUCTION PROCEDURES	3
10. DUTIES AND OBLIGATIONS OF SUCCESSFUL BIDDER	4
11. CONDITION OF THE PREMISES	4
12. DUE DILIGENCE	5
13. DEFAULT	5
14. COMMENCEMENT DATE OF THE LEASE	6
15. EFFECTIVE RENTAL	6
16. LEASE DOCUMENT	6
17. EFFECT OF SALE	6
18. OTHER	7
APPENDIX A	APPLICATION AND QUALIFICATION QUESTIONNAIRE
APPENDIX B	MEMORANDUM OF LEASE
APPENDIX C	DRAFT LEASE
APPENDIX D	STATE AND COUNTY TAX CLEARANCES
APPENDIX E	CASH FLOW PROJECTION (SAMPLE)
APPENDIX F	PERSONAL FINANCIAL STATEMENT (SAMPLE)

NOTICE OF SALE
PUBLIC AUCTION SALE OF ONE (1) STATE OF HAWAII LEASE
ON THE ISLAND OF [ISLAND]

The **Department of Land and Natural Resources ("DLNR")**, Division of Boating and Ocean Recreation, Planning and Coordination Office, will be conducting a public auction sale of one (1) lease for State land at the following date and location:

DATE & TIME Thursday, July 30, 2020, at 10:00 AM (HST)
PLACE 101 Maalaea Boat Harbor Road, Wailuku, Hawaii 96793

The above date, time, and/or place of auction are subject to change by DLNR.

The lease to be auctioned on the above date covers the following parcel located at Mala Wharf.

Location: Portions of Government Lands situated at Alamahi, Lahaina, Island of Maui, Hawaii as shown and described on Government Survey Map C.S.F. No. 25,708 dated December 11, 2018

Tax Map Key: (2) 4-5-005:019(por.)

Land Area: Approximately 18,644 square feet

Permitted Uses: For small boat harbor and maritime related purposes. The successful bidder shall occupy and use the Premises for the landscaping, maintenance, storage of small boats and trailers and other maritime related activities.

Lease Term: Twenty (20) years

Commencement Date: No more than thirty (30) calendar days from the date DLNR transmits the lease to the successful bidder for execution; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

Upset Minimum Annual Base Rent: \$49,580 per annum, payable monthly or 10% of gross receipts, payable quarterly, whichever is greater.

Fixed Increases in Minimum Annual Base Rent: Twenty (20) years of known rent subject to fixed increases in the minimum annual base rent

Years 1 thru 5	\$49,580.00 per annum vs 10%
Years 6 thru 10	\$57,017.00 per annum vs 10%
Years 11 thru 15	FMR per annum
Years 16 thru 20	FMR per annum

Performance Bond: Equal to two times the annual rental payable

Improvement Bond:	Equal to the value of improvements, if any.
Encumbrances:	Refer to the draft lease document and the exhibits to the lease for encumbrances to the lease, including but not limited to existing easements.

APPLICATION AND BIDDING INFORMATION

Any person wishing to bid and purchase the lease described above must first qualify to bid under the general qualifying criteria and the pre-qualifying criteria as described in the **Public Auction Bid Packet** ("**Bid Packet**"). Eligibility to bid shall be determined by the information supplied by prospective bidders in the Application and Qualification Questionnaire ("Application") provided as Appendix A of the Bid Packet.

Applications by prospective bidders for the above listed lease must be **received** by DLNR no later than; **Thursday, July 2, 2020 4:00 PM (HST)** at any one of the District Offices listed below. Applicants shall submit one (1) original and three (3) copies of the Application (including copies of all required attachments). Any person who has failed to submit the completed Application and all required attachments (and required copies) by this date and time will not be allowed to bid. Each Applicant shall be informed in writing in advance of the auction date as to the Applicant's eligibility to bid at the public auction. See Bid Packet for further instructions.

The Bid Packet describes the auction sale procedures, bidder qualifications and other requirements, and contains the Application form, memorandum of lease, draft lease document (including survey map and descriptions of the subject premises), and other relevant information. The Bid Packet may be examined at any of the District Offices listed below or downloaded from the DLNR website at www.hawaii.gov/dlnr/dobor/dobor-pm. Any person requiring special accommodation or information in an alternate format is asked to contact the Division of Boating and Ocean Recreation at (808) 587-1964.

Administrative Office
4 Sand Island Access Road
Honolulu, Hawaii 96819
Telephone (808) 587-1964

Oahu District Office
4 Sand Island Access Road
Honolulu, Hawaii 96819
Telephone: (808) 832-3520

Maui District Office
101 Maalaea Boat Harbor Road
Wailuku, Hawaii 96793
Telephone: (808) 243-5824

Hawai'i District Office
Honokohau Small Boat Harbor
74-380 Kealahou Parkway
Kailua-Kona, Hawaii 96740-2704
Telephone: (808) 327-3690

Kauai District Office
2494 Niumalu Road
Lihue, Hawaii 96766
Telephone: (808) 241-3111

Prospective bidders are responsible to thoroughly read and understand the covenants, terms, reservations, and conditions contained in the Bid Packet and draft lease document. The premises are to be leased in an "as is" condition, and prospective bidders are solely responsible to complete their own due diligence.

All bidders or authorized representatives must be present in person at the auction. DLNR reserves the right to cancel the public auction, to postpone or change the date of the public auction or any other deadlines, to reject any and all Applications or request the submittal of additional information, and to waive any defects when, in the opinion of the Chairperson, such action will be in the best interest of the State.

DONE at the office of the Department of Land and Natural Resources, State of Hawaii this
Jun 3, 2020 day of June, 2020.

BOARD OF LAND AND NATURAL RESOURCES

By *Suzanne D. Case*
Suzanne D. Case, Chairperson

The Honolulu Star-Advertiser
The Maui News

INSTRUCTIONS TO BIDDERS

1. PURPOSE

This Public Auction Bid Packet provides information, instructions, documents and forms related to the **State of Hawaii ("State"), Department of Land and Natural Resources ("DLNR")**, Division of Boating and Ocean Recreation public auction sale of one (1) State of Hawaii land lease scheduled for public auction on **Thursday, July 30, 2020 at 10:00 AM (HST)**, at **101 Maalaea Boat Harbor Road, Wailuku, Hawaii 96793** for the State lease listed in the Notice of Sale. This auction may be canceled, postponed, held at a different date or time, or continued by order of the **Chairperson of the Board of Land and Natural Resources ("Chairperson")**.

2. SIGNIFICANT DATES

Advertisement of Public Auction	Thursday, June 11, 2020
Applications Due	Thursday, July 2, 2020; 4:00 PM (HST)
Notice of Qualification/Disqualification	Thursday, July 9, 2020*
Public Auction	Thursday, July 30, 2020; 10:00 AM (HST)*

*Dates are subject to change by DLNR

3. GENERAL QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS

Any person shall be entitled to bid and purchase the lease at this auction, except a person who:

- (a) is a minor;
- (b) is in arrears in the payment of taxes, rents, or other obligations owing to the State or to any of its political subdivisions;
- (c) has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands canceled for failure to satisfy the terms, conditions and covenants thereof;
- (d) fails to show upon demand of the Chairperson or the Chairperson's agent at the public auction, the sum of **\$24,790.00 in cash, certified check, or cashier's check made payable to the Department of Land and Natural Resources;**
- (e) fails to submit, as part of a completed Application, evidence satisfactory to the Chairperson that the bidder is duly authorized to bid at the auction and enter into the lease if the bidder is the successful bidder. For example, a corporate bidder shall submit a certified corporate resolution; or
- (f) fails to meet the eligibility criteria as outlined in the following section.

4. PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS

In addition to meeting the general qualifying criteria listed in the section above, any person wishing to bid and purchase the State lease described in the Notice of Sale must first qualify to bid according to the following pre-qualifying evaluation criteria:

- (a) Qualifications and Experience: Qualifications and experience in the type of use and business operations proposed by the Applicant for the premises including but not limited to, the type and duration of business experiences, expertise, and success in that particular field of business, and expertise in management, financial, and marketing matters related or relevant to that particular field of business.
- (b) Business Plan: Business Plan for the premises including but not limited to, the soundness and feasibility of the Applicant's management, marketing, and financial plans for the premises.
- (c) Financial Capacity: Financial capacity including but not limited to, the financial capacity to fund the Applicant's proposed operations and improvements to the premises, if any, and the Applicant's creditworthiness and credit history.
- (d) Convictions for Violation of Law: Convictions of the Applicant or any principals, owners, shareholders, partners, members, or directors of the Applicant may result in the disqualification of the Applicant.

5. APPLICATION PROCEDURES

Eligibility to bid on the lease shall be determined by the information supplied by prospective bidders in the **Application and Qualification Questionnaire ("Application", Appendix A)**. Any person who has not completed and submitted an Application by the date and time indicated below will not be allowed to bid for the lease at the public auction.

One (1) original and three (3) copies of the completed Application with all required attachments (including, but not limited to, all documentation required to establish the bidder's eligibility to bid at the auction) must be **received** no later than **Thursday, July 2, 2020; 4:00 PM (HST)** by DLNR at any one of the District Offices listed in Section 16. Facsimile or electronically submitted copies shall **not** be accepted. The official time shall be that recorded on the receiving District Office's time stamp clock. These conditions apply regardless of whether an Application is mailed or hand-delivered. The State assumes no responsibility for lateness due to mail or other delivery service.

A prospective bidder, at the time an Application is submitted, must be capable of performing all of the terms and conditions of the lease that may be awarded. A prospective bidder, at the time an Application is submitted, understands the premises shall be leased in an "**as is**" condition, without any representations or warranties made by the State or DLNR as to the condition of the premises or suitability of the premises for the use permitted in the applicable lease.

Each Applicant shall be informed in writing in advance of the date of the auction as to the Applicant's eligibility or non-eligibility to bid at the public auction.

All information provided in the Application shall remain confidential until the execution of the lease. Thereafter, any information which is protected under Chapter 92F, Hawaii Revised Statutes, including an individual's financial information, will continue to be held

confidential.

6. REVIEW OF APPLICATIONS

A screening committee will review all Applications. The general qualifying and pre-qualifying criteria in Sections 3 and 4 will guide the screening committee. The screening committee may, but shall not be required to, use numerical rating systems in evaluating the Applications.

An Application may be rejected for any of the following reasons:

- (a) if the Application is late, conditional, incomplete or does not adhere to the format and instructions;
- (b) if it is shown that inaccurate statements are made in the Application;
- (c) if the Application fails to meet any of the general qualifying or pre-qualifying criteria in Sections 3 and 4; or
- (d) if it is in the best interest of the State.

Notwithstanding the above, DLNR and the screening committee reserve the right to waive any defects in any Application if it is in the best interest of the State.

7. MODIFICATION OF THE APPLICATION

Modifications to a submitted Application may be made before the Application due date. One (1) original and three (3) copies of the modified sheets or replacement Application shall be submitted by the Application due date.

8. RECONSIDERATION OF DISQUALIFICATION

An Applicant may request the Chairperson for a reconsideration of the Applicant's disqualification. Any such request shall be in writing and received by DLNR within seven (7) calendar days from the day DLNR transmits the notice of disqualification to the Applicant. The Applicant shall state the reasons why the Applicant believes the disqualification was improper and refer to specific evidence in the Application to support such reasons. Any reconsideration shall be limited to the information contained within the Application and no new or additional information may be submitted or considered. The Chairperson's decision on any reconsideration shall be final.

9. AUCTION PROCEDURES

- (a) All prospective bidders shall be qualified pursuant to Sections 3 and 4.
- (b) All qualified bidders or authorized representatives must be present in person at the auction.
- (c) All qualified bidders must bring and present a government issued, picture identification. If the individual that will be bidding is an authorized representative of the qualified bidder, the individual shall also provide evidence satisfactory to the Chairperson that the bidder is duly authorized to bid at the auction on behalf of the qualified bidder, e.g., a certified corporate resolution or power of attorney duly executed by the qualified bidder.

- (d) All qualified bidders must bring and present the sum of \$24,790.00 in cash, certified check, or cashier's check made payable to the Department of Land and Natural Resources.
- (e) Bidding shall commence at the upset minimum annual base rent as stated in the Notice of Sale and the qualified bidder making the highest bid at the fall of the hammer shall be the successful bidder of the lease.

10. DUTIES AND OBLIGATIONS OF SUCCESSFUL BIDDER

- (a) Day of the auction. Upon the fall of the hammer, the successful bidder shall:
 - (i) execute the Memorandum of Lease (**Appendix B**), for the leasing of the subject premises;
 - (ii) execute an affidavit stating that the successful bidder is not in arrears in the payment of taxes, rents or other obligations owing to the State or any of its political subdivisions, and that the successful bidder has not during the five (5) years preceding the date of the public auction had a previous sale, lease, license, permit or easement covering public lands canceled for failure to satisfy the terms, conditions and covenants thereof; and
 - (iii) pay to DLNR the sum of **\$24,790.00 in cash, certified check, or cashier's check made payable to the Department of Land and Natural Resources.**
- (b) Within one (1) working day from the date of the auction. Within one (1) working day from the date of the auction, the successful bidder shall pay in **cash, certified check or cashier's check made payable to the Department of Land and Natural Resources:**
 - (i) all charges required by law, including the cost of survey maps and descriptions (estimated at \$25.00), documents (estimated at \$30.00), advertising costs related to the Notice of Sale (estimated at \$1,400.00), recording fees and conveyance taxes (if any), all such amounts being non-refundable, collectively the "**Reimbursable Costs**"; and
 - (ii) the difference between the minimum amounts required to be paid at the fall of the hammer, as described in Section 10(a)(iii) above, and fifty percent (50%) of the minimum annual base rent successfully bid at the auction. The amounts paid pursuant to the above Section 10(a)(iii) and this Section 10(b)(ii) shall be collectively referred to as the "**Initial Deposit**".
- (c) Execution of Lease. Within thirty (30) calendar days from the date DLNR transmits the lease to the successful bidder for execution, the successful bidder shall properly execute and return said lease to DLNR.

11. CONDITION OF THE PREMISES

The premises shall be leased in an "**as is**" condition, without any representations or warranties made by the State or DLNR as to the condition of the premises or suitability of the premises for the use proposed by any prospective bidder or for any other uses permitted in the lease.

12. DUE DILIGENCE

The successful bidder at the public auction shall have sixty (60) calendar days from the date of the auction to conduct a due diligence investigation, determine the suitability of the premises, and to decide if the successful bidder will continue with the lease of the premises (the "**Due Diligence Period**"). The Chairperson may extend the Due Diligence Period provided any extension(s) of the Due Diligence Period may be conditioned on the successful bidder's payment of an extension fee(s). Extension fees shall be in an amount not to exceed ten percent (10%) of the minimum annual base rent successfully bid at the auction per thirty (30) day extension period, or portion thereof. Said fee(s) shall not be refundable or applied against any subsequent rents or other assessments owed by the successful bidder.

The successful bidder shall be responsible for all costs associated with its due diligence investigation. Copies of all due diligence reports shall be provided to DLNR and shall identify DLNR as an authorized user of said reports.

The successful bidder may, as the result of its due diligence investigation, elect not to proceed with the lease of the premises by providing written notice to the Chairperson prior to the expiration of the Due Diligence Period. In the event the successful bidder provides such written notice of its decision not to proceed with the lease, DLNR shall retain the Reimbursable Costs and twenty percent (20%) of the Initial Deposit, return eighty percent (80%) of the Initial Deposit to the successful bidder, and neither the successful bidder nor DLNR shall have any further rights, duties or obligations regarding the lease for the premises.

A survey map and description of the premises are attached to the lease document, a copy of which is attached as **Appendix C**.

Notwithstanding the above, prospective bidders are solely responsible for conducting their own due diligence, and DLNR does not warrant the accuracy of any of the information provided to bidders.

13. DEFAULT

In the event the successful bidder fails to fulfill any of the above obligations within the stated deadlines, DLNR may, by written notice from the Chairperson, terminate all rights of the successful bidder to obtain the lease and all obligations of DLNR to issue the lease to the successful bidder.

In the event of any termination due to the successful bidder's default of any of the obligations set forth in Section 10(a) or 10(b) above, DLNR may, at its option, retain as liquidated damages the Reimbursable Costs (if paid) and twenty percent (20%) of the Initial Deposit (or any portions thereof paid by the successful bidder).

In the event of any termination due to the successful bidder's default of any of the obligations set forth in Sections 10(c) above, DLNR may, at its option or unless otherwise described therein, retain as liquidated damages the Reimbursable Costs and entire Initial Deposit. The retention of said sums shall be in addition to any other rights or remedies to which DLNR may be entitled.

14. COMMENCEMENT DATE OF THE LEASE

The commencement date of the lease shall be no later than thirty (30) calendar days from the date DLNR transmits the lease to the successful bidder for execution pursuant to Section 10 above; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

15. EFFECTIVE RENTAL

The minimum annual base rent for the initial ten-year period of the lease shall be the minimum annual base rent bid at the public auction by the successful bidder.

16. LEASE DOCUMENT

A copy of the lease document setting forth fully the terms and conditions to be observed and performed by the Lessee together with survey maps and descriptions of the premises to be leased may be examined at the following DLNR Division of Boating and Ocean Recreation District offices or on the DLNR website at www.hawaii.gov/dlnr/dobor/dobor-pm:

Administrative Office
4 Sand Island Access Road
Honolulu, Hawaii 96819
Telephone (808) 587-1964

Oahu District Office
4 Sand Island Access Road
Honolulu, Hawaii 96819
Telephone: (808) 832-3520

Maui District Office
101 Maalaea Boat Harbor Road
Wailuku, Hawaii 96793
Telephone: (808) 243-5824

Hawai'i District Office
Honokohau Small Boat Harbor
74-380 Kealakehe Parkway
Kailua-Kona, Hawaii 96740-2704
Telephone: (808) 327-3690

Kauai District Office
2494 Niumalu Road
Lihue, Hawaii 96766
Telephone: (808) 241-3111

Refer to the Memorandum of Lease (**Appendix B**) and the lease document (**Appendix C**) for the obligations of the successful bidder, performance bond requirements, rental re-openings, insurance requirements, improvement requirements, improvement bond requirements, assignment of lease evaluation policy, subletting, reservations and other terms and conditions.

Each prospective bidder shall carefully examine all documents. Failure on the part of any prospective bidder to make such an examination shall not be grounds for any claim that the prospective bidder did not understand the conditions of the lease or auction. Each prospective bidder shall notify the Chairperson, in writing, of any ambiguity, inconsistency, or conflict in the documents before submitting an Application.

17. EFFECT OF SALE

Following the public auction sale and upon the successful bidder's satisfaction of all the obligations set forth in Sections 10(a) and 10(b) above, a lease document in conformance with the purchase shall be transmitted to the successful bidder for execution in accordance with Section 10(c) above.

In the event the successful bidder's rights to acquire the lease are terminated pursuant to the conditions above, the State may, but shall not be required to:

- (a) offer the lease to the bidder who offered the next highest bid at the public auction, at a lease rent equal to the minimum annual base rent bid by said bidder; or
- (b) cancel the public auction and re-auction the lease, limiting participation, however, to only those remaining qualified bidders and not reopen the auction to the general public. Notice shall be provided to the remaining bidders regarding the details of the auction. Publication of any notice of sale shall not be required; or
- (c) cancel the public auction and evaluate whether and when to re-auction the lease.

18. OTHER

DLNR reserves the right to cancel the public auction, to postpone or change the date of the public auction or any other deadlines, to reject any and all Applications or request the submittal of additional information, and waive any defects when, in the opinion of the Chairperson, such action will be in the best interest of the State.

DONE at the office of the Department of Land and Natural Resources, State of Hawaii this
Jun 3, 2020 day of June, 2020.

BOARD OF LAND AND NATURAL RESOURCES

By Suzanne D. Case
Suzanne D. Case, Chairperson

APPENDIX A
APPLICATION AND QUALIFICATION QUESTIONNAIRE

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section/question number. Submit one (1) completed original (with all required attachments) and three (3) copies (with copies of all required attachments).

IMPORTANT NOTE: The Applicant shall be the entity that will execute the Memorandum of Lease and the lease (if Applicant is the successful bidder at the public auction).

If Applicant is the successful bidder at auction, but the entity that intends to execute the Memorandum of Lease and/or the lease is different from the Applicant described in this Application (including changes to the ownership of Applicant), the Department of Land and Natural Resources ("DLNR") shall, at its sole discretion, have the right to (1) deem these changes to Applicant as an assignment of the rights of Applicant to the new entity requiring the consent of the Board of Land and Natural Resources; or (2) nullify the results of the auction and cancel any rights of Applicant to obtain the lease as the successful bidder.

Alternatively, if Applicant intends to form a new entity to enter the Memorandum of Lease and/or lease, Applicant may submit this Application and Qualification Questionnaire under the proposed entity by indicating "Yes" in Question 1 below and providing the name of the proposed entity and submitting information regarding the proposed owners, partners, shareholders, directors, officers, LLC members, etc. DLNR will evaluate Applicant for eligibility to participate in the auction by applying the evaluation criteria to the proposed entity.

PART I: GENERAL INFORMATION

1. Applicant's legal name: _____
Mailing address: _____
Is Applicant an entity that is to be formed in the future? (Please Circle) Yes / No
2. Name of contact person: _____
Phone: _____ Fax: _____ Email: _____
3. Applicant intends to bid on the following parcel:
Location: Alamihiki, Lahaina, Maui, Hawaii
Tax map key: (2) 4-5-005:019 (por.)
Intended use: _____
4. Applicant intends to hold title to the lease as:
Type of owner (Please Check One):
☐ Individual
☐ Husband and Wife
☐ Sole Proprietorship
☐ Joint Venture
☐ Partnership
☐ Corporation
☐ Limited Liability Company
Tenancy (Please Check One, If Applicable):
☐ Tenant in Severalty
☐ Joint Tenants
☐ Tenants in Common
☐ Tenants by Entirety

5. Applicant's fiscal year-end: _____

6. If Applicant is a partnership or joint venture, answer the following:

(a) Name, address, & percentage share owned by each partner or joint venture member:

Name	Address	Share
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Date of organization: _____

(c) General or limited partnership (if applicable): _____

(d) Recorded: _____

County	State	Date
_____	_____	_____

(e) Currently registered in Hawaii: (Please Circle) Yes / No
If Yes, as of: _____

(f) Name of managing partner: _____

(g) Provide the following information for the managing partner and each partner or joint venture member:

- (i) Name and address;
- (ii) Percentage of ownership interest;
- (iii) Whether a general or limited partner; and
- (iv) If the partner/member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership and management (i.e., principal owners and their respective ownership interests, directors, officers, etc.).

7. If Applicant is a corporation, answer the following:

(a) When incorporated: _____

(b) In what state or country: _____

(c) Authorized to do business in Hawaii: (Please Circle) Yes / No
If Yes, as of: _____

(d) Provide the name, address, and shares of stock for each officer of the corporation:

President: Name: _____
Address: _____
Number of stock shares: _____ Percentage of shares: _____

Vice-Pres: Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____
Secretary: Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____
Treasurer: Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____
Other: Name: _____ Title: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____

(e) Provide the name, address, and shares of stock for each member of the corporation's Board of Directors:
 Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____
 Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____
 Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____

(f) Provide the name, address, and shares of stock for each principal stockholder who is not named in 7(d) and 7(e) above. (Principal stockholder means one holding 10% or more of the outstanding stock of the corporation.)
 Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____
 Name: _____
 Address: _____
 Number of stock shares: _____ Percentage of shares: _____

8. If Applicant is a limited liability company (LLC), answer the following:
 (a) State or Country of formation: _____
 (b) Date of formation: _____
 (c) Registered to do business in Hawaii: (Please Circle) Yes / No
 If Yes, as of: _____
 (d) Member-managed or manager-managed? _____
 (e) Provide the following information for each member of the LLC:
 (i) Name and address: _____
 (ii) Percentage of ownership interest: _____

- (iii) If the member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership and management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):

- (f) If the LLC is a manager-managed LLC, provide the following information for the Manager:

(i) Name and address: _____

(ii) Percentage of ownership interest: _____

- (iii) If the member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership and management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):

9. Applicant must submit evidence acceptable to the Chairperson of the Board of Land and Natural Resources (e.g., certified corporate resolutions) that Applicant is duly authorized to apply for and bid on the lease at public auction, and if the successful bidder, to enter into the lease. Applicant shall also identify the person(s) that will be authorized to bid on the lease on behalf of Applicant at the public auction.

10. List all State of Hawaii leases, permits, licenses, easements, sales, etc. of public lands (e.g., from the State or County) which the Applicant has been a party to, including as a director, officer, shareholder, partner, limited liability company member:

Doc. No.	Type of Agreement	Term of Agreement

11. Attach tax clearances from both the State of Hawaii and the County in which the auctioned premises are located (**Appendix D**).

12. Is the Applicant registered with the U.S. Securities and Exchange Commission and been a publicly traded corporation for at least the last three years?
(Please Circle) Yes / No

13. Has the Applicant received a business loan within the last two years from an institution that is a member of the Federal Deposit Insurance Corporation or from any federal, mortgage-lending agency qualified to do business in Hawaii?
(Please Circle) Yes / No

If Yes, attach a copy of the loan agreement.

PART II: QUALIFICATIONS AND EXPERIENCE

14. Describe the Applicant's qualifications and experience in owning, constructing, and/or operating the type of business operations and use(s) proposed for the premises. Include any pertinent information, including but not limited to the names and locations of other similar businesses owned, developed, operated, or managed by Applicant, and the following information for each such business:

- (a) Describe each business operation (i.e., type of operations, annual gross and net revenues, number of employees, etc.).

- (b) Describe Applicant's role with respect to the business (i.e., is/was Applicant the owner, developer, operator, manager, etc.).

- (c) Describe the type and size of the improvements/facilities for the business and whether Applicant constructed the improvements or occupied existing improvements. If Applicant constructed or renovated the improvements, describe Applicant's role and provide the construction costs.

- (d) Provide the dates of Applicant's involvement/relationship with the business.

- (e) If Applicant's involvement or relationship with the business is/was through an affiliated or related company or through a common director or officer, describe the relationship between Applicant and the affiliated/related companies or directors/officers.

- (f) Describe any affiliations with national or international chains or franchises.

- (g) Provide contact information (names, addresses, companies, title/positions, phone numbers) for individuals that DLNR may contact to confirm any of the information provided in response to the above questions.

15. Provide any information or describe any other business experiences (including experiences in management, financial, and marketing/promotional matters), which Applicant feels is pertinent to establishing Applicant's qualifications and experiences in developing and operating a business on the premises.

16. Has Applicant ever been cited and/or fined for violations of any land use laws, ordinances, rules, or regulations? (Please Circle) Yes / No

If Yes, explain.

PART III: BUSINESS PLAN

Copy and attach additional plans as needed.

17. What will the premises be used for? List the goals and objectives to utilize and develop the premises.

18. What products or services will be sold?

19. What is the projected yearly level of production or sales?

20. What is the demand for your products in the near- and long-term?

21. Who are your primary customers and how will the products be distributed?

22. What is your pricing strategy?

23. How will you market your products?

24. Who are your major competitors and what is your competitive strategy?

25. Describe the proposed site development plan for the premises, indicating the location and size of buildings, parking areas, landscaped areas, fencing and related uses. Attach sketch of plan.

26. What improvements to the premises do you intend to make and at what cost?

27. Describe the proposed development schedule for the various improvements.

28. How will you finance the improvements?

29. Will you be subleasing any portion of the premises? (Please Circle) Yes / No

If yes, describe the sublease uses.

30. What problems are anticipated in carrying out this plan and how will you resolve them?

31. Attach a completed Cash Flow Projection (**Appendix E** sample format; you may use your own). You must show all income and expenses applicable to your business for a five (5) year period.

PART IV: FINANCIAL CAPACITY

32. Attach Applicant's financial statement (balance sheet, income/expense statement, and reconciliation of net worth) for the past three (3) fiscal years, and the most current interim financial statement. If Applicant has not been in existence for three (3) years; also attach the financial statements for the principals, i.e., those holding at least a 10% ownership interest.

33. Does Applicant have funding and financing commitments for Applicant's proposed improvements and business operations? If so, provide verification/confirmation(s) from all sources, as follows:

(a) If Applicant intends to obtain a loan, attach a preliminary loan commitment letter from a recognized lending institution. To be considered, the letter must specify approved loan amount and what loan proceeds will be used for.

(b) If Applicant is unable to or does not intend to secure a loan and Applicant is an individual, husband and wife, sole proprietorship or partnership, attach a Personal Financial Statement (**Appendix F**) for each individual and federal income tax return for the most recent three (3) years.

(c) If Applicant is unable to or does not intend to secure a loan and Applicant is a corporation, joint venture, or limited liability company, attach corporate financial statements (current balance sheet and income/expense statements) or federal income tax returns for the most recent three (3) fiscal years, and most current interim financial statement.

For Questions 34-40: (1) if applying as an individual, husband and wife, sole proprietorship or partnership, "you" refers to all individuals involved, including all partners, and (2) if applying as a corporation, joint venture or limited liability company, "you" refers to the entity itself and any director, officer, principal stockholder (stockholders holding $\geq 10\%$ of the outstanding shares) or limited liability company member or manager.

34. Are there any outstanding judgments against you? (Please Circle) Yes / No

If Yes, explain.

35. Have you filed bankruptcy within the last seven (7) years? (Please Circle) Yes / No

36. Have you had property foreclosed upon or given title or deed in lieu thereof in the last seven (7) years? (Please Circle) Yes / No

37. Are you a party in any legal action? (Please Circle) Yes / No

If Yes, explain.

38. Have you directly or indirectly been obligated on any loan, which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (Please Circle) Yes / No

If Yes, provide details, including date, name and address of lender and reasons for the action.

39. Are you presently delinquent or in default on any Federal, State or County rent, debt or another loan, mortgage, financial obligation, bond, or loan guarantee? (Please Circle) Yes / No

If Yes, explain.

PART V: CRIMINAL CONVICTIONS

40. Have you ever been convicted of a violation of law? (Please Circle) Yes / No

If Yes, explain.

PART VI: NOTARIZED CERTIFICATION

The undersigned Applicant hereby certifies that the statements and information contained in this Application and Qualification Questionnaire, including all attachments, are true and accurate to the best of Applicant's knowledge and understand that if any statements are shown to be false or misrepresented, Applicant may be disqualified from bidding or Applicant's lease may be canceled. The undersigned Applicant also authorizes the State of Hawaii Department of Land and Natural Resources and any of its employees or representatives to conduct investigations regarding any of the information provided in this Application and contact any of the references named herein.

Applicant Name

By: _____

Its: _____

Date: _____

Applicant Name

By: _____

Its: _____

Date: _____

Subscribed and sworn to before me this ____
day of _____, 201

Notary Public

County of: _____

State of: _____

My commission expires: _____

APPENDIX B
MEMORANDUM OF LEASE

This Memorandum of Lease is made this _____, by and between _____, a _____ (the "**Successful Bidder**"), whose mailing address is _____, and the STATE OF HAWAII, by and through its **Department of Land and Natural Resources** ("**DLNR**"), whose mailing address is P.O. Box 621, Honolulu, Hawaii 96809.

RECITALS:

A. DLNR is the owner of those certain parcels of land consisting of approximately 18,644 square feet, more or less, situated at Mala Wharf, Alamihi, Lahaina, Island of Maui, Hawaii, and identified by Tax Map Key No: (2) 4-5-005:019 (por) (the "**Premises**").

B. On July 30, 2020, DLNR conducted a public auction (the "**Auction**") for a Twenty year ground lease (the "**Lease**") over the Premises as described in the published Notice of Sale appearing in the Honolulu Star-Advertiser on [Notice Publication Date], and the Public Auction Bid Packet issued pursuant to said notice (the "**Public Auction Bid Packet**").

C. Pursuant to the Public Auction Bid Packet, the winning bidder at the Auction will be issued the Lease upon the winning bidder's satisfaction of certain terms and conditions.

D. The Successful Bidder was the winning bidder at the Auction with a minimum annual base rent bid of \$_____.

E. The Successful Bidder has executed an Affidavit stating that the Successful Bidder is not in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or any of its political subdivisions, and that the Successful Bidder has not during the five (5) years preceding the date of the Auction had a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof.

F. The Successful Bidder has paid to DLNR the sum of \$24,790.00 concurrently with its execution of this Memorandum of Lease.

G. DLNR and the Successful Bidder desire to enter into this Memorandum of Lease to confirm that the Successful Bidder was the winning bidder at the Auction and set forth the terms and conditions that must be satisfied by the Successful Bidder prior to DLNR issuing the Lease to the Successful Bidder.

NOW, THEREFORE, the parties hereby agree as follows:

1. Issuance of Lease. The Successful Bidder hereby agrees to rent and lease from DLNR, and DLNR agrees to demise and lease to the Successful Bidder, the Premises for the minimum annual base rent bid stated above in accordance with the terms, covenants, and conditions set forth herein below.

2. Conditions to Issuance of the Lease. DLNR will issue the Lease to the Successful

Bidder upon the Successful Bidder's completion of all of the following conditions:

- a. The Successful Bidder shall, within one (1) working day from the date of the Auction pay in cash, or certified check or cashier's check made payable to the Department of Land and Natural Resources:
 - (i) All charges required by law and all costs incurred by DLNR, including but not limited to the cost of survey maps and descriptions, documents, advertising costs related to the Notice of Sale document, and conveyance taxes (if any), all such amounts being non-refundable (collectively referred to as the "**Reimbursable Costs**"); and
 - (ii) The difference between fifty per cent (50%) of the minimum annual base rent bid by the Successful Bidder and the amount paid pursuant to Recital F above. The amounts paid pursuant to this Section 2.a.(ii) and Recital F, above, shall be collectively referred to as the "**Initial Deposit**".
- b. The Successful Bidder shall properly execute and return the Lease to DLNR within thirty (30) calendar days from the date DLNR transmits the Lease to the Successful Bidder.

3. Condition of the Premises; Due Diligence. The Premises shall be leased in an "**as is**" condition, without any representations or warranties made by the State or DLNR as to the condition of the Premises or suitability of the Premises for the use proposed by the Successful Bidder or for any other uses permitted in the Lease. DLNR does not warrant the accuracy of any of the information provided to the Successful Bidder.

The Successful Bidder is solely responsible for conducting its own due diligence. The Successful Bidder shall have sixty (60) calendar days from the date of the auction to conduct a due diligence investigation, determine the suitability of the Premises, and to decide if the Successful Bidder will continue with the lease of the Premises (the "**Due Diligence Period**"). The Chairperson may extend the Due Diligence Period provided any extension(s) of the Due Diligence Period may be conditioned on the Successful Bidder's payment of an extension fee(s). Extension fees shall be in an amount not to exceed ten percent (10%) of the minimum annual base rent successfully bid at the auction per thirty (30) day extension period, or portion thereof. Said fee(s) shall not be refundable or applied against any subsequent rents or other assessments owed by the Successful Bidder.

The Successful Bidder shall be responsible for all costs associated with its due diligence investigation. Copies of all due diligence reports shall be provided to DLNR and shall identify DLNR as an authorized user of said reports.

The Successful Bidder may, as the result of its due diligence investigation, elect not to proceed with the lease of the Premises by providing written notice to the Chairperson prior to the expiration of the Due Diligence Period. In the event the Successful Bidder provides such written notice of its decision not to proceed with the lease, DLNR shall retain the Reimbursable Costs and twenty percent (20%) of the Initial Deposit, return eighty percent (80%) of the Initial Deposit to the Successful Bidder, and neither the Successful Bidder nor DLNR shall have any further rights, duties or obligations regarding the lease for the Premises.

4. Default. In the event the Successful Bidder fails to fulfill any of the above obligations

within the stated deadlines, DLNR may, by written notice from the Chairperson, terminate all rights of the Successful Bidder to obtain the Lease and all obligations of DLNR to issue the Lease to the Successful Bidder.

In the event of any termination due to the Successful Bidder's default of any of the obligations set forth in Section 2.a. above, DLNR may, at its option, retain as liquidated damages the Reimbursable Costs (if paid) and twenty percent (20%) of the Initial Deposit (or any portions thereof paid by the Successful Bidder).

In the event of any termination due to the Successful Bidder's default of any of the obligations set forth in Sections 2.b or 2.c. above, DLNR may, at its option or unless otherwise described therein, retain as liquidated damages the Reimbursable Costs and entire Initial Deposit. The retention of said sums shall be in addition to any other rights or remedies to which DLNR may be entitled.

5. Commencement Date of Lease. The commencement date of the Lease shall be no later than thirty (30) calendar days from the date DLNR transmits the Lease to the Successful Bidder for execution pursuant to Section 2 above; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

6. Public Auction Bid Packet. The terms and conditions of the Public Auction Bid Packet by this reference are incorporated herein and made a part hereof; provided, however, that in the event of a conflict between the terms of the Public Auction Bid Packet and this Memorandum of Lease, the terms of this Memorandum of Lease shall control.

7. Review of Lease Document. The Successful Bidder acknowledges that it is responsible for reviewing the Lease document and ensuring full performance of all terms and conditions, some of which require performance within a specific timeframe after the Lease is executed, including but not limited to, the submittal to DLNR of the required performance bond and certificate(s) of insurance.

8. Governing Law. This Memorandum of Lease shall be governed by and construed in accordance with the laws of the State of Hawaii.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease as of the day and year first above written.

Name of Successful Bidder

Name:
Title:

Name:

Title:

Chairperson
Board of Land and Natural Resources

LAND COURT SYSTEM) REGULAR SYSTEM
Return by Mail () Pickup () To:

Total Number of Pages:
Tax Map Key No. (2) 4-5-005:019 (por.)

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

BOATING LEASE NO. LM-00-0000

between

STATE OF HAWAII

and

SALE AT PUBLIC AUCTION

covering

Alamihī, Lahaina, Maui, Hawaii

Containing an area of 0.428 acre

for landscaping, maintenance, storage of small boats and trailers
and other maritime related activities
at Mala Wharf and surrounding areas



TABLE OF CONTENTS

	<u>Page</u>
TERM OF LEASE	1
ANNUAL RENTAL	1
REOPENING OF ANNUAL RENTAL	2
PERCENTAGE RENT	2
INTEREST RATE/SERVICE CHARGE	4
RESERVATIONS:	
1. Minerals and waters	5
2. Ownership of improvements	5
AGREEMENTS AND COVENANTS BETWEEN PARTIES:	
1. Payment of rent	6
2. Taxes, assessments, etc.....	6
3. Utility services	6
4. Covenant against discrimination	6
5. Sanitation	6
6. Waste and unlawful, improper or offensive use of premises	6
7. Compliance with laws	6
8. Inspection of premises	7
9. Improvements	7
10. Repairs to improvements	7
11. Liens	7
12. Character of use	7
13. Assignments, etc.....	7
14. Subletting	8
15. Release and indemnity	8
16. Costs of litigation	9
17. Liability insurance	9
18. Bond, performance	10
19. Lessor's lien	11
20. Mortgage	11
21. Breach	11
22. Right of holder of record of a security interest	12
23. Condemnation	13
24. Right to enter	13
25. Inspection by prospective bidders	14



TABLE OF CONTENTS (cont'd)

	<u>Page</u>
26. Acceptance of rent not a waiver	14
27. Extension of time	14
28. Justification of sureties	14
29. Waiver, modification, reimposition of bond and liability insurance provisions	15
30. Quiet enjoyment	15
31. Surrender	15
32. Non-warranty	16
33. Hazardous materials.....	16
34. Hawaii law	17
35. Exhibits - Incorporation in lease	17
36. Headings	17
37. Partial invalidity	17
38. Time is of the essence	17
39. Historic preservation	17
40. Incorporation by reference	17
 SPECIAL CONDITIONS:	
41. Improvements	18
42. Bond, improvement	18
43. Fire and extended coverage insurance	18
44. Environmental regulations	19
45. Phase I environmental site assessment	19
46. Withdrawal	19
47. Structures on the premises	20
48. Additional liability insurance	20
49. Pollution control safeguards	22
50. Hazardous materials remediation	22
51. Clearances	22
52. Abandoned vehicles	22
53. Removal of trash	22
DEFINITIONS	23
SIGNATURE PAGE	24
ACKNOWLEDGMENT PAGE	25



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
BOATING LEASE NO. LM-00-0000

THIS LEASE, made this _____ day of _____,
20_____, by and between the STATE OF HAWAII, hereinafter referred
to as the "Lessor," by its Board of Land and Natural Resources,
called the "Board," and SALE AT PUBLIC AUCTION

whose address is _____,
referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Sections 171-35 and 200-2.5, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises which includes the existing improvements thereon, situate at Alamihi, Lahaina, Maui, Hawaii, and identified as "Mala Wharf and Surrounding Areas, Lease Parcel for Maritime Related Purposes," containing an area of 0.428 acre, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of twenty (20) years, commencing on the _____ day of _____, 20_____, up to and including the _____ day of _____, _____, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal monthly installments on _____ of each and every year during the term as follows:

A. For years one (1) through five (5) of the lease, the sum of _____ DOLLARS (\$_____) per annum, or ten per cent (10%) of gross receipts, whichever is greater.

B. For years six (6) through ten (10) of the lease, a fifteen per cent (15%) increase over the annual rent for the



immediately preceding five (5) year period or ten per cent (10%) of gross receipts, whichever is greater.

B. The annual rental minimum and percentage rents reserved shall be reopened and redetermined at the end of the tenth (10th) and fifteenth (15th) lease term.

C. Percentage Rent.

1. Percentage rent shall be based on the gross receipts from all commercial uses of the subject property.

2. The gross receipts shall include all revenues generated from, on, or within the premises, including the gross receipts of any sublessee.

3. Percentage rent shall be payable quarterly in arrears, without notice or demand, no later than thirty (30) days after March 31, June 30, September 30, and December 31 of each year, provided, however, that the Chairperson may extend the deadline for payment of percentage rents for good cause. Each payment of percentage rent shall be accompanied by a written statement certified as correct by Lessee, or a person duly authorized by Lessee, showing in accurate detail the amount of gross receipts, by category, for the payment period. Lessor may, in Lessor's sole discretion, specify the format and details required in Lessee's written statement of gross receipts

4. Lessee shall at all times keep and maintain accurate records of all business transactions and sales made in and from the premises, including records of business transactions and sales made by sublessees. Lessor shall have the right at all reasonable times during business hours, through Lessor's duly authorized agent, attorney, or accountant, to inspect and make copies of Lessee's records, accounts, and books in any way bearing on such sales (including copies of tax or information returns furnished to any governmental authority), at the premises or at any other office of Lessee at which such books, records, and accounts may be kept, and to inspect the records, accounts and books in any way bearing on sales of any other person or firm selling goods or services in or from any part of the premises. Lessor shall have the right to require Lessee to prepare and provide, at Lessee's sole expense, financial statements prepared according to generally accepted accounting principles and covering any fiscal year. All such information shall be held by Lessor, its agents, attorneys, and accountants in strictest confidence to the extent permitted by law.



5. If an audit discloses that Lessee has underpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such deficiency and upon such notification the deficient amount shall be immediately due and payable by Lessee. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to any other remedies available in this lease or otherwise, 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.

6. If an audit discloses that Lessee has overpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such overpayment. Overpaid amounts shall be credited to and set off against rental amounts next due and payable following the date that such overpayment is discovered or revealed. If the lease is in its final year, such overpayment shall be reimbursed to the Lessee, after deducting any amounts due to Lessor.

D. Determination of base rent and percentage rent upon reopening. The base rent and percentage rent for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both base rent and percentage rent, shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board or the Board's appraiser. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Provided that if the Lessee does not agree upon the fair market rental as determined by the Board's appraiser, the Lessee must notify the Lessor in writing within thirty (30) days after receipt of the determination, and the Lessee shall appoint the Lessee's own appraiser whose name and address shall be stated in the notice. The Lessee shall provide the Board with the complete appraisal prepared by the Lessee's appraiser. Each party shall pay for its own appraiser. If the Board's and the Lessee's



appraisers do not agree upon the lease rental, the Lessee and the Board shall, subject to section 171-17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter. The costs of mediation and arbitration shall be borne equally by the Lessee and the Board.

In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

E. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons 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. "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 the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters 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 required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, 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 becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

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.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply



with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

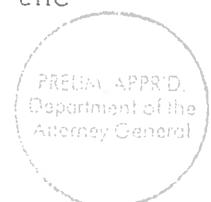
9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The 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.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall release, indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for landscaping, maintenance, storage of small boats and trailers and other maritime related activities at Mala Wharf and surrounding areas purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the



prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "C."

14. Subletting. The Lessee shall not sublet the whole or any part of the demised premises except with the approval of the Board; provided that prior to the approval, the Board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the Lessee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward.

15. Release and indemnity. The Lessee shall release, indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the

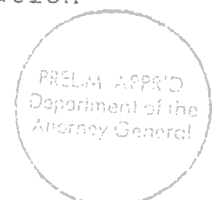


Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, general liability insurance, or its equivalent, with 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- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured. A copy of the policy or other documentation required by the Lessor shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a policy(s) or other documentation required by the Lessor showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the Lessor on deposit during the entire lease term, and furnish a like policy(s) or other documentation



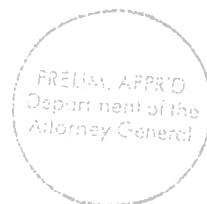
required by the Lessor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period or other documentation required by the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or other documentation required by the Lessor thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.



19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may 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; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail



or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss



to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispense shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. 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. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the 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 the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and



cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the premises preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the 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.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks,



certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after



notice thereof, the 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 the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises or any improvements thereon, as the same are being leased as is, where is, with all faults and defects, whether latent or patent.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then 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. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to release, indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.



34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. 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.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

40. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.



SPECIAL CONDITIONS

41. Improvements. If the Lessee constructs any improvements hereinafter referred to as ("Building Improvements"), the Building Improvements shall be in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

42. Bond, improvement. If the Lessee constructs any Building Improvements, the Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the Building Improvements, but in no event shall the amount be less than the Building Improvements, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the Building Improvements contained in this lease, the completion of the Building Improvements on or before the specified date of completion free from all liens and claims, and that the Lessee shall release, indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the Building Improvements.

43. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the



balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a policy or other documentation required by the Lessor showing the policy(s) or other documentation required by the Lessor to be in full force and effect and shall furnish a like policy or other documentation required by the Lessor upon each renewal of the policy(s). Each policy(s) or other documentation required by the Lessor shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

44. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

45. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

46. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to



the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land harvested, unless the Board pays to the Lessee the value of those crops.

47. Structures on the premises. There are currently two (2) Lessor-owned structures ("Structures") on the premises. Use of these structures will be included in the lease in their "AS IS, WHERE IS" condition. The Lessee may have a caretaker reside on the premises. The Lessee understands that use of the Structures are without warranty of habitability for fitness of use, and the Lessor is not responsible to improve, repair, replace, or rehabilitate any of the Structures, nor is the Lessor responsible for any damages of any type, actual or implied as a result of use. The lease is not intended to and does not create a residential lease subject to Hawaii Revised Statutes chapter 521.

48. Additional liability insurance.

(a) 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

(b) 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):

Workers' Compensation Hawaii statutory limits

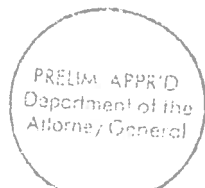
Employer's Liability

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

(c) 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

(d) 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 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

49. Pollution control safeguards. The Lessee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Lessee's, its invitee's and its agent's use, maintenance, repair and operation of the premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the premises, contain and take remedial action on the premises and its surrounding waters of such pollutant or contaminant and restore to the Lessor's reasonable satisfaction the area affected by such pollution or contamination, all at the Lessee's own cost and expense.

50. Hazardous materials remediation. Lessee shall be responsible to clean up and take any other reasonable remedial action if any hazardous materials is found on or within the premises, when the environmental site assessment required by paragraph 45 of this lease is done, or sooner if required by a governmental regulatory agency.

51. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

52. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

53. Removal of trash. The 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.



Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Board
of Land and Natural
Resources at its meetings
held on February 9, 2018
August 23, 2019.

STATE OF HAWAII

By _____
SUZANNE D. CASE
Chairperson
Board of Land and
Natural Resources

APPROVED AS TO FORM:

LESSOR

 _____
CINDY Y. YOUNG
Deputy Attorney General

Dated: _____

SALE AT PUBLIC AUCTION

LESSEE

STATE OF HAWAII

COUNTY OF

)
) SS.
)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII

COUNTY OF

)
) SS.
)

On this _____ day of _____, 20____, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively of _____, a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII

COUNTY OF

)
) SS.
)

On this _____ day of _____, 20____,
before me personally appeared _____,
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires: _____





STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,708

December 11, 2018

MALA WHARF AND SURROUNDING AREAS
LEASE PARCEL FOR MARITIME RELATED PURPOSES

Alamihi, Lahaina, Maui, Hawaii

Being a portion of the Government (Crown) Land of Alamihi.

Being also a portion of Mala Wharf and Surrounding Areas,
Governor's Executive Order 4315.

Beginning at the southeast corner of this parcel of land, at the southwest corner of Grant S-15,770 to County of Maui and on the north side of Mala Wharf Approach the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being 4430.04 feet South and 6028.45 feet West, thence running by azimuths measured clockwise from True South:-

1. 140° 23' 119.94 feet along the north side of Mala Wharf Approach;
2. 187° 35' 171.18 feet along the remainder of Mala Wharf and Surrounding Areas, Governor's Executive Order 4315;
3. 277° 35' 88.00 feet along the remainder of Mala Wharf and Surrounding Areas, Governor's Executive Order 4315;



C.S.F. No. 25,708

December 11, 2018

4. 7° 35'

252.67 feet along Grant S-15,770 to County of Maui to
the point of beginning and containing an
AREA OF 0.428 ACRE.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor rk

Compiled from map and desc.
furn. by Warren S. Unemori
Engineering, Inc. Said map and
desc. have been checked as to
form and mathematical correctness
but not on the ground by the Survey
Division.





ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a)(5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a)(5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "C"



5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same



proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.



Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.



SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	57 mos.
	Whole term:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations



$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of labor Statistics

Refrigerator

Example

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade	Expired term:	57 mos.
Fixture	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture



\$1,705 - \$1,012 = \$ 693

SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.



SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

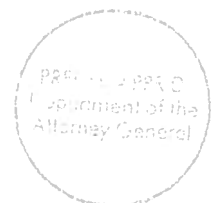
Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	- 82,690	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	- 1,012	
	Adj Dep Cost Trade Fixtures:		- 693
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055



SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.



No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1. Net Consideration Received: \$1,000,000
2. Consideration Paid: \$600,000
Premium: - 45,055
Net Consideration Paid: \$554,945
3. Adj Value Consideration (improvements):

$$\begin{array}{rcl} \$554,945 & \times & \frac{156.4}{121.1} \\ & & = \end{array}$$
\$716,708

Depreciation:

$$\begin{array}{rcl} \$716,708 & \times & \frac{107 \text{ mos.}}{408 \text{ mos.}} \\ & & = \end{array}$$
-187,960

Adj Dep Value Consideration: - 528,748
4. Excess: \$ 471,252
5. Premium: Percentage: 45% \$ 212,063



APPENDIX D

STATE AND COUNTY TAX CLEARANCES

Applicants must submit State and County tax clearance certificates within the timeframe specified in the Public Auction Bid Packet. Original or certified copies of tax clearance certificates issued by (i) the Hawaii State Department of Taxation; and (ii) the County in which the subject property is located (pertaining to property taxes, special assessments or other County obligations) must be submitted with this Application for the Applicant and all affiliated entities. "Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the bidding entity; any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the bidding entity; or any entity in which the bidding entity has more than fifty percent (50%) interest. The bidder shall be responsible for obtaining the verifications for all affiliated companies. The tax clearances must be valid on any date between the advertisement date and any date thereafter up to the date the lease is executed.

For information on obtaining State tax clearances, contact the State Department of Taxation:

- Oahu District Tax Office
830 Punchbowl Street, Post Office Box 259, Honolulu, Hawaii 96809-0259
Telephone: (808)-587-4242; Toll-Free 1 (800) 222-3229
- Hawaii District Tax Office
75 Aupuni Street, Post Office Box 833, Hilo, Hawaii 96721-0833
Telephone: (88) 974-6321
- Maui District Tax Office
54 South High Street, Post Office Box 1169, Wailuku, Hawaii 96793-1169
Telephone: (808) 984-8511
- Kauai District Tax Office
3060 Eiwa Street, #105, Lihue, Hawaii 96766-1889
Telephone: (808) 274-3403

Website: <http://www.state.hi.us/tax/current/a6.pdf>

For information on obtaining County tax clearances, contact the applicable County Real Property Tax Office:

- City & County of Honolulu
City Hall, Treasury Office, Room 115, 530 South King Street, Honolulu, Hawaii 96813
Telephone: (808) 523-4856 (forms can be mailed or emailed to you)
- County of Hawaii
Real Property Tax Office/Collections Division, 101 Pauahi Street, Hilo, Hawaii 96720
Telephone: (808) 961-8282; Facsimile (808) 961-8415
- County of Maui
Real Property Tax Division, 70 E Kaahumanu Avenue, Kahului, Hawaii 96732
Telephone (808) 270-7697
- County of Kauai
Real Property Tax Collection, 4444 Rice Street, Suite 463, Lihue, Hawaii 96766
Telephone: (808) 241-6555

APPENDIX E
CASH FLOW PROJECTION (SAMPLE)

Name of Applicant:				Item No.:	
	Year 1	Year 2	Year 3	Year 4	Year 5
Income:					
Initial capitalization					
Sales					
Loans					
Other					
Other					
Other					
Total Income					
Expenses:					
Labor					
Salaries					
Employee benefit programs					
Pension & profit-sharing plans					
Custom hire (labor, machinery)					
Materials					
Livestock					
Farm supplies (fertilizer, pesticides, etc.)					
Improvements					
Machinery & Equipment					
Car and truck expenses					
Gasoline; fuel expenses					
Rent payments					
Repairs and maintenance					
Overhead					
Lease rent (land)					
Utilities					
Insurance					
Advertising and promotion					
Storage and warehousing					
Taxes (property, income, GTE)					
Interest expense					
Other					
Other					
Total Expenses					
Net Cash Flow					

APPENDIX E
CASH FLOW PROJECTION (SAMPLE)

Name of Applicant:				Item No.:	
	Year 6	Year 7	Year 8	Year 9	Year 10
Income:					
Initial capitalization					
Sales					
Loans					
Other					
Other					
Other					
Total Income					
Expenses:					
Labor					
Salaries					
Employee benefit programs					
Pension & profit-sharing plans					
Custom hire (labor, machinery)					
Materials					
Livestock					
Farm supplies (fertilizer, pesticides, etc.)					
Improvements					
Machinery & Equipment					
Car and truck expenses					
Gasoline; fuel expenses					
Rent payments					
Repairs and maintenance					
Overhead					
Lease rent (land)					
Utilities					
Insurance					
Advertising and promotion					
Storage and warehousing					
Taxes (property, income, GTE)					
Interest expense					
Other					
Other					
Total Expenses					
Net Cash Flow					

APPENDIX F
PERSONAL FINANCIAL STATEMENT (SAMPLE)

Name of Applicant:		Social Security Number:	
ASSETS	OMIT CENTS		OMIT CENTS
Cash in Bank (Checking)		Notes Payable	
Cash in Bank (Savings)		Secured	
		Unsecured	
Accounts & Notes Receivable		Notes Payable Other (Itemize on Reverse)	
U.S. Government Bonds		Accounts Payable	
Investments in Own Business		Charge Account	
Other Stocks & Bonds (Itemize on Reverse)		Other	
CSVLI (Itemize on Reverse)		Unpaid Taxes	
Residence (Itemize on Reverse)		Real Estate Mtgs. Payable	
Other Real Estate (Itemize on Reverse)		Other	
Automobiles Make & Year			
Make & Year		IL Accts - Auto (Itemize on Reverse)	
Title in Name of:		IL Accts - Other (Itemize on Reverse)	
		Loans on Life Insurance	
Personal Property & Furniture		Other Liabilities	
Machinery & Equipment (Itemize on Reverse)		Note Payable - Equipment & Machinery	
Inventory & Case Invested in Growing Crops		TOTAL LIABILITIES	
Other Assets		NET WORTH (Assets Less Liabilities)	
TOTAL ASSETS		TOTAL LIABILITIES & NET WORTH	
CONTINGENT LIABILITY: As Endorser/Guarantor \$ _____ On Letters of Credit \$ _____ Legal Claims and Judgments (Explain) \$ _____			
MONTHLY INCOME (Alimony, Child Support, Etc. is Optional)	OMIT CENTS	MONTHLY PAYMENTS	OMIT CENTS
APPLICANT'S GROSS SALARY		Rent or Mortgage	
Overtime (Constant & Regularly Recurring)		Note Payments	
Bonus or Commissions		Charge Accounts	
Dividends & Investments		IL Loan – Auto	
Interest		IL Loan – Other	
Rents		Loans on Life Insurance	
Other (Explain)		Federal & State Income Tax	
SUBTOTAL – APPLICANT		Insurance Premiums	
CO-APPLICANT'S GROSS SALARY		Alimony, Child Support, Etc.	
Other (Explain)		Other Fixed Monthly Payments	
SUBTOTAL - CO-APPLICANT			
TOTAL		TOTAL PAYMENTS	

