

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

July 27, 2018

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST AUTHORIZATION TO ALLOW GKM, INC. (BOATING LEASE NO. H-82-4) TO ADD FUEL SALES TO THE LEASE “CHARACTER OF USE” AT A RENTAL RATE OF FIVE PERCENT (5%) OF GROSS FUEL RECEIPTS, SITUATED AT HONOKOHAU SMALL BOAT HARBOR, KAILUA-KONA, KEALAKEHE, ISLAND OF HAWAII, HAWAII, TAX MAP KEY (3) 7-4-008:042 (POR.)

REQUEST:

The Division of Boating and Ocean Recreation (“DOBOR”) is seeking approval from the Board of Land and Natural Resources (Board) to authorize GKM, Inc. to conduct fuel sales and to update the Lease “Character of Use” to include fuel sales at a rate of five percent (5%) of gross fuel receipts at the Honokohau small boat harbor, Hawaii. (see attached EXHIBIT A)

CHARACTER OF USE:

Occupy and use the premises principally for marine and marine-related activities which include the following:

Sales:

1. Marine hardware and supplies
2. Marine paints and other finish material

Services:

1. The construction, operation and maintenance of a boat haul-out facility for boat repair and storage
2. Repair facility for the maintenance and repair of boats
3. Marine workshop facilities
4. Rigging and swaging for vessels
5. Administrative offices for boat repair and storage facilities
6. The submerged land shall be used exclusively for the berthing of vessels for servicing and repair and the adjacent land area for use as a work dock area

The following additional marine-related activities may also be conducted within the demised premises upon prior written approval by the Lessor:

Sales:

1. Sailboats and power boats and other water craft (new and brokerage)
2. Charts, maps, and nautical publications
3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice and fresh bait
6. Outboard and inboard engines and supplies

Services:

1. Sail making, canvas goods and repair
2. Repair and maintenance of marine electrical and electronic equipment
3. Marine surveys
4. The construction, operation and maintenance of vessels and marine equipment storage facilities
5. Scuba/skin diving services associated with marine repair and salvage
6. Repair and maintenance of marine instruments and navigation equipment
7. Marine upholstery, draperies and interior finishes
8. Repair facility for the maintenance and repair of boats
9. Cold storage facility or ice house
10. Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.
11. Other related activities as approved in writing by the Lessor

ANNUAL RENTAL:

\$120,184.00 per annum, payable in quarterly installments of \$30,046.00

REMARKS:

During the process of reviewing DOBOR fuel agreements, DOBOR Property Management Staff found that there was no fuel agreement for GKM, Inc. After reviewing GKM Inc. records, DOBOR found a plethora of documents referencing GKM, Inc. offering fuel sales at Honokohau Small Boat Harbor without BLNR approval (see attached EXHIBIT B).

As a reference, Kona Marine Holdings, Inc. Lease gives them rights to sell fuel, but not exclusive rights to sell fuel at Honokohau Small Boat Harbor. Also, Kona Marine Holdings, Inc. is required to pay 5% of gross fuel sales. According to the GKM, Inc. Lease No. H-82-4, the "Character of Use" does not include fuel sales. Furthermore, Kona Marine Holdings, Inc. is at a disadvantage in competing with GKM, Inc. because Kona Marine Holdings, Inc. Lease requires them to pay five (5%) percent gross receipts while GKM, Inc. is presently conducting fuel operations without written approval and is currently not paying any percentage of gross receipts to the State of Hawaii.

### **Sublease**

The State of Hawaii consented to a sublease by Gentry Pacific, Ltd., Lease No. H-83-2, to Honokohau Fuel Inc., dba Honokohau Gas & Oil Co., Lease No. GKM-011 (see attached EXHIBIT C). The Board approved the sublease on October 12, 1984. The sublease term was for 20 years commencing February 12, 1985 and ending February 2005. However, Honokohau Fuel, Inc., filed for bankruptcy between August 15-22, 1986 effectively ending Sublease No. GKM-011, see attached EXHIBIT D.

### **Honokohau Fuel Bankruptcy / Termination of Lease**

Honokohau Fuel, Inc. filed for bankruptcy between August 15-22, 1986. Gentry Pacific Ltd. petitioned the United States Bankruptcy Court on January 27, 1989 with a “motion for order Confirming Rejection and Termination of Sublease No. GKM-011. Gentry Pacific’s Motion for order Confirming Rejection and Termination of Lease was granted, and the Sublease No. GKM-011 was deemed rejected and terminated on February 3<sup>rd</sup>, 1989 by the United States Bankruptcy Court (see attached EXHIBIT E). After the bankruptcy was completed, GKM Inc. took over the operation of the business without assignment/approval from the State of Hawaii.

### **Permitted Use of Lease**

The permitted use of Sublease No. GKM-011 was to be used by the Sublessee solely for the following and for no other purpose(s): “Selling of gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area”. The fueling facility within Gentry’s leased area was approved by the State with the condition that fuel will be “sold only to its tenants and not intended as a retail fuel facility to service the general public”.

Currently there is no lease provision granting GKM, Inc. permission to conduct fuel sales at Honokohau Small Boat Harbor. DOBOR previously sent three separate certified letters (July 13, 2017, November 17, 2017, and June 7, 2018) to GKM, Inc. requesting evidence of any documentation from the Lessor granting permission to conduct fuel sales. DOBOR has yet to receive any evidence from GKM Inc. granting permission to conduct fuel sales.

### **GKM Response**

GKM, Inc’s Attorney responded by letter on June 25, 2018 which stated that GKM, Inc. was granted rights to conduct fuel by assignment of lease recorded October 16, 2002 (see attached EXHIBIT F). GKM, Inc. also stated that fuel sales were initially conducted by Honokohau Fuel, Inc./Honokohau Partnership, Inc. and they consider the on-going fueling activities permitted under said lease.

Ms. Prettyman’s letter also alluded to selling fuel to the general public – “There is currently no way for the Honokohau trailer-boating community to procure fuel unless they drive all the way around to the other end of Honokohau Small Boat Harbor where vehicles are fueled (no launch ramps located there), then drive back around to the launch ramps on our (North) side of the harbor. Very challenging and not safe.”

**Note:** Honokohau Fuel, Inc. filed for bankruptcy and Honokohau Partnership, Inc. permitted lease use was for the sale of ice, fish, and photography only.

GKM, Inc.’s Attorney states that “At a hearing on March 24, 2006, the DLNR approved the relocation of the fuel dispensers and the convenience store-fueling station improvements and consented to Gentry’s Kona Marina’s mortgaging of its lease to secure the \$1,000,000.00.” They further contend that “the approval of the loan and the extension and mortgaging of the Lease for the express written purpose of relocating and improving an ongoing fueling operation at Honokohau Harbor is all the written approval that should be required.” Item J-1 of the March 24, 2006 Board of Land and Natural Resources meeting does not contemplate the relocation of the fuel dispensers and the convenience store-fueling station improvements. In fact, the submittal states “Loan proceeds will be used to renovate the existing steel building and add additional square footage. Plans were approved by DLNR on December 29, 2004. GKM, Inc. also proposes to renovate the haul-out slip and travel lift to accommodate larger vessels and make repairs to existing buildings, parking lot, and fencing.” Nowhere in the submittal or minutes does it mention fueling facilities. (see attached EXHIBIT G).

#### **Gentry Pacific Ltd. History of Selling Fuel to the General Public**

Gentry Pacific Ltd. has continuously disregarded instructions over the years from both the Department of Transportation and the Division of Boating & Ocean Recreation to cease offering fuel sales to the general public. (see attached EXHIBIT B).

On July 17, 2017, Tina Prettyman sent a letter to DOBOR stating the following regarding the fuel sales at Gentry’s Kona Marine “With regards to the sales of fuel, GKM, Inc. has correspondence on file with your department and board approval for a convenience store-gas station” (see attached EXHIBIT H). DOBOR has requested this documentation from GKM, Inc. several times but DOBOR has yet to receive any such documentation. Furthermore, during the sublease period, GKM, Inc. requested several times to amend their lease to sell fuel to “outside vehicles and vessels.” The Department of Transportation denied each request (see attached EXHIBIT I).

DOBOR is seeking to amend GKM Inc. lease to include fuel sales at a rental rate of five percent (5%) of Gross Fuel Receipts. DOBOR is also seeking to honor the original sublease terms that limited fuel sales to GKM, Inc.’s tenants only.

#### **RECOMMENDATION:**

That the Board of Land and Natural Resources:

1. Authorize GKM, Inc. to conduct fuel sales, under the terms and conditions cited above, which are by this reference, incorporated herein and further subject to the following:
  - a. Update Boating Lease No. H-82-4 “Character of Use” to include fuel sales at a rental rate of five percent (5%) of Gross Fuel Receipts.
  - b. Restrict fuel sales to GKM, Inc. tenants only.




- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
*for* EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:

  
SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachment:

- A. Aerial Map of Honokohau Small Boat Harbor: GKM, Inc. and Kona Marine Holdings, Inc. Fuel Facility Locations
- B. DOT & DOBOR and GKM, Inc. Fuel Sale History
- C. Honokohau Fuel Inc., dba Honokohau Gas & Oil Co., Sublease No. GKM-011
- D. Honokohau Fuel Inc., dba Honokohau Gas & Oil Co. Bankruptcy Filing
- E. Sublease No. GKM-011 Termination
- F. 6/25/18 Response Letter from GKM, Inc.'s Attorney
- G. BLNR March 24, 2006 Meeting Minutes & Land Board Submittal
- H. 7/17/2017 GKM, Inc. Letter
- I. GKM, Inc. Request's to Amend sublease & DOT Denial



# Honokohau Small Boat Harbor

GKM Inc. and Kona Marina Holdings Fuel Locations

## Legend

Fuel Locations

GKM Inc. Fuel Location

Kona Marina Holdings Fuel Location

EXHIBIT A

Google Earth

400 ft





History  
SUMMARY OF COMMUNICATIONS RE UNAUTHORIZED SALE OF FUEL FROM  
THE GENTRY PROPERTY'S LEASE AT HONOKOHAU HARBOR

Lease  
4/8/1983

| Date          | Communication                                                   | Content                                                                                                                                                                                                                                                                                                     |
|---------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nov. 19, 1984 | Colin L. Love to Harbors Division, Adam Vincent                 | First written complaint about Gentry's sale of fuel                                                                                                                                                                                                                                                         |
| Nov. 30, 1984 | Adam Vincent to Colin L. Love                                   | Gentry was given approval to sell fuel to its tenants only, and is not intended to be a retail fuel facility to service the general public.                                                                                                                                                                 |
| Sept. 6, 1985 | Jack Hall to Harbors Division, Adam Vincent                     | Gentry's fueling facility is now a full service facility selling fuel to the general public.                                                                                                                                                                                                                |
| Dec. 4, 1985  | Colin L. Love to Harbors Division, Adam Vincent                 | The sale of fuel to motorists and boat owners coming in off of the highway on the way to the launch ramp appears to be a consistent pattern.                                                                                                                                                                |
| Feb. 9, 1987  | Jack Hall to Edward Hirata, Director of Dept. of Transportation | Summarizes the communications between Kona Fuel and Marine, or its officers, or attorney, during 1985 through December 1986. Reference to various telephone calls on a number of problems, including the illegal sale of fuel. Copies of letters were attached as exhibits.                                 |
| Mar. 3, 1987  | Edward Hirata to Jack Hall                                      | Robbie Holmes advised to stop fueling vehicles that are not users of the Gentry facility.                                                                                                                                                                                                                   |
| Mar. 9, 1987  | Robert Garcia, Esq., to David Higa, Harbors Division            | Garcia represents Hawaii Petroleum, the fuel supplier for the Fuel Dock. Garcia informs Higa that Holmes & Sawyer, Gentry's sublessee, have been selling fuel to the public, and advertising the sale of fuel. Ian Birnie (Harbors) has agreed that Gentry's actions are a flagrant violation of the lease. |
| May 5, 1987   | David Higa, Chief of Harbors Division to Robert Garcia          | Holmes has been told to stop selling fuel to the general public. Harbors does not condone the continued unauthorized use of the lease premises.                                                                                                                                                             |
| Dec. 8, 1987  | Jack Hall to Wendy E. Oda, Harbors Division                     | The department has given notice to Gentry to stop the unauthorized sale of fuel, but nothing happens. Hall is interested in knowing how the department plans on correcting the situation.                                                                                                                   |

Sub-Lease GMK-oil Honokohau Fuel Inc.

|                               |                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aug. 5, 1988                  | Colin L. Love to Dan Kochi, Deputy Director for Harbors         | Recites past problems, and references a real estate ad for the sale of Holmes' fueling operation. The listing says they have two Chevron pumps, and that the sale of gas and diesel fuel is permitted. It indicates \$541,451.00 in annual income, (most of which was fuel). Points out that the State gets no part of this income.                                                                                              |
| Feb. 1, 1989                  | Edward Hirata to Jack Hall                                      | The State is satisfied that the KF&M fuel facility meets the present and projected future demands for a fueling facility.                                                                                                                                                                                                                                                                                                        |
| Feb. 28, 1989                 | Jack Hall to Ian Birnie, Harbors Division                       | Request for a reduction in rent because of lost profit caused by:<br>1. The unfair and unauthorized competition in the sale of fuel from the Gentry lease;<br>2. Delays in the State approving subleases.<br>3. The State left us no alternative but to sell or sue.                                                                                                                                                             |
| June 2, 1989 and June 6, 1989 | Colin L. Love to John Uchima, Deputy Director, Harbors Division | Settlement letters regarding the sale of Harbor Lease H-83-2 to the Dahlbergs. The letter recites past problems. The settlement includes Harbors agreeing that if there is a foreclosure and if KF&M takes the lease back, KF&M can re-sell with no consent fee. \$75,000 was paid for this agreement that KF&M would not have to fight over the consent fee again. Timing was critical, and KF&M was forced to this settlement. |
| Jan 17, 1990                  | WIIT article                                                    | Complaints about Dahlberg at the harbor have resulted in plans for a new fueling facility.                                                                                                                                                                                                                                                                                                                                       |
| Jan. 18, 1990                 | Colin L. Love to Edward Hirata, Director of DOT                 | Transmitted the news paper article (above). Again the history of the unauthorized sale of fuel is presented, and the department is asked for help.                                                                                                                                                                                                                                                                               |
| Apr 16, 1993                  | Jack Hall to Larry Cobb, Harbors Division                       | Inquiry into the status of Dahlberg's payment of rent.                                                                                                                                                                                                                                                                                                                                                                           |
| Apr. 21, 1993                 | David Parsons, Harbors Division, to Jack Hall                   | Dahlberg has not paid percentage rent for 1990, 1991 and 1992.                                                                                                                                                                                                                                                                                                                                                                   |
| Apr. 24, 1993                 | Jack Hall to David Parsons, Harbor Division                     | Reference to the continued illegal sale of fuel from the Gentry Lease and the failure of Harbors to take any action. Videos of the illegal activities                                                                                                                                                                                                                                                                            |

|               |                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|               |                                                                                | were taken and given to the State, then lost by the State.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Apr. 29, 1993 | Transcript of a meeting between Dahlberg, Larry Cobb, Ian Birnie and Jack Hall | Dahlberg says he withheld the percentage rent for three years because the State did not put a stop to the illegal sale of fuel from the Gentry lease. The State did not know they were not being paid the lease rent.                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| June 4, 1993  | David Parsons, Harbors Division to Dahlberg                                    | Acknowledges the unauthorized sale of fuel, but does not agree that it justified the withholding of Statements of Gross Receipts for three years. Parsons says that the statements should have been sent to them, and they should have been afforded the chance to correct the situation (unauthorized sale of fuel)                                                                                                                                                                                                                                                                                                                                      |
| Mar. 7, 1994  | Jack Hall to David Parsons, Harbors Division                                   | This letter addressed: <ol style="list-style-type: none"> <li>1. The failure of the State to address lease violations by Gentry;</li> <li>2. Harbor lease H-83-2 is the only authorized fuel facility;</li> <li>3. If the State wants an additional facility, put it out to bid;</li> <li>4. The history of the problems with Gentry, the State's promises and the State's lack of performance;</li> <li>5. The State's attempt to legitimize the illegal sale of fuel from the Gentry lease;</li> <li>6. KF&amp;M's security interest is jeopardized by the State's failure to prevent the illegal sale of fuel, and KF&amp;M demands action.</li> </ol> |
| May 17, 1994  | Jack Hall to Larry Cobb, Property Management Division, DLNR-Boating            | Provided Larry Cobb with a complete package of correspondence since 1983, and asked him to take action to prevent the illegal sale of fuel from the Gentry lease.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| June 13, 1994 | David Parsons, Boating Division to Jack Hall                                   | The State has no objection to Gentry selling fuel to vessels stored on their premises. They do not admit that the previous administration made any mistakes. (No reference to the ongoing problem with the illegal sale of fuel.)                                                                                                                                                                                                                                                                                                                                                                                                                         |
| June 24, 1994 | Jack Hall to David Parsons                                                     | The letter addresses: <ol style="list-style-type: none"> <li>1. KF&amp;M never agreed that Gentry could fuel boats stored at its facility. KF&amp;M is the only authorized facility;</li> <li>2. Changes that will be made in the facility to</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                  |

|                |                                                                                      |                                                                                                                                                                                                                                                                                                                                            |
|----------------|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                |                                                                                      | increase income:                                                                                                                                                                                                                                                                                                                           |
|                |                                                                                      | 3. Loss of income to the State because Harbors allows the illegal sale of fuel from the Gentry lease;                                                                                                                                                                                                                                      |
|                |                                                                                      | 4. Gentry is fueling boats at will, many of them charter boats and commercial vessels; and                                                                                                                                                                                                                                                 |
|                |                                                                                      | 5. A list of illegal fueling operations, names of boats and dates is attached.                                                                                                                                                                                                                                                             |
| Sept. 15, 1994 | Colin L. Love to John Keppeler, Deputy Director                                      | Reference to a massive fuel spill at the Gentry fueling operation, and the continued illegal sale of fuel from the Gentry lease.                                                                                                                                                                                                           |
| Nov. 30, 1994  | Keith W. Ahue, Chairperson, Board of Land and Natural Resources, to Jack Hall        | The alleged illegal fueling activities at the Gentry lease has been the subject of investigation. The State has determined that the lessee may be in violation of its lease, and is taking appropriate action to demand that the matters be resolved.                                                                                      |
| Nov. 30, 1994  | Keith W. Ahue, Chairperson, Board of Land and Natural Resources to Gentry Properties | Notice to stop the unauthorized sale of fuel or their lease will be terminated. Given 60 days to comply.                                                                                                                                                                                                                                   |
| Jan. 20, 1995  | Michael D. Wilson, chairperson of Board of Land and Natural Resources to Jack Hall   | Edward Hirata did not have the authority to bind the Board of Land and Natural Resources to a settlement agreement whereby KF&M paid \$75,000 in return an agreement whereby they could take the harbor lease back from the Dhalbergs in the event of their default, and re-assign it to a new buyer, without having to pay a consent fee. |
| Jan. 23, 1995  | Colin L. Love to Dawn Chang, Office of the Attorney General                          | The failure of the State to prevent the unauthorized sale of fuel by Gentry may have caused Dahlberg to fail. The department has made demands on Gentry before, but that has not stopped them from the unauthorized sale of fuel.                                                                                                          |
| March 9, 1995  | Colin L. Love to Dawn Chang, Office of the Attorney General                          | One of the conditions for KF&M paying the delinquent rent is that DLNR will stop the unauthorized sale of fuel from the Gentry Properties lease.                                                                                                                                                                                           |
| March 14, 1995 | Dawn Chang, Office of the Attorney General, to Colin L. Love                         | The DLNR has conducted its own investigation, and will continue to monitor the fueling activities of Gentry Properties, and if a violation has occurred, the State will take action against the Gentry lease.                                                                                                                              |

|                   |                                                                       |                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------|-----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dec. 1, 1995      | Jack Hall to David Parsons, State Boating Administrator               | Requests credit for the \$75,000 paid to the State for an agreement that Edward Hirata did not have the authority to make.                                                                                                                                                                                                                                                               |
| February 27, 1996 | Jack Hall to Kazu Hayashida, Director, DOT                            | Letter explaining the background of the \$75,000 payment to DOT, attaching a copy of the settlement agreement and asking that the funds be applied to the Dahlberg delinquent rent.                                                                                                                                                                                                      |
| Mar. 9, 1996      | Jack Hall to David Parsons, State Boating Administrator               | Notification of objections to the State's efforts to increase the unauthorized sale of fuel from the Gentry lease by moving the pumps so that it will be easier for cars coming in from the highway to get fuel.                                                                                                                                                                         |
| April 1, 1996     | Thomas T. Fujikawa, Chief of the Harbors Division of DOT to Jack Hall | A letter from DOT responding to KF&M's letter of Feb. 27, 1996 requesting money paid to DOT be applied to the Dahlberg rent delinquency. KF&M is referred to DLNR-DBOR and Larry Cobb.                                                                                                                                                                                                   |
| June 1 - 6, 1996  | List                                                                  | List of illegal fuel transactions at the Gentry facility, statement by John White that he stopped surveillance because he was threatened by Holmes.                                                                                                                                                                                                                                      |
| June 12, 1996     | Colin L. Love to Gilbert Coloma-Aguran, Deputy Director DLNR          | The letter explains the full background of the problems with the unauthorized sale of fuel from the Gentry lease, and described the efforts of Gentry (Gary Lambert, their manager) and Larry Cobb from Harbors to expand the Gentry fueling facility to make it easier for cars coming in from the street to buy fuel.                                                                  |
| July 10, 1996     | KF&M to DLNR-DBOR                                                     | Check for \$50,000, paid to DLNR without DLNR-DBOR providing an accounting of the amount due.                                                                                                                                                                                                                                                                                            |
| July 11, 1996     | Colin L. Love to Michael Wilson, Chairperson, BLNR                    | A five page letter summarizing the thirteen years of problems in dealing with DOT and BLNR and their failure to collect rent from the Dahlbergs and their failure to prevent the illegal sale of fuel at the harbor, etc. A copy of all of the foregoing letters were attached, and a copy of the letter to Mr. Wilson and all of the attachments was given to each member of the board. |

|               |                                          |                                                                                      |
|---------------|------------------------------------------|--------------------------------------------------------------------------------------|
| July 16, 1996 | Colin L. Love to Kona Fuel & Marine, Inc | The letter summarizes the July 12, 1996 BLNR meeting and the demands made upon KF&M. |
|---------------|------------------------------------------|--------------------------------------------------------------------------------------|

### Documents Recently Obtained

|                  |                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------|---------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 29, 1987     | Norman Gentry, V.P. Gentry-Pacific, Ltd. to David Higa, Chief, Harbors Division, DOT        | Letter acknowledging a complaint about Robbie Holmes selling fuel and referring David Higa to Gary Lambert.                                                                                                                                                                                                                                                                                                   |
| June 3, 1987     | Gary Lambert, General Manager for Gentry's Kona Marina to Robbie Holmes                     | Memo to Holmes telling him that he can only sell fuel in accordance with his sublease.                                                                                                                                                                                                                                                                                                                        |
| June 8, 1987     | Harvey Jay Migdal, Corporate Counsel for Gentry to David Higa, Chief, Harbors Division, DOT | Letter taking the position that there are no limitations to the sale of fuel in the Holmes <u>sublease</u> .                                                                                                                                                                                                                                                                                                  |
| January 25, 1989 | Ian Birnie, Harbors District Manager to Dep-K                                               | Memorandum to Honolulu office of Harbors division reporting: <ul style="list-style-type: none"> <li>1. He was told by Gentry's Kona attorney that Holmes had ignored a notice to cease selling fuel to automobiles.</li> <li>2. Gentry was filing for summary possession.</li> <li>3. The Kona attorney had been threatened by Holmes.</li> <li>4. Ian Birnie was going to seek police protection.</li> </ul> |
| May 10, 1989     | Gentry-Pacific, Ltd., Robert K. Holmes and Steven Sawyer                                    | Stipulated settlement of a summary possession action that had been filed by Gentry-Pacific against Holmes for violating his sublease by selling fuel to automobiles. Holmes agrees to not sell fuel to automobiles. Gentry is to seek an amendment of the sublease that will allow Holmes to sell fuel to automobiles.                                                                                        |
| June 17, 1993    | S.V. Quitiquit, Esq., to David E. Parsons, DLNR-DBOR                                        | Letter denying any knowledge of Holmes selling fuel to automobiles and contending that the Gentry's lease allows them to sell fuel to vessels on the water.                                                                                                                                                                                                                                                   |



JOHN WAIHEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P.O. BOX 821  
HONOLULU, HAWAII 96809

KEITH W. AHUE, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

JOHN P. KEPPELER, II  
DONAL L. HANAIE

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN  
RECREATION  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
PROGRAM  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

REF: BOR-PM/LC

November 30, 1994

Gentry Properties  
P. O. Box 295  
Honolulu, HI 96809

Gentlemen:

Subject: Harbor Lease No. H-82-4, Honokohau Boat Harbor,  
Island of Hawaii

This is to officially notify you that the Department of Land and Natural Resources, upon consultation with the Attorney General's office, has determined that certain activities of your subleasee, Honokohau Fuel, Inc., GMK-011, has violated the terms of Harbor Lease No. H-82-4.

An investigation has recently been completed in conjunction with the Department of the Attorney General, Investigations Division. The investigation indicates that your sublessee, Honokohau Fuel, Inc., GMK-011, has violated the terms of the sublease and your lease. Specifically, occurrences of fueling vehicles, trailer boats not stored on the premises, and fueling of vessels in the haul out slip have been observed and documented. You have been notified on previous occasions that these practices violate the terms of the Harbor Lease No. H-82-4 and applicable Hawaii Administrative Rules.

You are hereby notified that the above mentioned violations constitutes a breach of Harbor Lease No. H-82-4. Under the terms of Paragraph 23 of the lease, you have sixty (60) days from receipt of this notice to cure the breach.

You are required to provide the Department with evidence of corrective action to satisfy the breach. Mere assurances or promises of compliance will not suffice. As a minimum, it will be necessary to remove the fuel truck (Hawaii State License No. 313 MCC registered to Honokohau Marine Ice House, Inc.) from the premises.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF BOATING AND OCEAN RECREATION**  
4 Sand Island Access Road  
Honolulu, Hawaii 96819

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**JEFFREY T. PEARSON, P.E.**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES INFORMATION  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORY PRESERVATION  
KAIROHAWI ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

BOR-PM-204-18

GKM, Inc.  
c/o Tina Prettyman  
74-425 Kealakehe Parkway  
Kailua-Kona, HI 96740

Dear: Tina Prettyman,

On May 25, 2018, Item J-7, the Board of Land and Natural Resources authorized the continuation of your revocable permit #5, retroactively for one year from July 1, 2018 to June 30, 2019. During the RP #5 submittal process, DOBOR was informed of ongoing fuel sale operations being conducted at the Honokohau Small Boat Harbor location (Lease # H-82-4).

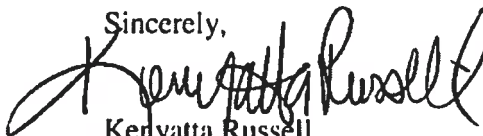
According to the GKM INC., lease (Lease # H-82-4) the Character of Use does not include fuel sales. DOBOR has no records or lease addendums granting permission to conduct fuel sales at this location. However, fuel sales may be conducted within the demised premises upon prior written approval by the Lessor per GKM INC. lease.

The Division of Boating and Ocean Recreation (DOBOR) will be going before the Board of Land and Natural Resources (the BLNR) tentatively July 13<sup>th</sup>, 2018 to request authorization to allow GKM INC. to offer fuel sales. DOBOR is seeking to add fuel sales to GKM INC. "Character of Use" at a rate of five percent (5%) of gross fuel receipts.

If you have any documentation granting permission to conduct fuel sales please forward a copy to [Kenyatta.russell@hawaii.com](mailto:Kenyatta.russell@hawaii.com) and or the address above attention Kenya Russell prior to July 1<sup>st</sup>, 2018.

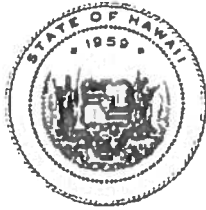
Should you have any questions, please contact Property Management, at (808) 587-1978.

Sincerely,

  
Kenyatta Russell  
Property Manager

Sent by regular and  
Certified Mail:  
7017 0530 0001 0150 5454

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

4 Sand Island Access Road  
Honolulu, Hawaii 96819

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COADMINISTRATOR WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD  
ADMINISTRATOR  
DIVISION OF BOATING AND OCEAN RECREATION

BOR.PM-101.18

November 17, 2017

*Certified Mail*  
7017 0530 0001 0153 3600

GKM, Inc.  
c/o Ms. Tina Prettyman  
74-425 Kealakehe Parkway  
Kailua-Kona, HI 96740

Dear Ms. Prettyman,

On July 13, 2017, the Division of Boating and Ocean Recreation (DOBOR) requested your assistance with providing any documentation of approval given by the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR), regarding the fuel operations at GKM, Inc.

Upon our review of your tenant files, DOBOR currently has no evidence of an agreement made between GKM, Inc. and DLNR-DOBOR for fuel operations. Please provide copies of all documents you may have pertaining to this matter. Should you not have written approval from the Board of Land and Natural Resources, we will prepare a submittal requesting that the Board approve fuel operations to occur at the GKM, Inc. facility.

Please contact our Property Management office at (808) 587-1964 if you have any questions regarding this matter.

Regards,

A handwritten signature in black ink, appearing to read "Keiki E. Kipapa".

Keiki, E. Kipapa  
Property Manager III



**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HARBORS DIVISION**

79 SO NIMITZ HWY • HONOLULU, HAWAII 96813

12-21-88 C. H. ref.  
EDWARD Y. HIRATA  
DIRECTOR

DEPUTY DIRECTORS  
JOHN K. UCHIMA  
RONALD N. HIRANO  
DAN T. KOCHI  
JEANNE K. SCHULTZ

IN REPLY REFER TO:

December 23, 1988

Dawn Suyenaga Candon, Esq.  
Associate Corporate Counsel  
Gentry-Pacific, Ltd.  
P. O. Box 295  
Honolulu, Hawaii 96809

Dear Ms. Candon:

Thank you for your letter of December 8, 1988,  
regarding Harbor Lease No. H-82-4, to Gentry-Pacific, Ltd.,  
and Sublease No. GKM-011, to Honokohau Fuel, Inc.

Given the physical location of your Gentry Kona Marina  
office and Honokohau Fuel, Inc.,'s fuel pumps, it is  
inconceivable your management was not aware of fuel sales to  
private vehicles. Your letter to the sublessee in fact  
state "...warnings have been given to you to halt such  
sales." Additionally, departmental records indicate that  
Gentry-Pacific, Ltd., was notified of illegal fuel sales by  
then Deputy Director Adam Vincent as long ago as March 20,  
1985.

We appreciate your stated intention to halt the  
unauthorized sale of fuel by Mr. Holmes. The status of  
lease No. H-82-4 depends entirely upon your actions.

Please call me if you have any questions.

Yours very truly,

A handwritten signature in cursive script that reads "Dan T. Kochi".

Dan T. Kochi  
Deputy Director

bcc. Dir, Chief, Har-H

Mr. Robert Holmes  
February 11, 1987  
Page 2

HAR-PM 2658

We understand that the sign is now at your gas pumps and that you continue to sell gasoline to anyone who drives in. You must cease such sales and operate within the uses permitted under your sublease.

Please call Mr. Artemio Delos Reyes, Harbors Division Property Manager, at 548-2525, if you have any questions.

Very truly yours,

*IS/ John Uehara*

*for* Edward Y. Hirata  
Director of Transportation.

ADR:jls

bcc: HAR-H  
HAR-B

November 23, 1988

HAR-PM 1966

Gentry-Pacific, Ltd.  
P. O. Box 295  
Honolulu, Hawaii 96809

Gentlemen:

We have been informed by Mr. Ian Birnie, Hawaii District Manager, that Mr. Robert Holmes, Honokohau Fuel, Inc. (Sublease No. GKM-011), continue to sell fuel to private vehicles. This is in violation of the purpose set forth in Item D, Page 2, of the sublease by Gentry-Pacific, Ltd. to Honokohau Fuel, Inc. and Honokohau Gas and Oil Company now Honokohau Fuel, Inc., dated February 12, 1985, pursuant to the terms of Harbor Lease No. H-82-4.

The permitted use under Sublease No. GKM-011 states in Item D: "The premises shall be used by the Sublessee solely for the following and for no other purpose(s): selling of gas, diesel and oil to commercial, charter and pleasure boats within the leased area."

Mr. Holmes continue to sell fuel to private vehicles in breach of the terms and conditions of the sublease consented by the State on December 5, 1984.

You are hereby notified to remedy the breach within sixty (60) days from the date of receipt of this letter. This notice is pursuant to Paragraph 23, Page 18, of your lease and Sections 171-20, HRS. Failure to remedy the illegal fueling of private vehicles within the 60-day period will subject your lease to termination pursuant to the provisions of Section 171-21, HRS. This notice is also being sent to First Hawaiian Bank, mortgagee of your property as required under Section 171, HRS and Paragraph 23 of the lease.

Your cooperation in resolving this matter is requested.

Very truly yours,

*Dan T. Kochi*  
Dan T. Kochi  
Deputy Director for Harbors

ADR:jls

cc: First Hawaiian Bank

bcc: HAR-H

*Seen*  
CH, HAR

C.O.  
HAR-S

APR 88 7:16  
HAR-PM



B

CONSENT TO SUBLEASE

KNOW ALL MEN BY THESE PRESENTS:

That the STATE OF HAWAII, Lessor in Harbor Lease No. H-82-4, does hereby consent to the Sublease by GENTRY-PACIFIC, LTD. of a portion of the premises demised under said Lease, to wit: An area containing approximately N/A square feet to Honokohau Fuel, Inc., dba Honokohau Gas & Oil Co., whose principal place of business and post office address is P.O. Box 2078, Kailua-Kona, HI 96745 .

This Consent shall (1) neither authorize nor be deemed to authorize any further or other sublease of said portion or any other portion or portions of the premises demised under said Lease; (2) not be deemed a waiver of any terms, covenants, provisions or conditions in said Lease contained and on the part of the Lessee to be observed or performed; (3) not be construed as a waiver by the STATE of any legal rights it may have under or in connection with said Lease; (4) not be deemed to estop the STATE from pursuing any cause of action it may have against Lessee either legal or equitable.

This Consent is further subject to the condition that the STATE does not hereby incur any additional liability, either direct or implied.

DATED: Honolulu, Hawaii, 12/5/84

APPROVED AS TO FORM:

STATE OF HAWAII

Beatrice K. Dawson  
Deputy Attorney General

By

John W. ...  
Its Director of Transportation

APPROVED:

BOARD OF LAND AND NATURAL RESOURCES

By S. Chu  
Chairman and Member

By Wassunika ...  
Member

Approved by the Board  
at its meeting held on

10/12/84, J-8

EXHIBIT C

GENTRY KONA MARINA SUBLEASE

GENTRY-PACIFIC, LTD.

to

Honokohau Fuel, Inc. and

Arthur M. Barnes and Steven Sawyer

Sublease No. GKM-011

#123



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## GENTRY KONA MARINA SUBLEASE

THIS SUBLEASE made and entered into this 12<sup>th</sup> day of FEBRUARY, 1985, by and between GENTRY-PACIFIC, LTD., a Hawaii corporation, hereinafter called "Sublessor", and Honokohau Fuel Inc, and Honokohau Gas and Oil Company, whose principal place of business and post office address is P.O. Box 2078, Kailua-Kona, -  
Hi. 96745, hereinafter called "Sublessee",

### WITNESSETH:

In consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Sublessee to be kept, observed and performed, the Sublessor does hereby demise and lease unto the Sublessee, and the Sublessee does hereby lease and hire from the Sublessor, the Premises hereinafter described in the Basic Provisions and Exhibits.

### BASIC PROVISIONS AND EXHIBITS

Item A -- PREMISES: Premises is defined in this Sublease as the area outlined on Exhibit A which is attached hereto and made a part hereof. The Premises is located in the Honokohau Boat Harbor, and, is specifically in the area of property leased by Gentry-Pacific, Ltd. from the State of Hawaii.

Item B -- LEASED AREA: For all purposes under this Sublease, the Leased Area of the Premises shall be deemed to contain approximately na square feet.

### Item C -- SUBLEASE TERM; SUBLEASE YEAR; EXTENSIONS AND RENEWALS:

The Sublease Term is 20 years, and no months and no days, commencing 30 days after issuance of Certificate of Occupancy, or date, ("the Commencement Date"), and ending no later than midnight on 20 years hence., ("the Termination Date"). A Sublease Year shall mean a period of

twelve (12) consecutive full calendar months. The first Sublease Year shall begin on the Commencement Date if such Commencement Date shall occur on the first day of a calendar month. If such Commencement Date shall not fall on the first day of a calendar month, the first Sublease Year shall commence on the first day of the calendar month immediately following the month in which the term would otherwise have commenced. Each succeeding Sublease Year shall commence on the anniversary date of the first Sublease Year. The Sublease Term includes all extensions and renewals of the original Sublease term herein set forth.

Item D -- PERMITTED USE: The Premises shall be used by the Sublessee solely for the following and for no other purpose(s): selling of gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area.

The Sublessee is aware that the Sublessor does not guarantee that the Permitted Use listed above shall be for the exclusive use of the Sublessee within the area of the Honokohau Boat Harbor and/or within the area of Gentry's Kona Marina.

Item E -- TRADE NAME: Sublessee shall operate and do business on the Premises with all signs and advertising under the trade name: Honokohau Gas & Oil Company

Item F -- FIXED MINIMUM RENT:

(1) From the Commencement Date through year three, inclusive, a minimum annual rent of \$ 2,400.00, in monthly installments of \$ 200.00

(2) For Sublease Year 4, through 5, inclusive, a minimum annual rent of \$ 2,760.00 in monthly installments of \$ 230.00.

(3) For Sublease Year na, through na, inclusive, a minimum annual rent of \$ na in monthly installments of \$ na.

(4) For Sublease Year na, through na, inclusive, a minimum annual rent of \$ na in monthly installments of \$ na.

Rent for the remaining 3 five-year rental periods will be renegotiated in accordance with Covenant Number 3, entitled Rental Redetermination, but in no event will the rent for each new rental period be less than the rent for the immediately preceding rental period.

Item G -- PERCENTAGE RENT: none percent ( ---%) In the event this Sublease provides that the percentage rent is to be renegotiated, then the parties shall mutually agree to the new percentage rent not less than 90 days prior to the expiration of the last Sublease Year for which the percentage rent is fixed; and, in the event Sublessor and Sublessee fail to so agree on a new percentage rent, then such percentage rent shall be redetermined by an arbitrator or arbitrators in the same manner as they are appointed and used under paragraph no. 3 entitled Rental Redetermination, hereinafter. In no event shall the redetermined percentage rent be less than the percentage rent for the immediately preceding period.

Item H -- SECURITY DEPOSIT: \$ 200.00 . This Security Deposit shall be held by Sublessor as security for the faithful performance by Sublessee of all of the terms, covenants and conditions of this Sublease by Sublessee. This deposit bears no interest, may be comingled with Sublessor's other funds, shall be increased by Sublessee if the Fixed Minimum Rent increases and shall be returned at the termination of this Sublease if Sublessee has complied with all of the terms, covenants and conditions of this Sublease, including the payment of rent, and Sublessee has vacated the Premises.

Item I -- GUARANTOR(S): Arthur M. Barnes and Steven Sawyer

Item J -- SUBLESSEE'S SHARE OF TAXES AND ASSESSMENTS: three and 47/100 percent ( 3.47 %) for the land and na percent ( na %) for the buildings and improvements. (16)  
93

Said percentage has been calculated as shown in Exhibit "C" attached hereto and made a part hereof, and Sublessee hereby acknowledges that Sublessor may use any other method of weighted proration which reasonably allocates such charges among the leased areas, as solely determined by Sublessor. Sublessee also acknowledges that the square footages of the various classes of leaseable space and of the common area space as estimated in Exhibit "C" may materially change as solely determined by Sublessor, as the Gentry Kona Marina is developed and subsequently operated.

Item K -- COMMON AREA EXPENSES: Sublessee's percentage of common area expenses which Sublessee must bear is one 14/100 percent ( 1.14 %). Said percentage of common area expenses shall be paid by Sublessee monthly within 5 days after Sublessor notifies Sublessee of the monthly amount due. Sublessee agrees that Sublessor may adjust once per each Sublease Year the above percentage of common area expenses which Sublessee must bear. (16)  
93

Said percentage has been calculated as shown in Exhibit "C" attached hereto and made a part hereof, and Sublessee hereby acknowledges that Sublessor may use any other method of weighted proration, which reasonably allocates such charges among the leased areas, as solely determined by Sublessor. Sublessee also acknowledges that the square footages of the various classes of leaseable space and of the common area space as estimated in Exhibit "C" may materially change as solely determined by Sublessor, as the Gentry Kona Marina is developed and subsequently operated.

Item L -- BROKER(S): NONE.

Item M -- STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION HARBOR  
LEASE NO, H-82-4:

Notwithstanding anything contained to the contrary in this Sublease, in any and all events, the State of Hawaii, Department of Transportation Harbor Lease No. H-82-4 between the State of Hawaii and Gentry-Pacific, Ltd. controls and is paramount, which includes the required consent of the State of Hawaii, otherwise this Sublease will be of no force and effect. (Lease No. H-82-4 is herein sometimes referred to as the "Lease".) The property subject to said Lease No. H-82-4 is depicted in Exhibit "A", and legally described in Exhibit "B", of which the Premises is a part.

Sublessee hereby acknowledges and represents that Sublessee has received a copy of the Lease, and has reviewed the Lease.

Item N -- SUBLESSOR'S ADDRESS FOR RENTAL PAYMENTS AND NOTICE:  
Gentry-Pacific, Ltd., P. O. Box 295, Honolulu, Hawaii 96809, and at such other place as Sublessor may designate in writing to Sublessee from time to time.

Item O -- EXHIBITS: The following drawings and special provisions are attached hereto as exhibits and are expressly incorporated in this Lease for all purposes:

Exhibit "A" -- Plan outlining the Premises and Site plan of Gentry Kona Marina.

Exhibit "B" -- Legal description of Gentry Kona Marina.

Exhibits "C" -- Projected Allocation Estimates for Sublessee's Percentage Liability of Real Property Taxes and Assessments (Item J) and Common Area Expenses (Item K)

Note: Although Gentry-Pacific, Ltd. may lease additional land in the Honokohau Boat Harbor, those additional lands will not be included in computing the percentages in Items J and K.

Item P -- OTHER CONDITIONS:

1. Additional rent of one cent (\$.01) per gallon for every gallon sold which exceeds 20,000 gallons per month shall be paid by sublessee. Sublessee to report total gallons sold by the 10th day of each month in accordance with Covenant Number 4, entitled Percentage Rent.
2. Sublessee shall maintain fuel tankwalls and foundation, and fuel lines.
3. Sublessee is hereby permitted to use sublessor's three (3) fuel lines already in place during the term of this Sublease. Sublessee shall fully maintain said fuel lines during the term of this sublease.
4. ~~Sublessor has provided Sublessee with full access of one of the four four inch electric service ducts for the purpose of conducting business. Said ducts terminate in Sublessee's Space Number 22. Sublessee may, at Sublessor's sole discretion and with written approval from Sublessor, use any excess electrical capacity available in the said second four inch service duct which is connected to Sublessor.~~

THE SUBLESSEE COVENANTS AND AGREES WITH THE SUBLESSOR AS FOLLOWS:

1. **Payment of Rent.** Beginning with the Commencement Date, monthly in advance throughout the term of this Sublease, without demand or notice, Sublessee shall pay said rent in legal tender of the United States of America to Gentry Kona Marina at the time, in the manner and form set forth in the Basic Provisions and Exhibits, and at the place specified above, or at such other place and to such other nominee as Sublessor may from time to time designate. In the event the Commencement Date falls on other than the first day of the month, the rental for the first fractional month shall be computed on a daily basis from the Commencement Date to the end of the month by multiplying the Fixed Monthly Minimum Rent by a fraction, the numerator of which is the number of days from the Commencement Date to the end of the month and the denominator of which is the number of days in the month.

2. **Service Charge and Default Rate of Interest.** Without prejudice to any other remedy available to Sublessor, a service charge of four (4) cents for each dollar of each rental payment owed for the particular month which is not made on time shall be assessed against Sublessee if the rental is paid more than 5 days after the due date to cover the extra expense involved in handling delinquent payments, and, any amounts owing by Sublessee to Sublessor under the terms of this Sublease shall bear interest from the date same becomes due until paid at the specified maximum rate, if any, then allowed by applicable law or if there is no such specified maximum rate, at a floating rate equal to three (3) percentage points over the large business prime rate then being charged by Bank of Hawaii. Said interest shall be considered as a part of the rental payable in this Sublease.

3. **Rental Redetermination.** Rental Redetermination means that a new Fixed Minimum Rent must be renegotiated. In the event this Sublease requires a reopening of the Fixed Minimum Rent, then such Fixed Minimum Rent shall be the rental for the immediately preceding Sublease Year, or 100% of the fair market rental at the time of the redetermination, whichever is higher.

In determining the fair market rental, the land, buildings and Permitted Use of the Premises as set forth herein in this Sublease shall be considered. The value of Sublessee's

equipment and furnishings shall not be considered in determining the said rental rate.

At the time of redetermination, the fair market rental shall be determined by mutual agreement of Sublessor and Sublessee not less than ninety (90) days prior to the expiration of the period for which minimum rent is fixed. If Sublessor and Sublessee fail to agree upon such fair market rental not less than ninety (90) days prior to the expiration of said fixed period, the fair market rental shall be determined by an arbitrator or arbitrators appointed as hereinafter provided.

Either party may give to the other written notice of its desire to fix such fair market rental by arbitration. If, within ten (10) days after the receipt of such notice, Sublessor and Sublessee are able to agree upon a single arbitrator, then said arbitrator alone shall determine said fair market rental. The decision and award of such arbitrator shall be final, conclusive and binding upon both parties for the period of redetermined rent, unless the same shall be vacated, modified or corrected, as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended. If Sublessor and Sublessee have not agreed upon one (1) such arbitrator within ten (10) days after said receipt of such notice, then such determination shall be made by two (2) arbitrators, each of whom must be a member of the American Institute of Real Estate Appraisers, and either party may give to the other party a written notice naming one (1) of the two (2) arbitrators. Thereupon, the other party shall, within ten (10) days after receipt of such notice, name a second arbitrator, and in case of failure so to do, the party who has already named an arbitrator may have the second arbitrator selected or appointed by any judge of the First Circuit Court of the State of Hawaii. With forty-five (45) days of their respective appointments, each arbitrator shall determine said fair market rental and submit their reports to the Sublessor and Sublessee. If the fair market rental determined by each of the arbitrators varies by five percent (5%) or less between them, the average of the two shall be controlling, unless the same shall be vacated, modified or corrected, as provided in said Chapter 658. If the fair market rental determined by each arbitrator varies by more than five percent (5%) between them, then, within ten (10) calendar days of the submission of the last fair market rental determination, both arbitrators shall appoint a third arbitrator who shall be a member of the American Institute of Real Estate Appraisers, and in case of failure so to do, either party may have the third arbitrator selected or appointed by any



judge of the First Circuit Court of the State of Hawaii. Said third arbitrator shall, within thirty (30) calendar days of his appointment, determine said fair market rental and submit his report to the Sublessor and Sublessee. The fair market rental determined by the third arbitrator shall be controlling unless it is less than that set forth in the lower fair market rental report previously obtained, in which case the fair market rental set forth in said lower report shall be controlling, or unless it is greater than that set forth in the higher fair market rental report previously obtained, in which case the fair market rental set forth in said higher report shall be controlling, and, unless the determination as herein provided with respect to the third arbitrator shall be vacated, modified or corrected, as provided in said Chapter 658. The arbitrator or arbitrators shall have all the powers and duties prescribed by said Chapter 658, and judgment may be entered upon any such decision and award as provided in said Chapter 658. All costs and expenses of the arbitration shall be borne equally by Sublessor and Sublessee except that each party shall bear the fees and costs of the arbitrator appointed by it, or by the Court on its behalf in lieu of appointment, and shall bear its own attorneys' and witnesses' fees and costs of court if the arbitration becomes the subject of litigation. If and whenever the fixing of such fair market rental is under arbitration, Sublessee, pending the determination thereof, shall continue to pay the then monthly rental which it had been paying during the period of fixed rent and shall promptly pay without any prior demand therefor and without any deduction or set off whatsoever, the deficiency, if any, upon the conclusion of the arbitration proceedings together with interest thereon at the rate of twelve percent (12%) per annum from the commencement of the period of rental redetermination until the date upon which said deficiency and interest are actually paid to Sublessor.

4. **Percentage Rent.** For each and every calendar month or fraction thereof during the term of this Sublease, Sublessee shall pay to Sublessor, on or before the tenth (10th) day of the next succeeding month, as additional rent, a sum of money determined by deducting the Fixed Minimum monthly or fractional monthly rent from the percentage rent for such preceding calendar month or fractional month. The percentage rent shall be determined by multiplying the percentage as set forth in Item G of the Basic Provisions hereinabove by Sublessee's gross sales for each month. In no event, however, shall the monthly rent to be paid by Sublessee to Sublessor be less than the Fixed Minimum Rent herein specified.

5. **Gross Sales and Reports.** The term "gross sales," means the entire amount of the actual sales price, whether for cash or otherwise, of all sales of merchandise or services, and all other receipts whatsoever of all business conducted at, in, from or upon the Premises, less any Hawaii State General Excise Taxes. Sublessee shall submit to Sublessor on or before the tenth (10th) day of each and every calendar month (excluding the 10th day of the first month of the first Sublease Year but including the 10th day of the month following the end of the term) at the place then fixed for the payment of rent, together with the remittance of monthly percentage rent, a written statement signed by Sublessee or by a person duly authorized by Sublessee showing in detail the amount of gross sales of the preceding calendar month or fractional month, if any.

6. **Gross Income Tax.** Sublessee shall also pay to Sublessor as additional rent, together with each payment of rental, real property taxes, and other charges payable by Sublessee hereunder, including but not limited to, the State of Hawaii General Excise Tax (the payment for which under this Sublease would presently be 4.167%).

7. **Preservation and Disclosure of Records.** For the purpose of ascertaining the amount of rent, Sublessee agrees to prepare and keep on the Premises for a period of not less than two (2) years following the end of each Sublease Year, or until Sublessor's auditors have had reasonable opportunity to audit the same, whichever is later, adequate records which shall show inventories and receipts of merchandise at the Premises and daily receipts from all sales and other transactions on the Premises by Sublessee and any other persons conducting any business upon said Premises.

8. **Audits.** Sublessee grants unto Sublessor and its agents the right at all reasonable times to have access to all books, accounts, records and reports, including, without limitation, gross income tax reports and purchase orders, which must be kept by Sublessee with respect to its business on the Premises for at least three (3) years following the end of a calendar year.

9. **Taxes, Assessments, etc.** Sublessee shall pay or cause to be paid, when due, as additional rent, its prorated amount, which is the percentage set forth in the Basic Provisions and Exhibits (Item J, and as set forth in Exhibit "C"), of all taxes, rates, assessments and other charges of every description to which said Premises are subject, including any improvements thereon and the parcel of land of which the Premises is a

part, which taxes, rates, assessments and other charges are now or may hereafter be assessed against the Sublessor or Sublessee by authority of law during the term of this Sublease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Sublessee shall be required to pay proratably only such installments, together with interest, as shall become due and payable during the term of this Sublease.

10. **Minerals and Waters.** Pursuant to the Lease, the State of Hawaii has reserved the right to all minerals as hereinafter defined, in, on or under the demised premises therein and the Premises herein, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such 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 the removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, 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, in, on or under the land.

11. **Prehistoric and Historic Remains.** All prehistoric and historic remains found on the premises demised herein shall be and remain the property of the State of Hawaii and shall not be disturbed or removed by Sublessee, its employees, agents or contractors, without the express approval of the Director of Transportation of the State of Hawaii.

12. **Easements.** Sublessor and the State of Hawaii reserve the right to establish, or to sell or grant to others, easements required for maritime or utility purposes, provided that such easements shall not, in any substantial way, interfere with Sublessee's use of the Premises.

13. **Construction of Improvements; Environmental Impact Assessment.** In the construction of any improvements by Sublessee, if required by the State of Hawaii, Sublessee shall, within sixty (60) days of the issuance of the building permit, prior to constructing any improvements on the Premises, submit an Environmental Impact Assessment to the Department of Transportation of the State of Hawaii. Within thirty (30) days after the approval of any such required Environmental Impact Statement or

Negative Declaration, whichever is necessary to comply with Chapter 343, Hawaii Revised Statutes, as amended, and the Regulations of the State of Hawaii's Environmental Quality Commission, Sublessee will submit completed building plans to the Harbors Division and Sublessor for approval.

If required by the State of Hawaii or County of Hawaii, prior to construction, Sublessee must obtain Department of Health approval for disposal of sewage, Hawaii County approval of a shoreline management permit, and Hawaii County approval for shoreline setback requirements and a building permit from Hawaii County. All costs associated with meeting the requirements hereinabove will be borne by Sublessee. Sublessee must also file and receive, if required by the State of Hawaii and/or County of Hawaii, approval of a Conservation District Use Application from the Department of Land and Natural Resources.

During the term of this Sublease, no improvements, alterations or additions will be constructed on or under the Premises unless Sublessee first submits its plans and specifications to Sublessor for its approval (and to the State of Hawaii if required) and approval is granted by Sublessor in writing (and the State of Hawaii, if so required). The plans and specifications must be in full compliance with all statutes, ordinances, and rules and regulations applicable thereto.

**14. Improvement Bond.** Sublessee will, at the time of the issuance of any building permit to Sublessee procure and deposit with Sublessor a surety bond in the amount of the construction costs, which bond shall (1) name the State of Hawaii and Sublessor as obligees, (2) be conditioned upon the faithful observance and performance of the building plans submitted to and approved by Sublessor (and the State of Hawaii, if required) and (3) save and hold the State of Hawaii and Sublessor harmless from all liens, suits, actions or damages arising out of, caused by or attributable to such work performed under the building permit.

**15. Contractor's Insurance.** Before commencing the construction or installation of any improvements, equipment or fixtures on the Premises, Sublessee shall require that all contractors and subcontractors employed on the Premises by Sublessee or Sublessee's contractor procure and maintain in full force and effect during the course of construction and installation the following insurance:

- a. **Workmen's Compensation as required by law.**
- b. **Contractor's Comprehensive General Liability and Property Damage** with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.
- c. **Contractor's Automobile General Liability and Protective Property** with a combined minimum single limit of \$500,000.00 for bodily injury and property damage per occurrence.

16. **Utilities.** Water, sewer, and electricity are available at the approximate locations depicted on Exhibit "A".

17. **Utility Services; Rubbish Disposal.** Sublessee 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 said Premises, or any part thereof, or any improvements thereon or Sublessor or Sublessee in respect thereof may during the term of this Sublease become liable, whether assessed to or payable by Sublessor or Sublessee. If such utility services are furnished by Sublessor, the charges to Sublessee will be the greater of Sublessor's actual costs for the furnishing of said services or the rate which would be payable if the Tenant were to purchase the same services from the public utility involved.

18. **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, sex, color, religion or ancestry.

19. **Sanitation, etc.** Sublessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

20. **Waste and Unlawful, Improper or Offensive Use of Premises.** Sublessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, loud or offensive noise, or unlawful, improper or offensive use of the Premises, or any part thereof.

21. **Compliance with Laws.** Sublessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes pertaining to the Premises, now in force or which may hereinafter be in force.

22. **Inspection of Premises.** Sublessee will permit Sublessor and the State of Hawaii

and their agents, at all reasonable times during the said term, to enter the Premises and examine the state of repair and condition thereof.

23. **Improvements.** Sublessee shall not at any time during the term of this Sublease construct, place, maintain and/or install on the Premises any building, structure and/or improvement of any kind and description whatsoever except with the prior approval of Sublessor and the prior approval of the Director of Transportation of the State of Hawaii, if required by the Director, and Sublessor and upon such conditions as said Director and Sublessor may impose.

24. **Repairs to Improvements.** Sublessee shall, at its own expense, keep, repair and maintain the Premises and improvements thereon now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted.

25. **Common Area; Rules and Regulations.** The term "common area," as used in this Sublease, shall be deemed to include those portions of the Gentry Kona Marina as are designated by Sublessor for the non-exclusive use of Sublessee in common with other authorized users, including but not limited to, roadways, service areas, driveways, areas of ingress and egress, landscaped and planted areas, sidewalks and other pedestrian ways, corridors, courts, public washrooms, drinking fountains, community rooms, toilets, stairs, ramps, areas containing buildings or structures used in connection with the maintenance of said common area, together with the buildings and structures constructed thereon, and all other similar facilities from time to time provided for the joint use and convenience of such authorized users.

Sublessee shall pay to Sublessor during the term of this Sublease, as additional rent, its pro rata share which is the percentage set forth in the Basic Provisions and Exhibits at Item K, and as set forth in Exhibit "C", of the cost and expenses which are incurred by or on behalf of Sublessor each calendar year, or part thereof, in maintaining and operating the common area (as hereinabove defined), including insurance premiums for the common areas, and the utility systems, lines, conduits, appurtenances thereto and security services serving the Gentry Kona Marina.

Sublessor shall have the exclusive right to police, regulate traffic in and otherwise control the use of parking, sidewalks, and all other portions of the common areas of the

Gentry Kona Marina. In furtherance of such right, Sublessor may from time to time promulgate and amend reasonable rules and regulations with respect to the common area, including hours of operation, which shall be binding upon Sublessee on reasonable notice. For the enforcement of said rules and regulations, Sublessor shall have all remedies in this Sublease provided for a breach of the term of this Sublease, as if said rules and regulations were expressly incorporated herein, and all other legal or equitable remedies whether or not provided for in this Sublease.

26. **Encumbrances, Rights Reserved to Sublessor.** Sublessor reserves the following rights:

(a) The right to grant or relocate all easements now or hereafter required by Sublessor for the construction, installation, operation, maintenance, repair and replacement of rights of way, underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and other public services and utilities; and

(b) The exclusive right to the use of the roof, exterior walls and area beneath the Premises, together with the right, from time to time, to install, maintain, use, repair and replace utility mains and other facilities serving other premises within the Gentry Kona Marina, when such location is dictated by necessities of engineering design, good practice and/or code requirements.

27. **Right to Change.** Sublessor reserves the absolute right at any time and from time to time to increase, reduce, change, or alter the size, height, layout, or location of any buildings, driveways, entrances and exits, automobile parking areas, and other circulation areas now or at any time hereafter forming a part of the Gentry Kona Marina.

28. **Right to Enter.** The agents and representatives of the State of Hawaii and the County of Hawaii may enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the Sublessee to the use and enjoyment of the Premises shall not be unreasonably interfered with.

Sublessee will permit Sublessor and its agents to enter into and upon said premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said Premises are situated, or for the purpose of making

repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, without any rebate of rent and without any liability to Sublessee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; provided, that except in case of emergencies, Sublessor shall make such entry for the purpose of repairing and maintaining the building only during non-business hours, and all such work shall be done in such manner as to cause as little interference as reasonably possible.

29. **Liens.** Sublessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon or the estate of the State of Hawaii or Sublessor or Sublessee become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Sublessor and the State of Hawaii from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

30. **Assignments and Subletting.** Sublessee shall not transfer or assign this Sublease or any interest herein. Sublessee shall not rent nor further sublet the whole or any portion of the Premises, without the prior written approval of Sublessor and the Director of Transportation of the State of Hawaii, which written approval each may unilaterally and arbitrarily withhold. Sublessee understands that said Director and Sublessor also have the right to deny uses contrary to the primary purpose of this Sublease.

31. **Rental Revisions under the Lease.** Sublessee understands that the Board (as it is defined in the Lease) has the right to review and approve the rent to be charged to Sublessee herein and, if necessary, to revise the rent and rent structure charged to the Lessee by the State of Hawaii in the Lease in light of the rental rate to be charged to the Sublessee herein by Sublessor. In the event such revision takes place under the Lease, then Sublessor may revise the rent and rent structure charged to Sublessee herein by passing onto Sublessee the share of such revision attributed to the increase of the rent charged by the State of Hawaii in the Lease to Lessee therein. Likewise, Sublessee understands that this same procedure and rental revision right applies to any assignment or subletting which may be approved under paragraph no. 30 entitled, Assignments and Subletting, above.

32. **Mortgage.** Upon due application and with the written consent of Sublessor and



the State of Hawaii, Sublessee may mortgage this lease or any interest herein or create a security interest in the Premises. Any such mortgage, hypothecation or pledge given by Sublessee without the prior written approval of the Sublessor and said Director shall be null and void. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Sublessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under Chapter 171, Hawaii Revised Statutes, as amended, to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder of this Sublease shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such 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 on the holder than those conferred with respect to any of the aforementioned Federal agencies.

Sublessee shall upon execution of any such mortgage promptly deliver a true copy of such mortgage or written notice thereof to Sublessor. The mortgagee or its assigns may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of such mortgage may take possession of and rent the Premises, and upon foreclosure thereof may without further consent of Sublessor sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of the Sublessee contained in the mortgaged lease, and such assignee may make a purchase money mortgage thereof to the assignor, provided that upon execution of any such assignment or mortgage a true copy thereof shall be delivered promptly to Sublessor and that no other or further assignment of this Sublease for which any provision hereof requires written consent of Sublessor shall be made without such consent. The mortgagee or its assigns of such mortgage shall be liable to perform

the obligations of the Sublessee under such mortgaged Lease only during the period such person has possession or ownership of the leasehold estate. Nothing contained in such mortgage shall release or be deemed to relieve Sublessee from the full and faithful observance and performance of Sublessee's covenants herein contained or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of Sublessor hereunder, and the terms, covenants and conditions of this Sublease shall control in case of any conflict with the provisions of such mortgage.

33. **Protection of Mortgagee.** During the continuance in effect of any authorized mortgage of this Sublease, Sublessor will not terminate this Sublease because of any default on the part of Sublessee to observe or perform any of the covenants or conditions herein contained if the mortgagee or its assigns, within sixty (60) days after Sublessor has mailed to the mortgagee or its assigns at the last known address thereof a written notice of intention to terminate this Sublease for such cause, shall cure such default, if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter perform all the covenants of this Sublease capable of performance by the mortgagee or its assigns until such time as the leasehold estate shall be sold upon foreclosure of such mortgage, and any default consisting of Sublessee's failure promptly to discharge any lien, charge or encumbrance against the leasehold estate junior in priority to such mortgage shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said 60-day period and thereafter prosecuted in diligent and timely manner.

34. **Subordination and Attornment.** Sublessee agrees upon request of Sublessor to subordinate this Sublease and Sublessee's rights hereunder to the loans and mortgages now or hereafter placed, charged or enforced against Sublessor's interest in this Sublease and the leasehold estate hereby created, the Premises or the land, building or improvements included therein or of which the Premises are a part, and execute and deliver (but without cost to Sublessee) at any time and from time to time upon demand by Sublessor such documents as may be required to effectuate such subordination, and in the event that Sublessee shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after receipt of written notice so to do and the receipt by Sublessee of the documents to be executed by it, Sublessee hereby appoints Sublessor, its successors and

assigns, the attorney in fact of Sublessee irrevocably to execute and deliver any and all such documents for and on behalf of Sublessee, provided that such holder of a mortgage shall agree that Sublessee may attorn to it or to any purchaser on foreclosure and this Sublease shall continue in effect if Sublessee is not then in default hereunder. In the event that the mortgagee or beneficiary of any such mortgage or deed of trust elects to have this Sublease a prior lien to its mortgage or deed of trust, then and in such event upon such mortgagee or beneficiary giving written notice to Sublessee to that effect, this Lease shall be deemed a prior lien to such mortgage or deed of trust whether this Sublease is dated or recorded prior to or subsequent to the date of filing of such mortgage or deed of trust.

35. **Financial Statements.** Should a lender advancing funds to Sublessor for the purpose of financing the construction of the Premises, or should the Sublessor require financial statements relating to Sublessee, Sublessee shall submit to such lender or to the Sublessor the required balance sheets and profit and loss statements and financial statements, and shall keep such reports, in the case of a lender, current so long as such lender shall require.

36. **Indemnity.** Sublessee will indemnify, defend and hold Sublessor and the State of Hawaii harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claim for property damage, personal injury or wrongful death, arising out of any accident in or about the Premises, sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the Premises, or by any fire thereon or growing out of or caused by any failure on the part of Sublessee to maintain the premises in a safe condition; and will reimburse Sublessor and the State of Hawaii for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

37. **Costs of Litigation.** In case Sublessor or the State of Hawaii shall, without any fault on their part, be made a party to any litigation commenced by or against Sublessee (other than condemnation proceedings), Sublessee shall and will pay all costs and expenses

incurred by or imposed on Sublessor and/or the State of Hawaii; furthermore, Sublessee shall and will pay all costs and expenses which may be incurred or paid by Sublessor or the State of Hawaii in enforcing the covenants and agreements of this Sublease, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges. In the event Sublessee brings an action or proceeding against Sublessor arising out of any breach of the terms and conditions hereof, and prevails against Sublessor, Sublessee shall be entitled to recover its costs and reasonable attorneys' fees from Sublessor.

**38. Insurance.**

A. **Liability Insurance.** Sublessee shall procure, at its own cost and expense, and keep in force during the entire term of this Sublease, with an insurance company or companies acceptable to Sublessor, a policy or policies of comprehensive general liability insurance in a combined single limit amount of not less than \$1,000,000.00 for bodily injury and property damage per occurrence; that said policy or policies shall cover the Premises, including all buildings, improvements and grounds and all roadways and sidewalks on or adjacent to the Premises in the control of Sublessee. Sublessee shall furnish Sublessor with a certificate showing such policy to be in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer that Sublessor and the State of Hawaii, through its Director of Transportation, shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in said policy. The procuring of this policy shall not release or relieve Sublessee of its responsibility under this Sublease. The policy or policies required under this provision shall name Sublessor and the State of Hawaii as additional insureds.

The minimum limits of insurance recited herein may be increased by such amounts as Sublessor and/or the Director of Transportation, in the exercise of sound and prudent judgment, may require.

B. **Fire Insurance.** Sublessee will, at its own expense, at all times during the term of this Sublease, keep the Premises insured in the names of Sublessor, the State of Hawaii, Sublessee and all Mortgagees, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an

amount equal to the maximum insurable value thereof, in a company or companies approved by Sublessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to Sublessor, the State of Hawaii, Sublessee, and the Mortgagees, if any, as their interests may appear, and shall be deposited with the Mortgagee, if any, otherwise with Sublessor; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by Sublessee for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the plans and specifications approved in writing by Sublessor, and the Director of Transportation; provided, however, that with the approval of Sublessor, Sublessee may surrender this lease and pay the balance owing on any mortgage and Sublessee shall then receive that portion of said proceeds which the unexpired term of this sublease at the time of said loss or damage bears to the whole of said term, Sublessor to retain the balance of said proceeds.

Sublessee shall furnish to Sublessor, the State of Hawaii, and the Mortgagees, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify Sublessor, the State of Hawaii, and the Mortgagees, if any, of any intention to cancel or materially change any such policy or policies, 30 days prior to actual cancellation.

39. **Surrender.** Sublessee shall and will at the expiration or sooner termination of this sublease, peaceably and quietly surrender and deliver possession of the Premises to Sublessor, together with all improvements constructed thereon by Sublessee of whatever nature or description, in good order and condition, reasonable wear and tear excepted; provided, that trade fixtures, equipment and personal property may be removed by Sublessee prior to such expiration or termination; and provided further, that within sixty (60) days after the termination or expiration of this Sublease, Sublessor may, at its option and upon written notice to Sublessee, require Sublessee to remove all or any portion of any improvement constructed by Sublessee on the Premises, and its equipment, fixtures, trade or otherwise, and/or personal property all at Sublessee's sole expense and cost.

Sublessee shall, in the removal of any of its improvements, equipment, trade fixtures

and/or personal property from the Premises, conduct such removal in such a manner as to cause no damage to the Premises, and in the event of such damage, Sublessee shall, at its own cost and expense, repair or replace the same.

If Sublessee fails or neglects, when so required by Sublessor, to remove all or any portion of any improvement constructed on the Premises by Sublessee of whatever nature or description, equipment, fixtures, trade or otherwise, and/or personal property within sixty (60) days after receipt of written notice to so remove, Sublessor may remove and dispose of the same and charge the cost of such removal and disposal to Sublessee, which costs Sublessee hereby agrees to pay.

40. **Breach.** Time is of the essence of this Sublease and if Sublessee shall fail to yield or pay such rent, costs, charges, assessments, or the like, as required of Sublessee in this Sublease, or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Sublease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of Sublessee's property for the benefit of creditors, or if Sublessee shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than ten (10) days with respect to the payment of rent with no written notice required, and for a period of more than thirty (30) days after delivery by Sublessor of a written notice of any other breach or default by personal service, registered mail or certified mail to the Sublessee at its last known address and to each mortgagee or holder of record having a security interest in the Premises, if any, Sublessor may, at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this Sublease 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 such termination, all buildings and improvements constructed thereon by Sublessee shall become the property of the Sublessor, or at Sublessor's option, be removed by Sublessee as provided in paragraph 38 hereinabove.

In the case of the non-payment of rent during the term of this Sublease, Sublessor may re-enter the Premises and terminate the Sublease. Sublessee shall be liable for subsequently accruing rent during the term of the Sublease when the Premises are not

re-let and for any deficiency resulting from a re-letting of such Premises plus expenses for the re-letting.

In the event Sublessee discontinues using the Premises for 15 consecutive days for the uses enumerated herein and activities related thereto, without the consent of Sublessor from the date hereof, Sublessor reserves the right to terminate the Sublease on 10 days' written notice.

41. **Condemnation.** In the event that at any time during the term of this Sublease, the Premises or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, the estate and interest of Sublessee in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking of any land shall be payable to and be the sole property of Sublessor, and Sublessee shall not by reason of the taking be entitled to any claim against Sublessor for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of any buildings or improvements erected or owned by Sublessee upon the land shall be divided between Sublessor and Sublessee in the ratios that the expired and unexpired portions of the term of this Sublease, respectively, shall bear to the whole term hereby created, and that in case only a part of the buildings or improvements constructed or owned by Sublessee are taken, Sublessee may claim and receive from the condemning authority but not from Sublessor, any expense incurred by Sublessee in repairing any damage thereto; provided that, in case a part of the Premises shall be required, taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced in the proportion that the area of land so taken shall bear to the area hereby subleased; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the Premises unfit for the purposes of Sublessee, Sublessee shall have the option to surrender this Sublease within 15 days of such condemnation and taking.

42. **Inspection by Prospective Sublessees.** Sublessor 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 the proposed sale or other disposition of the Premises for purposes of informing and apprising such person or persons of the condition of the Premises preparatory to such proposed disposition; provided, however, that any

such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to Sublessee, and shall, if Sublessee so requires, be made in the company of Sublessee or designated agents of Sublessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this Sublease.

43. **Sale or Assignment by Sublessor.** Sublessor may at any time assign or transfer its interest as Sublessor in and to this Sublease, or any part thereof, and may at any time sell or transfer its interest in and to the whole or any portion of the Premises.

44. **Attornment.** Sublessee hereby agrees to attorn to the assignee, transferee, or purchaser of Sublessor from and after the date of notice to Sublessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Sublease were made, in the first instance, by and between Sublessee and such assignee, transferee or purchaser.

45. **Transfer of Sublessor's Obligations.** In the event of any transfer or conveyance of the Sublessor's interest hereunder other than by way of security only, the Sublessor herein named, except as hereinafter provided (and in case of any subsequent transfers or conveyances, except by way of security only, the then Grantor) shall be automatically free and relieved from and after the date of such transfer or conveyance of all personal liability with respect to the performance of any covenants or obligations on the part of Sublessor contained in this Sublease thereafter to be performed, provided that any funds in the hands of such Sublessor, or the then Grantor, at the time of such transfer or conveyance in which Sublessee has interest shall be turned over to the Transferee or Grantee, and any amount then due and payable to Sublessee by Sublessor, or by the then Grantor, under any provisions of this Sublease shall be paid to Sublessee, it being intended hereby that the covenants and obligations contained in this Sublease on the part of the Sublessor to be kept and performed by it shall, subject as aforesaid, be binding on Sublessor, its successors and assigns only during and in respect to their respective successive periods of ownership.

46. **Extension of Time.** Notwithstanding any provision contained herein to the contrary, wherever applicable, Sublessor may for good cause shown, and in its sole discretion, allow additional time beyond the time or times specified herein to Sublessee, in which to comply with, observe or perform any of the terms, conditions and covenants



contained herein.

47. **Quiet Enjoyment.** Sublessor hereby covenants and agrees with Sublessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part Sublessee to be observed and performed, Sublessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by Sublessor or any other person or persons lawfully claiming by, through or under it.

48. **Short Form Lease.** This Sublease shall not be recorded by either Sublessor or Sublessee, provided, that Sublessor may, at its discretion, permit Sublessee to record a short-form counterpart of this Sublease, setting forth only the date of commencement and the date of termination of this Sublease and describing the Premises.

49. **Waiver of Jury Trial and Counterclaims.** The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on matters relating to the payment of rent in this Sublease and matters relating to the proper use of the Premises.

50. **Signs.** All exterior signs, installed or painted, advertising the business or activity conducted on the Premises, shall be restricted to the appurtenant equipment or any improvements constructed by Sublessee and are subject to the approval of the Sublessor. All signs installed or painted shall be done in good aesthetic taste and shall strictly conform to the sign ordinance of Hawaii County.

51. **Non-Waiver.** The waiver by Sublessor of any breach of any term, covenant or condition herein contained, including the acceptance of rent, shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained, and the exercise of one right or remedy by Sublessor shall not impair Sublessor's right to any other remedy.

52. **Brokerage Commissions.** Sublessee represents that Sublessee has dealt directly with (and only with) the broker(s) identified in Item L of the above Basic Provisions and Exhibits in connection with this Sublease, and that no other broker negotiated this Sublease or is entitled to any commission in connection herewith. Sublessee agrees to indemnify Sublessor against, and hold Sublessor harmless from, all liabilities arising from

the claims of any other broker based upon acts of Sublessee (including, without limitation, attorneys' fees incurred by Sublessor in connection therewith).

IN WITNESS WHEREOF, the State of Hawaii, Sublessor, and Sublessee herein have caused these presents to be executed this 12<sup>th</sup> day of February, <sup>1985</sup>1984, both *if* effective on the day and year hereinabove set forth.

GENTRY-PACIFIC, LTD.

By *Robert Gentry*  
Its

By \_\_\_\_\_  
Its

Sublessor

HONOKOHAU FUEL, INC.

By *Arthur M. Barnes*  
Its ~~PRESIDENT~~ Sublessee

*Arthur M. Barnes*  
Arthur M. Barnes Sublessee

*Steven Sawyer*  
Steven Sawyer Sublessee  
*D.C.  
n.p.*

STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) : SS:

On this 28th., day of May, 1985, before

*1st* me appeared NORMAN GENTRY ~~and~~ \_\_\_\_\_  
to me personally known, who, being by me duly sworn, did say that  
*1st* ~~they are~~ <sup>he is</sup> the Vice President ~~and~~ \_\_\_\_\_,  
respectively, of GENTRY-PACIFIC, LTD.  
a Hawaii corporation, and that the seal affixed to the foregoing  
instrument is the corporate seal of said corporation, and that said  
instrument was signed and sealed in behalf of said corporation by  
authority of its Board of Directors, and the said NORMAN GENTRY  
*1st* ~~and~~ \_\_\_\_\_ acknowledged said instrument to be the  
free act and deed of said corporation.

*Smith L...*  
\_\_\_\_\_  
Notary Public, First Judicial Circuit,  
State of Hawaii

My commission expires: 25 December 1986

STATE OF HAWAII )  
 ) : SS:  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before  
me appeared \_\_\_\_\_ and \_\_\_\_\_  
to me personally known, who, being by me duly sworn, did say that  
they are the \_\_\_\_\_ and \_\_\_\_\_,  
respectively, of \_\_\_\_\_ GENTRY-PACIFIC, LTD.,  
a Hawaii corporation, and that the seal affixed to the foregoing  
instrument is the corporate seal of said corporation, and that said  
instrument was signed and sealed 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, First Judicial Circuit,  
State of Hawaii

My commission expires: \_\_\_\_\_

*ms*  
*np* STATE OF HAWAII *Hawaii* ) : SS:  
CITY AND COUNTY OF HONOLULU )

On this *20th* *ms* *np* day of *November*, 19 *84*, before  
me appeared *Arthur M. Barnes* and *-*  
to me personally known, who, being by me duly sworn, did say that  
they are the *President* and *-*,  
respectively, of *Honolulu Fuel, Inc.*,  
a Hawaii corporation, and that the seal affixed to the foregoing  
instrument is the corporate seal of said corporation, and that said  
instrument was signed and sealed in behalf of said corporation by  
authority of its Board of Directors, and the said *President*  
and *-* acknowledged said instrument to be the  
free act and deed of said corporation.

*ms*  
*np* *Edward M. Shepherd*  
Notary Public, First Judicial Circuit,  
State of Hawaii

L.S.

My commission expires: *10-29-85*

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

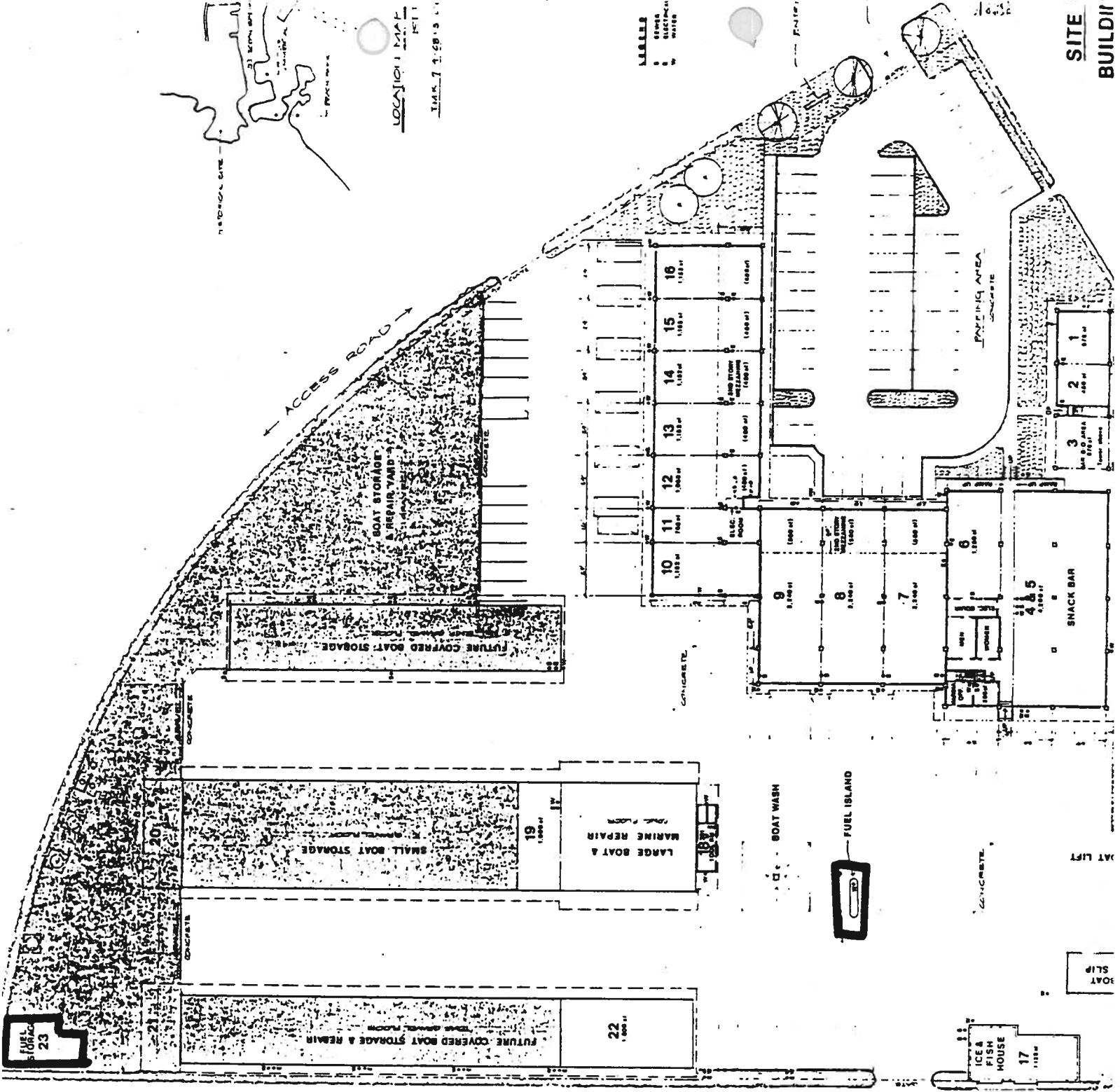
)  
: SS:  
)

On this 5<sup>th</sup> day of December, 1984,  
before me personally appeared Stevan Sawyer

to me known to be the person\_\_ described in and who executed the  
foregoing instrument and acknowledged that he executed the same  
as his free act and deed.

Annette L. Clemmer  
Notary Public, State of Hawaii

My commission expires: 9/1/85



SITE BUILDING

LEGEND  
BOAT  
ELECTRIC  
WATER

LOCATION MAP  
MARK 7 1.000 sq. ft.

FUTURE BOAT STORAGE

REPAIR YARD  
HONOKOHAU BOAT HARBOR

Being a portion of Government Land of Kealahou

Being also a portion of submerged land of Honokohau Boat Harbor

Land situated at Kealahou, North Kona, Island of Hawaii, State of Hawaii

Beginning at the northwest corner of the Repair Yard, on the northwest side of Access Road, the coordinates of said point of beginning referred to "HAWAII PLANE COORDINATE GRID SYSTEM, ZONE 1" (Central Meridian 155° 30' 00.00") being 305,540.20 feet north and 319,530.41 feet east and running by azimuths measured clockwise from Grid South of said Hawaii Plane Coordinate Grid System, Zone 1:

1. 307° 52' 49" 425.78 feet along on a curve to the right with a radius of 485.00 feet;
2. 333° 55' 233.09 feet along Access Road;
3. 63° 55' 156.33 feet along the southeast boundary of the Repair Yard;
4. 96° 03' 238.34 feet along the southern boundary of the Repair Yard;
5. 6° 03' 40.00 feet along a portion of the Repair Yard, walkway and submerged land of the boat harbor;
6. 96° 03' 115.00 feet along submerged land of the boat harbor;
7. 186° 03' 545.09 feet along a portion of submerged land of the boat harbor and western boundary of the Repair Yard to the point of beginning and containing an area of 177,860 square feet or 4.083 acres.

EXHIBIT B



## EXHIBIT "C"

GENTRY KONA MARINA  
PROJECTED ALLOCATION ESTIMATES FOR  
SUBLESSEE'S PERCENTAGE LIABILITY OF REAL PROPERTY TAXES  
AND ASSESSMENTS (ITEM J) AND COMMON AREA EXPENSES (ITEM K)

## I. APPROXIMATE SQUARE FOOTAGE OF AREAS IN GENTRY KONA MARINA (GKM):

|                                                          |            |
|----------------------------------------------------------|------------|
| "Class I", which is Improved, Enclosed Space             | 23,383 sf  |
| "Class II", which is Partially Improved,<br>Roofed Space | 14,556 sf  |
| "Class III", which is Open Space                         | 34,156 sf  |
|                                                          | -----      |
| Approximate total leasable sf in GKM                     | 72,095 sf  |
| Approximate common area square feet                      | 102,145 sf |
|                                                          | -----      |
| Approximate total area sf of GKM                         | 174,240 sf |
|                                                          | =====      |

## II. COMPUTATION OF REAL PROPERTY TAXES AND ASSESSMENTS FOR SUBLESSEE:

- A. Computation on land - Sublessee's pro rata share of taxes and assessments for land is computed as follows:

2,500 sq. ft. (Sublessee's space) : 72,095 sq. ft. (Approximate total leaseable square feet in Gentry Kona Marina) = 3.47 % (Sublessee's percentage of liability for real property taxes and assessments on all land in GKM)

- B. Computation on buildings and improvements - Sublessee's weighted pro rata share of taxes and assessments for buildings and improvements is computed as follows:

Class I, which is 23,383 sq. ft. (and is to be weighted 6.7) x 6.7 = 156,666 sf  
(which is the weighted amount of Class I improvements)

Class II, which is 14,556 sq. ft. (and is to be weighted 2.0) x 2.0 = 29,112 sf  
(which is the weighted amount of Class II improvements)

Total weighted amount of Class I and II improvements = 185,778 sf

2,500 sq. ft. of Class III (Sublessee's Premises x na, which is na weight = na (Sublessee's weighted space) na (total weighted space) = na % (Sublessee's percentage of liability for real property taxes and assessments on all buildings and improvements in GKM)

## III. COMPUTATION OF COMMON AREA MAINTENANCE CHARGE FOR SUBLESSEE:

Sublessee's weighted pro rata share of common area maintenance charges is computed as follows:

Class I, which is 23,383 sf (and is to be weighted 6.7) x 6.7 = 156,666 sf

Class II, which is 14,556 sf (and is to be weighted 2.0) x 2.0 = 29,112 sf

Class III, which is 34,156 sf (and is to be weighted 1.0) x 1.0 = 34,156 sf

Total weighted amount of Class I, II, and III space = 219,934 sf

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
**MEMORANDUM**

HAR-H  
81

DOT 1027  
(Rev. 11/68)  
Bx

TO: Ch, HAR

DATE: August 27, 1986

FROM: HAR-H

SUBJECT: HONOKOHAU FUEL, INC. *< Gentry - Pacific Sublease*

On August 26, we received the enclosed copy of Honokohau Fuel's request to their landlord, Gentry, that their lease be amended to allow fuel sales to outside vehicles and vessels. Note that the request is dated 8/22.

Also enclosed is an excerpt from the 8/25 issue of Pacific Business News, stating that Honokohau Fuel filed for bankruptcy, under Chapter 11, between August 15 and 22.

The dates of these separate actions indicate that the bankruptcy filing took place on or before the request to amend the lease. It appears that the amendment request was not written in good faith. Furthermore, Gentry's manager, Gary Lambert, stated (on August 25) that the bankruptcy filing voids the sublease. Mr. Lambert further stated that Gentry would probably not put the fuel facility out for sub-lease again, but would manage it themselves. He implied that they would abide by the permitted use statement and not sell fuel to autos.

If the sublease to Honokohau Fuel was not voided by the bankruptcy, I would strongly oppose approval of the requested amendment as being unfair to the successful bidder (Jack Hall) at public auction for that service.

The demise of Honokohau Fuel probably has no bearing on Honokohau Partnership (ice, fish and photography), which recently opened. The same principals, Steven Sawyer and Skip Barnes, were in both, and I believe Rob Holmes bought both companies. On August 14, Holmes telephone me and asked if I was going to shut down all other fish handlers in Honokohau (referring to Jack Hall's sub-lessee, Flying Seafoods) now that he was open for business. I told him to take it up with his landlord - Gentry.

  
IAN BIRNIE

Enc

EXHIBIT D

## FORECLOSURES

Filed Aug. 14-22

C-86-3147—First Hawaiian Bank vs. Robert S. Mist et al. Suit to foreclose mortgage on 2747 Puuhonua St., Manoa Valley, Oahu, for alleged non-payment of principal sum of \$85,128. Atty. for plaintiff: Barry K. Tagawa.

C-86-3157—Hawaii Housing Authority vs. Derrick T. Trukuda, Brenda Calero, Rita Brenda Trukuda, et al. Suit for foreclose mortgage on Apt. D-114 of Waikele condominium at Waikele, Oahu, for alleged default. Atty. for plaintiff: Stephen K.C. Nui.

Kaonohi, Ewa, Oahu, for alleged default. Atty. for plaintiff: Ronald V. Grant.

C-86-3186—First Hawaiian Bank vs. Kenneth W. and Jeranne E. Johnson, et al. Suit to foreclose mortgage on 75-5718 Alahou St., North Kona, Hawaii, for alleged non-payment of principal sum of \$35,000. Atty. for plaintiff: Michael L. Biehl.

C-86-3189—Territorial S&L Assn. vs. Shu W. Chun, Omel I. Turk, et al. Suit to foreclose mortgage on Apt. 710 of Pacific Grand condominium at Honolulu, Oahu, for alleged non-payment of principal sum of \$41,351. Atty. for plaintiff: Phyllis Spradlin.

C-86-3191—Assn. of Apt. Owners of Canterbury Place vs. Lori F. and Laurie M. Zaccaria, et al. Suit to foreclose mortgage on Apt. 203 of Canterbury Place condominium at Waikele, Oahu, for alleged non-payment of principal sum of \$1,397. Atty. for plaintiff: J. Eric Pustinen.

ML-86-0078—J.M. Sueda Inc. vs. Dynamic Industries Corp., Pauahi Realty Inc., City & County of Honolulu, et al.; \$10,144; 167 N. Pauahi St., Honolulu, Oahu; Kenneth K.S. Lau.

## BANKRUPTCIES

The following debtors' petitions were filed Aug. 15-22

### Chapter 7

• 86-00509—Charles K. Whitsell, aka Charles Whitsell Photography, 581 Kamoku St., Suite 3004. Debts: \$20,166. Assets: \$5,500.

• 86-00519—Alan Tucker, 1099 Green St., Suite 211. Debts and assets not listed.

• 86-00520—Shannon M.I. Manaois, 955 Ala Lilikoi St., Suite 604. Debts: \$18,880. Assets: \$1,050.

• 86-00521—Glenn T. Kawachi, 990 Ala Nanala Pl., Suite 16-C. Debts and assets not listed.

• 86-00522—Daryl E. Wallace, 94-1044 Mahua Rd., Waipahu. Debts and assets not listed.

• 86-00523—John M. Moore, 4300 Waiatae Ave., Suite 706-A. Debts and assets not listed.

• 86-00524—James A. Sr. and Betty J. Lidia, P.O. Box 4341, Hilo, Hawaii. Debts: \$38,267. Assets: \$1,850.

• 86-00525—Edward Jr. and Marie H. Balaj, 84-538-A Hanalei St., Wai-anae. Debts and assets not listed.

• 86-00527—Lester L. Pertz, P.O. Box 3534, Honolulu. Debts and assets not listed.

• 86-00528—Debra D. Figueroa, aka Debra D. Frigillana, 1720 Poki St., Suite 212. Debts: \$23,193. Assets: \$5,670.

• 86-00529—La Paloma Numero Cinco Inc., by its trustees in dissolution, Joseph G. Jr. and Laura R. Martinez, c/o 324 Awini Pl. Debts and assets not listed.

• 86-00531—Rosemary S. Antcliff, 2365-D Gemini Ave., Hickam Air Force Base. Debts: \$12,671. Assets: \$1,250.

• 86-00532—Sabina K. Milan, 3137

George St. Debts: \$20,201. Assets: \$3,119.

• 86-00533—John P. and Sherry L. Barnett, 1351-C Dorey St., Wahiawa. Debts: \$9,301. Assets: \$2,209.

• 86-00535—Michael A. Pope, 2030 Ahualani Pl. Debts and assets not listed.

### Chapter 11

• 86-00510—(INVOLUNTARY)—Buena Vista #2ABC Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Roy Y. Awaya. Debts and assets not listed.

• 86-00511—(INVOLUNTARY)—Buena Vista #6 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: John W. Nakao. Debts and assets not listed.

• 86-00512—(INVOLUNTARY)—Buena Vista #3 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Michael Katsumoto. Debts and assets not listed.

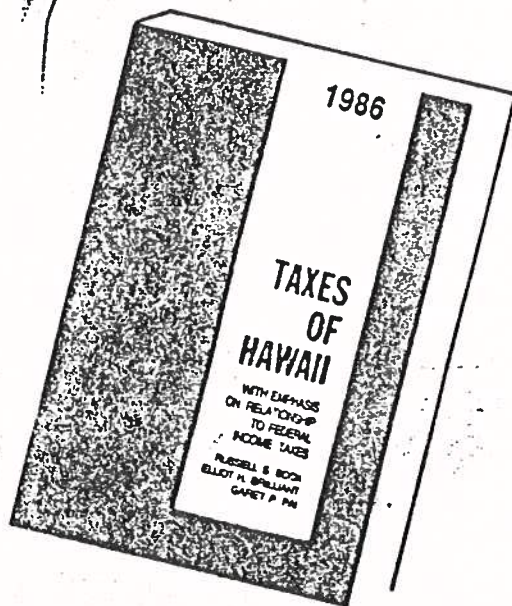
• 86-00513—(INVOLUNTARY)—Buena Vista #4 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Paul S. Haraguchi. Debts and assets not listed.

• 86-00514—(INVOLUNTARY)—Buena Vista #1-K Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Stewart A. Green. Debts and assets not listed.

• 86-00526—JCSY Inc., Kailua Shopping Center, Kailua. Debts: \$357,196. Assets: \$35,000.

• 86-00530—Honokohau Fuel Inc., P.O. Box 5111, Kailua-Kona, Hawaii. Debts: \$81,642. Assets: \$62,804.

• 86-00534—Dochia A. Gonzalez, aka Dochia Gonzalez, Joseph A. Gonzalez Jr., aka Joe Gonzalez, DJ's Ceramics, and DJ's Ceramics Ltd., 96-1417 Waihona Pl., Pearl City. Debts and assets not listed.



the State Tax Office. ice with a copy of changes plus a lies, specimen and Attorney s income, excise, rovisions. This for 23 years, Hawaii taxes. pages and nd tax dered company

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STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-H  
355

TO: HAR-PM *pm 3/8/89*  
THRU: DEP-K *K*  
FROM: HAR-H

DATE: February 2, 1989

SUBJECT: SUBLEASE GKM-OIL, GENTRY AND HONOKOHAU FUEL, INC., R/S 2559

It is interesting that Gentry's attorney is acting on Holmes' bankruptcy, using that as grounds for termination of the sublease.

I notified you by memo (HAR-H 81, 8/27/86) two and a half years ago that Honokohau Fuel, Inc., had filed for bankruptcy under Chapter 11 between August 15-22, 1986. I also advised you that I had discussed the bankruptcy petition with Gentry's Kona manager, Gary Lambert, on 8/25/86, and he had informed me that it was cause for automatically voiding the sublease. Gentry and we have taken two and a half years to follow up on this matter.

The 1/31/89 hearing in Kona was postponed because Gentry's attorney has been unable to serve Rob Holmes. Maybe his friend Derrick Lining can provide information as to his whereabouts.



IAN BIRNIE

Enc.

IAN -

TRY SOUTH AMERICA!

Of Counsel:  
CASE & LYNCH

SYLVESTER V. QUITIQUIT  
DAVID C. FARMER  
Suites 2500 and 2600  
Grosvenor Center, Mauka Tower  
737 Bishop Street  
Honolulu, Hawaii 96813  
Telephone No. 547-5400

Attorneys for GENTRY PACIFIC, LTD.

R 92784  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII  
1989 FEB -8 AM 11:14  
DOROTHY A. FERNALD CLERK

FEB - 8 1989

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

|                      |   |                                |
|----------------------|---|--------------------------------|
| In re                | ) | CASE NO. 86-000530             |
|                      | ) | (Chapter 11)                   |
| HONOKOHAU FUEL, INC. | ) |                                |
|                      | ) | ORDER CONFIRMING REJECTION AND |
|                      | ) | TERMINATION OF DEBTOR'S        |
| Debtor.              | ) | INTEREST IN LEASE              |
|                      | ) | DATE: January 27, 1989         |
|                      | ) | TIME: 9:30 a.m.                |
|                      | ) | JUDGE: Jon J. Chinen           |
|                      | ) |                                |

3435U/13048-16

ORDER CONFIRMING REJECTION AND  
TERMINATION OF DEBTOR'S INTEREST IN LEASE

Gentry Pacific, Ltd.'s ("Gentry Pacific") Motion for Order Confirming Rejection and Termination of Lease was heard before the Honorable Jon J. Chinen on Friday, January 27, 1989, at 9:30 a.m. David C. Farmer, Esq. appeared on behalf of Gentry Pacific, and Mark D. Bernstein, Esq. appeared on behalf of Steven Sawyer, Sublessee.

The Court, having considered the motion, the files and records in the case, and the representations of counsel, and no objections having been filed;

EXHIBIT E

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Gentry Pacific's Motion for Order Confirming Rejection and Termination of Lease is hereby granted, and the Debtor's interest in Sublease No. GKM-011 is deemed rejected and terminated.


DATED: Honolulu, Hawaii, FEB - 3 1989.

JON A. CHINEN

---

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



---

MARK D. BERNSTEIN, ESQ.  
Attorney for Steven Sawyer

---

In re Honokohau Fuel, Inc., Case No. 86-000530 United States Bankruptcy Court for the District of Hawaii (Chapter 11) "ORDER CONFIRMING REJECTION AND TERMINATION OF DEBTOR'S INTEREST IN LEASE"

# STEPHEN D. WHITTAKER

Attorney at Law, A Limited Liability Law Company

---

Post Office Box 964, Kailua-Kona, Hawaii 96745-0964  
73-1459 Kaloko Drive, Kailua-Kona, Hawaii 96740-0916  
Telephone: (808) 960-4536 Facsimile: (808) 325-7530  
e-mail: [stephen@whittakerlawkona.com](mailto:stephen@whittakerlawkona.com)

June 25, 2018

State of Hawaii  
Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
Attention: Kenyatta Russell, Property Manager  
4 Sand Island Access Road  
Honolulu, Hawaii 96819

By email, also, to [Kenyatta.russell@hawaii.com](mailto:Kenyatta.russell@hawaii.com)

Re: *Your Letter to GKM, Inc., c/o Tina Prettyman Received June 8, 2018*

Dear Mr. Russell:

I have been retained by GKM, Inc. (1) to respond in answer to your letter, referenced above, with the history of fuel sales at Honokohau Harbor and (2) to rebut the suggestion in your letter that the "Character of Use" for GKM, Inc. under Lease # H-82-4 ("Lease") does not include fuel sales. You have invited my client to provide "documentation granting permission to conduct fuel sales" to you at the above addresses prior to July 1, 2018. This letter includes a brief history of fuel operations at Gentry's Kona Marina and provides the requested documentation.

## Fuel Sales at Honokohau Harbor

Pursuant to Lease # H-82-4 and the authority therein granted the Lessee (initially Gentry-Pacific, Ltd. and by Assignment of Lease recorded October 16, 2002, now GKM, Inc.) fuel sales have been a permitted use at Gentry's Kona Marina since 1985. Fuel sales were initially conducted by Honokohau Fuel, Inc./Honokohau Partnership, Inc. and there is, or should be, substantial documentation in your office establishing such use. We have incomplete records as not all files and correspondence were "assigned" with the Lease, but among the records is a June 28, 1991, letter from Bruce Shimokawa, Property Manager with the State of Hawaii Department of Transportation, directed to GKM, Inc.'s Gary Lambert, requesting a new insurance policy for the fuel operators, Honokohau Fuel, Inc. and Honokohau Partnership, Inc. (Copy 1 enclosed.) We provide this as the earliest evidence in our files documenting fuel operations at Gentry's Kona Marina.

In the summer of 1994 Gary Lambert, then General Manager for Gentry's Kona Marina, at the request of Larry Cobb of the State of Hawaii DLNR, DOBOR, prepared a "status report of all subleases and Sub-Subleases" as Mr. Cobb had reported that some of the leases "were

**EXHIBIT F**

JUL 2'18AM 7:18BOR ADM

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possibly misplaced or [had] 'disappeared' or been sent to [the] legal department." Mr. Lambert's letter and the status report show Honokohau Fuel, Inc. and Honokohau Partnership, Inc. as having "Approved" existing subleases in June of 1994. (Copy of letter and status report enclosed as 2).

On February 12, 1996, Gary Lambert again had occasion to write to the DLNR, this time to Mr. Boniface Espinda, District Manager, in connection with a request "to make alterations to the now exiting fuel station." Mr. Lambert included in his letter a Site Plan and a Building Plan and he copied the letter to David Parsons. (Copy of letter and Site Plan and Building Plan enclosed as 3). This letter was answered, we believe, on May 7, 1996, in a letter which approved the alterations to the fueling station, though Gentry's Kona Marina has not been able to locate a copy of the May 7, 1996, letter.

Though we do not have the May 7, 1996, letter, we have an October 9, 1996, letter to Mr. Lambert on the subject of the fueling station which states unqualifiedly "This will acknowledge receipt of the 107 names submitted on the petition, "to allow the continuation of fueling of all boats and trailers at Gentry's Kona Marina that was mailed to me on October 3, 1996." (Emphasis in original)(Copy 4 enclosed).

In July of 2004, in a continuing pattern of cooperation with the DLNR and its property managers, Gentry's Kona Marina prepared and sent to Steve Molmen a tenant roster which, again, showed Honokohau Fuel, Inc. as a tenant. At this point in time it was known that Gentry's Kona Marina would not renew the sublease to Honokohau Fuel, Inc. and that fact was made known to Mr. Molmen and to DLNR in Mr. Lambert's summary. (Copy 5 enclosed). Gentry's Kona Marina needed to make plans for the continuation of the services that had been provided by Honokohau Fuel, Inc. and Honokohau Partnership, Inc.

#### Gas Station-Convenience Store Improvements, Lease Extension and Mortgage

In late 2004, coinciding with the expiration of the sublease to Honokohau Fuel, Inc./Honokohau Partnership, Inc., and in response to the ongoing needs of the boating community at Honokohau Harbor, Gentry's Kona Marina developed a plan to relocate the fueling operations to the north boundary of Lease # H-82-4. In connection with the plan Mr. Lambert wrote to First Hawaiian Bank on November 30, 2004, with a rough outline of the company's needs and received a letter in answer on December 21, 2004, expressing the bank's interest in the business. The bank cautioned that a lease extension would be required for the substantial ONE MILLION DOLLAR (\$1,000,000.00) loan under discussion. (Copies of letters are Enclosure 6).

On December 29, 2004, Steven M. Molmen, in his capacity as Property Manager for



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DLNR and its DOBOR, wrote with approval of the plan for the investment in the improvements and the construction of the improvements, including a convenience store and fueling station. While Mr. Molmen cautioned that "nothing contained [in his letter] shall be deemed to alter, expand or otherwise amend the marine or marine-related activities specified in the subject lease," as shown above (see, e.g. Enclosure 4), the fueling activities were an ongoing permitted use under the Lease. (Copy of approval is Enclosure 7).

In response to Mr. Molmen, and in reliance on the continuing approvals of the DLNR and DOBOR, Mr. Lambert wrote for Gentry's Kona Marina on January 6, 2005, providing Mr. Molmen with a copy of First Hawaiian Bank's letter on the proposed \$1,000,000.00 loan for the improvements (Enclosure 6) and requesting the DLNR/DOBOR agree to an extension of the Lease so that the loan under discussion with First Hawaiian Bank could be amortized as the bank required. (Enclosure 8). The matter was still under consideration when Mr. Lambert wrote again on October 24, 2005, outlining the steps that Gentry's Kona Marina had taken to that point to facilitate the construction of the improvements, including the fueling station and convenience store (Copy is Enclosure 9):

- 1. On November 18, 2004, I provided Nancy Murphy, Hawaii District Manager-DLNR-BOR, with our capital improvement plans (over \$1,000,000).*
- 2. These plans were approved on December 29, 2004 - see enclosure "A".*
- 3. On January 6, 2005, we requested a twenty (20) year extension on our lease- see enclosure "B". Our bank, First Hawaiian, is requiring the twenty (20) year extension in order to approve \$1,000,000 in capital improvement financing - please see enclosed correspondence "C".*
- 4. The fueling operation at our business was shut down on February 12, 2005.*
- 5. Our DLNR-approved capital improvement plans included new, safer fuel dispensers and location.*
- 6. There is currently no way for the Honokohau trailer-boating community to procure fuel unless they drive all the way around to the other end of Honokohau Small Boat Harbor where vehicles are fueled (no launch ramps located there), then drive back around to the launch ramps on our (north) side of the harbor. Very challenging and not safe.*

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- 7. We currently have a slightly hostile environment due to the inability of fisherman to obtain fuel.*
- 8. Our buildings are home to twenty-two (22) small businesses, and an additional 60 plus small businesses depend upon our marina for their survival. .. and this does not include the 120 plus marine activity and charter fishing boats and 80 plus commercial fishermen that rely on our services.*
- 9. Letter from Peter Yong stating DLNR cannot commit to any such extension until the negotiations with JOI have concluded.*
- 10. Board of Land and Natural Resources meeting on September 23, 2005 - Approval of set aside to Department of Land and Natural Resources 68.55 acres of public lands at Honokohau (Gentry's Kona Marina land lease is no longer in the JOI negotiations).*
- 11. It is in the public's best interest that Gentry's Kana Marina be granted the twenty-year lease extension to allow for improvements and continued maintenance of their boating facility.*

At a hearing on March 24, 2006, the DLNR approved the relocation of the fuel dispensers and the convenience store-fueling station improvements and consented to Gentry's Kona Marina's mortgaging of its Lease to secure the \$1,000,000.00. In reliance on such approval Gentry's Kona Marina proceeded to with its plans and made a request of the County of Hawaii for approval of a plan to "Convert warehouse to retail office and relocation of existing fuel facilities" and got appropriate approval. (Copy is Enclosure 10).

While our files don't include a letter or minutes of the March 24, 2006, hearing and approval, I enclose a June 28, 2007, letter directed to Ms. Janice A. Pakele at the Department of Liquor Control, County of Hawaii, signed by Allan A. Smith as Interim Director of the Department of Land and Natural Resources. While the subject of the letter is the GKM, Inc. Liquor License, the letter recites, "This correspondence shall formally serve as the Letter of Consent to the County of Hawaii **approving the improvement plans by GKM, Inc., for a convenience store-gas station** that may provide Prepackaged Beer and Wine for sale." (Emphasis added)(Copy is Enclosure 11).

Fulfilling its promise to consent to an extension of the Lease to facilitate the loan and improvements, the DLNR entered into an Extension Of Harbor Lease No. H-82-4 on May 12,

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2006, and the Extension was duly recorded with the Bureau of Conveyances of the State of Hawaii. The Extension (Copy is Enclosure 12) provides, in part:

2. The annual rental shall be reopened and redetermined on March 31, 2019, March 31, 2024, March 31, 2029, and March 31, 2034.  
....
3. The proceeds of the ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) loan shall be used as indicated on the Board submittal approved by the Board of Land and Natural Resources for purposes of leasehold improvements.

In the event the parties do not agree on a new rental at reopening, there are detailed provisions in the Extension on how an appraisal process would proceed. There are no provisions for a unilateral increase in rent by DLNR.

The Lease, with the Extension, allows for the Lessee, among other things, to offer as "Services", "11. Other related activities as approved in writing by the Lessor". See Lease at Page 3. GKM, Inc. contends that the enclosures, the record of the March 24, 2006, hearing, the approval of the loan and the extension and mortgaging of the Lease for the express, written purpose of relocating and improving an ongoing fueling operation at Honokohau Harbor is all the written approval that should be required. The DLNR and DOBOR are estopped from claiming that GKM, Inc. does not have "written" authority to conduct fuel sales at Gentry's Kona Marina.

#### The Extra-Contractual Fuel Charge

Against this background the letter which Keiki E. Kipapa, then Property Manager, wrote for the DLNR on July 13, 2017, a decade after the deal was done, feigning surprise at the fact that GKM, Inc. was conducting fuel sales, came as a shock to GKM, Inc. (Copy is Enclosure 13). The July 13, 2017, letter recited that, "Our records do not indicate previous approval from the DLNR and we kindly request your assistance in resolving this matter."<sup>1</sup> Tina Prettyman, General Manager for GKM, Inc. wrote on July 17, 2018, in answer, referencing some of the correspondence which is enclosed with this letter and, additionally, protesting the arbitrary and unfair decision of the DLNR to put the boat yard developed by GKM, Inc. out to auction. (Copy is Enclosure 14). Ms. Prettyman's made the point this letter does, to wit, the DLNR has long known and long approved the fuel operations of, first, Honokohau Fuel, Inc./Honokohau Partnership, Inc. and, by succession and written consent, GKM, Inc.

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<sup>1</sup> We would point out that the record demonstrates a poor history of accurately maintaining records at the DLNR/DOBOR and that the Department has turned to GKM, Inc. and its predecessor entities in the past for "help" in replacing lost or "disappeared" records.

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The undated letter you wrote which was received June 8, 2018, states, "The Division of Boating and Ocean Recreation (DOBOR) will be going before the Board of Land and Natural Resources (the BLNR) tentatively July 13<sup>th</sup>, 2018 to request authorization to allow GKM INC. to offer fuel sales. DOBOR is seeking to add fuel sales to GKM INC. "Character of Use" at a rate of five percent (5%) of gross fuel receipts." This is an anticipatory breach of Lease # H-82-4 and the Extension Of Harbor Lease No. H-82-4 made May 12, 2006.

On behalf of GKM, Inc., we are expressing our strong objection to your threat to change the terms of the Lease and unilaterally impose on GKM, Inc. an extra-contractual charge on operations that have been approved and ongoing for decades. Nothing in the Lease or the Extension authorizes such unilateral action, and the general law certainly does not sanction such behavior in breach of lease. Obviously, GKM, Inc. has a huge reliance interest in the improved premises. GKM, Inc. made those improvements for the continued operation of a fueling station with the written consent of the DLNR more than a decade ago. To suggest, as your letter does, that the DLNR has the right to impose a five percent (5%) charge on GKM, Inc.'s fuel sales just because it wants to, is not the law.<sup>2</sup> GKM, Inc. has the right to enforce the Lease and Extension as written.

We respectfully request that you consider the enclosures and withdraw your planned request to the BLNR to impose a surcharge on Lease # H-82-4. Changing financial needs of the DOBOR or whatever incentives may be at play in this matter do not give the DLNR the legal right to change the terms of Lease No. H-82-4. Of course, should you decline our invitation to withdraw your request and proceed to hearing, we will ask to appear and be heard for GKM, Inc. In this connection GKM, Inc. reserves all of its legal rights and remedies under the Lease, the Extension and applicable law.

Very truly yours,

  
Stephen D. Whittaker

Enclosures

cc: GKM, Inc. c/o Tina Prettyman

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<sup>2</sup> It hardly seems necessary to point out that a rent increase that is not allowed by the parties' agreement or is fraudulently or improperly assessed or charged can expose the landlord to legal liability. See, e.g. *Molokai Services Inc. v. Hodgins*, 142 Hawai'i 150, 414 P.3d 202 (Ct. App. 2018).

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MARCH 24, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young (left at 9:02 am)  
Mr. Ted Yamamura  
Mr. Ron Agor (arrived at 9:20 am)

Mr. Tim Johns  
Mr. Gerald DeMello  
Ms. Taryn Schuman

**STAFF**

Mr. Sam Lemmo, OCCL  
Mr. Dan Quinn, Parks  
Ms. Christen Mitchell, DOFAW  
Mr. Ross Smith, DOT

Ms. Charlene Unoki, Land  
Mr. Glen Abe, DOT  
Mr. Richard Rice, DOBOR  
Ms. Athline Clark, DAR

**OTHERS**

Mr. Randy Ishikawa, Deputy Attorney General  
Mr. Douglas Chin, D-3  
Ms. Diana Bertsch, E-1  
Mr. Gary Lambert, J-1  
Mr. Mike Tousad, F-3  
Mr. Don Palawski, F-3  
Mr. Robert Braun, F-3

Mr. William Moore, D-2  
Mr. John Sakaguchi, K-1  
Mr. Phil Hauret, D-7  
Dr. Bud Antonelis, F-3  
Ms. Cha Smith, F-3

{Note: language for deletion is [bracketed], new/added is underlined}

**Motion made to amended the title of item F-2 to read**

**“The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).”**

**Unanimously approved to amend the title of Item F-2 (Johns/Schuman).**

**Item A-2: Minutes of February 24, 2006 briefing.**

**Deferred due to lack of quorum.**

**Item A-4: Minutes of March 10, 2006**

The Board made the following changes:

**1) Page 3, first sentence**

**“[Kauai] Kali Watson, attorney for All Tree Service, Inc., appeared before the Board and together with Dave Kendrick and Terry Rodriguez conducted a power point presentation showing the subject site and their operation.”**

**Unanimously approved as amended (Yamamura/DeMello).**

**Item D-3: Consent to Assign Grant of Easement Identified as General Lease No. S-4227, SWVP Keauhou L.L.C., Assignor, to KBH, Inc., Assignee, Kahaluu, North Kona, Hawaii, TMK: (3) 7-8-13:42.**

Charlene Unoki, Acting Assistant Administrator of the Land Division let it be known that the current tenant SWVP Keauhou LLC is in the process of selling their hotel and would like to transfer the subject easement to the new owner. Ms. Unoki recommended the Board consent to the assignment of the existing Grant of Easement identified as General Lease No. S-4227, from Keauhou L.L.C., as Assignor to KBH Inc., as Assignee subject to the terms and conditions listed in staff's submittal.

Douglas Chin of Carlsmith Ball LLP was present and noted his agreement with staff's recommendation.

**Unanimously approved as submitted (DeMello/Schuman).**

**Item D-2: Conveyance By Land Patent Grant of Addition to Hilo Medical Center, Hawaii Health Systems Corporation, Piihonua, South Hilo, Hawaii, TMK; (3) 2-3-032:portion of 001.**

Ms. Unoki is seeking the Board's permission to convey a piece of property (10 acres) that is currently being used as a parking lot. She reminded the Board Act 262, SLH 1996 created the Hawaii Health Systems Corporation (HHSC) for the purpose of operating the community hospitals statewide. Ms. Unoki also noted that HHSC is asking that the rent be waived although staff is not in agreement. Ms. Unoki recommended the Board authorize the fee simple conveyance by land patent grant of an approximate 10-acre portion of TMK: 2-3-032: 001 to HHSC and grant an immediate right of entry to HHSC to allow planning and construction of the parking lot and related improvements.

William Moore, a Planning Consultant representing Hilo Medical Center and Ron Terry, the chief author of the Environmental Assessment project were present to answer any questions. The Board asked Mr. Terry if an agreement was made on a rent amount to be paid starting in 1997, why has his organization failed to make payments. Mr. Moore noted that the State is subsidizing the hospital and they are willing to pay the back rent as well as the agreed upon rent.

**Unanimously approved as submitted (DeMello/Schuman).**

**Item E-1: Request from the World Triathlon Corporation to use the Hapuna Beach State Recreation Area in South Kohala, Hawaii for the 2006 Ford Ironman 70.3 Honu Half Triathlon (70.3).**

Dan Quinn, Administrator of State Parks mentioned that the World Triathlon Corporation is seeking permission to use the Hapuna Beach State Park to stage the 2006 Ford Ironman 70.3 Honu Half Triathlon. Mr. Quinn conveyed the swim portion of the Triathlon will be based out of the park. Race organizers are asking to begin set up on Thursday, June 1, 2006. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the 2006 Ford Ironman Honu Half Triathlon subject to the four conditions listed in staff's submittal.

Diana Bertsch representing the World Triathlon Corporation was present.

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item K-1: State Civil Defense Warning and Communications Device Installation at Haena Beach Park, Haena, Halele'a, Kauai, TMK: (4) 5-9-005:019.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands noted that the County of Kauai is requesting placement of a warning and communication device at Haena Beach Park. Mr. Lemmo recommended the Board approve this application to install a State Civil Defense Disaster Warning and Communication Device subject to the terms and conditions listed in staff's submittal.

John Sakaguchi representing the agent Wilson Okamoto announced that he has read staff's submittal and is in agreement with the terms and conditions.

**Unanimously approved as submitted (Agor/DeMello).**

**Item K-2: Amendment to Condition 7 & 9 of Conservation District Enforcement File No. HA-05-19 located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.**

**Motion to Withdraw.**

**Unanimously approved to withdraw (DeMello/Agor).**

**Item J-1: Consent to Mortgage and Amendment for Extension of Lease Term, General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 7-4-008-042.**

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) communicated that GKM, Inc. dba Gentry's Kona Marina would like to acquire a mortgage from First Hawaiian Bank for \$1,000,000 to make improvements at the subject site. As a requirement of the mortgage Gentry is seeking to extend the term of the lease for an additional twenty years. Mr. Rice recommended the Board consent to the mortgage between GKM, Inc., Mortgagor and First Hawaiian Bank Mortgagee subject to the terms and conditions listed in staff's submittal.

Gary Lambert, General Manager of Gentry's Kona Marina and Vice President of GKM, Inc., appeared before the Board seeking their approval of staff's recommendation. Mr. Lambert let it be known the proceeds from the mortgage will be used to renovate the haul out slip, travel lift and an existing steel building on the property. They estimate these improvements to cost \$1,000,000.

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item M-3: Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1) 9-1-14:24 (Por) and (1) 9-1-74:37 & 38 (Pors).**

**Item M-4: Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor.**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item M-1: Issuance of Revocable Permit Ground Transport, Inc. for Inconsistent Use Honolulu International Airport.**

**Item M-2: Consent to Sublease Retail Concession DFS Group L.P. to Maui Divers of Hawaii, Ltd Honolulu International Airport.**



**Unanimously approved as submitted (Yamamura/DeMello).**

**Item D-7: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Sunset Beach Elementary School, Pupukea, Oahu, TMK: 5-9-05:18 portion.3**

Member Johns recused himself.

Ms. Unoki announced that the state acquired the property from the James Campbell Estate in 1975 and with the property came an encumbrance by Hawaiian Electric Company for a term easement. Ms. Unoki recommended the Board authorize the issuance of a perpetual non-exclusive easement to Hawaiian Electric Company, Inc. covering the subject area for access and utility purposes.

Phil Hauret representing Hawaiian Electric was present.

**Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).**

**Item F-3: The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).**

Athline Clark, a Planner with the Division of Aquatic Resources (DAR) noted this is the first access permit to the Northwestern Hawaiian Islands (NWHI) being issued. This permit would allow access for the National Marine Fisheries Service to conduct three different types of activities – setting up a monk seal recovering camp and recovering work, conducting green sea turtle research and conducting a research project on sharks and shark incidents involving monk seal pups at the French Frigate Shoals. The second permit which is a supplemental permit would allow access for the research vessel. Due to the timing of the project, Ms. Clark noted that the review process has to be cut short but noted that it is their intention to go through the entire review process on future permits. With regards to the permit review process, Ms. Clark noted that three staff members were asked to review the permit and went through each of their recommendations. Ms. Clark recommended the Board authorize and approve with stated conditions, a Research, Monitoring and Education Permit and Special Activity Permit to the National Marine Fisheries Service and the Oscar Elton Sette, for activities and access within the NWHI.

The Board asked Ms. Clark to update them on the formulization of the permit review committee. Ms. Clark communicated they are in the process of putting together a permit

review committee that will be made up of someone from the Kahoolawe Island Reserve Commission (KIRC), a staff member from the Division of Forestry and Wildlife (DOFAW) that works at Kure Atoll, staff from DAR, individuals from the Office of Hawaiian Affairs (OHA), staff from Fish and Wildlife Service, the National Fisheries Service and NWHI Ecosystems Reserve. Ms. Clark informed the Board the next set of permits will be reviewed by the committee.

Mike Tousad, Deputy Regional Administrator for the Pacific Islands regional office of the NOAA Fisheries Service came forward to provide testimony. Mr. Tousad let it be known that they hope to address some of staff's recommendation but agrees with the need to work with the State and the Fish and Wildlife Service to regulate these activities. He feels there is a need to slow the decline in the population of monk seals.

Dr. Bud Antonelis conducted a power point presentation that dealt with a shark removal Experiment at French Frigate Shoals. Mr. Antonelis believes the Hawaiian monk seal is a national and international treasure and is one of only two endemic mammals in Hawaii. He went on to say the Hawaiian monk seal population is at its lowest level in recorded history and is in a crisis situation. At present through mitigation efforts the decline in the populations has slowed to about 4% per year. Mr. Antonelis believes the number of seals will probably fall below 1000 within the next five years. A large factor contributing to this decline is the juvenile mortality rate of the monk seals due to attacks by sharks. He went on to say a discrete number of Galapagos sharks have learned to predate on young pup seals and this shark behavior likely stems from such factors as loss of habitat, access to pups and easy access into the atoll via previously dredged channels. Dr. Antonelis went over the results of the shark removal experiment at French Frigate Shoals. The results showed that the removal of sharks preying on young pups before or near the time of weaning is one of the most successful and measurable actions taken to enhance juvenile survival. Predation on pre-weaned pups has dropped significantly from 37 in 1997 to an average of about 10 per year since the study began in 2000.

Don Palawski, who works for the US Fish and Wildlife Service and manages eight (8) national wildlife refuges in the central Pacific, testified. He spoke of the Hawaiian Islands refuge that was established in 1909 by Teddy Roosevelt which extends from Nihoa to the Pearl and Hermes. He spoke of their work at the French Frigate Shoals and working with the National Marine Fisheries Service to monitor and inventory monk seals and green sea turtles. With regards to staff recommendation, Mr. Palawski agrees with and supports monitoring and inventorying of the monk seal and sea turtle population. Mr. Palawski noted they started this project five years ago in which they researched if sharks were getting pups before being weaned from their mothers and what techniques through research would be used in the future to protect these young seals. In closing, Mr. Palawski agrees with staff's recommendation to monitor the monk seal and turtle population but would like other actions to hold until various organizations will be able to meet and discuss if this is the best way to proceed.

Cha Smith, Director of Kahea read comments supplied by Stephanie Fried. Ms. Fried had four impressions upon reading staff's submittal 1) The first permit application for the

new NWHI State Refuge is notable for what it does say as well as what it doesn't say; 2) the permit request is for the killing of apex predators in this apex-predator dominated ecosystem; 3) there have been only very limited consultation with the Native Hawaiian community and 4) the realization that it is the Department's first attempt and although somewhat bumpy will be worked out once protocols are established. Ms. Fried's letter expressed significant concern that there is no recognized panel of ecosystem scientists to evaluate the impact to the ecosystem. She also noted that there is no mention made by NMFS of the fact that juvenile seals are also found emaciated and starving and that lack of prey may play an important role. Ms. Fried believes it would be important to learn what measures could be taken to reduce competition for monk seal prey.

Bob Braun, a veterinarian in Hawaii for twenty years and a contractor to NOAA Fishers provided testimony. Mr. Braun spoke of their efforts in 2001 to haze the aggressive sharks then deter the sharks prior to attacking the pups. At that time the take requirement for the sharks was that the shark would need to attack a pup while staff maintained visual contact of the shark only after the second attack could they take down the shark. Mr. Braun feels the opportunity for public input is more than adequate. Lastly, Mr. Braun communicated that there is a mixing of two types of issues – the overall decline in the population of juvenile monk seals being attributed solely to sharks and secondly the taking of sharks to prove this theory.

**The Board amended the Recommendation Section by deferring the recommendation dealing with sharks and instructed staff and the permit applicant to work with US Fish and Wildlife Service and the Native Hawaiian community to come up with some protocols.**

**Unanimously approved as amended (Yamamura/Schuman).**

**Item F-1: Request for Approval to Amend/Extend a DLNR/UH Contract (No 47471 – Hawaii Fish Aggregating Device System) to Provide Additional Funds (\$320,000) for the Period of July 1, 2006 Through June 30, 2007.**

**Item F-2: Request for Approval to Amend/Extend Eight (8) Project Agreements with the Research Corporation of the University of Hawaii for FY07 for the Following Projects: Coral Reef Initiative (Contract No. 49090), Coastal Stock Enhancement (Contract No. 49820), Public Fishing Areas (Contract No. 50027), Stream/Estuarine Studies (Contract No. 51059), Marine Population Survey (Contract No. 51058), Ulua Tagging (Contract No. 52851), and Finfish Broodstock and Larvae Culture (Contract No. 52994), and Hawaii Marine Recreational Fishing Survey (Contract No. 48518).**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item C-1: Request approval of Contract with Ms. Denise Laitinen to Coordinate the Federally Funded Assistance Function of the Hawaii Firewise Program for the Division of Forestry and Wildlife.**

**Item C-2: Authority to Conduct a Public Hearing to Add the Land of Wao Kele O Puna (Tax Map Keys: (3) 1-2-010:002 and (3) 1-2-010:003) to the Forest Reserve System.**

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item D-5: Forfeiture of Duke Kahanamoku Beach Concession Contract Filed as General Lease No. S-5801, C & K Beach Service, Inc., Concessionaire, Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, TMK: 2-3-037:021.**

**Motion to defer.**

**Unanimously approved to defer (Yamamura/Agor).**

**Item D-1: Grant of Term, Non-Exclusive Easement to Brendan McNamara for Access and Utility Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-06:within 53 & 54.**

**Item D-4: Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia Johnson-Ellis for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-05:portion 20.**

**Item D-6: Withdrawal from Governor's Executive Order No. 1786 to the Board of Harbor Commissioners for Beach Control Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-37:21, 2-6-8:29.**

**Item D-8: Rescind Prior Board Action of January 28, 2000 (Item D-22), Department of Agriculture Requests for Designation, Set Aside for Addition to the Kalaeloa Agricultural Park and a Management Right-of-Entry at Honouliuli, Oahu, TMK: (1) 9-1-31:portion of 1.**

**Item D-9: Set Aside to the City and County of Honolulu Department of Parks and Recreation for Park Purposes, Waiawa, Oahu, TMK: (1) 9-7-68:4.**

**Item D-10: Amend Prior Board Action of January 13, 2006 (Agenda Item D-16), After-the-fact Approval of Lease of Federal Property with the Secretary of the Air Force on behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 (Portion).**

**Unanimously approved as submitted (DeMello/Agor).**

**Item L-1: Approval for Award of Construction Contract – Job No. J00CF11A, Iolani Palace State Monument ADA Barrier Removal, Honolulu, Oahu, Hawaii.**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item E-2: Briefing to the Board on the Status of the Diamond Head Crater Celebration at Diamond Head State Monument, Oahu.**

Mr. Quinn went over the set up on the grounds of Diamond Head as well as the line up of entertainers. He indicated the organizers of the event will be setting up throughout the week leading up to the event. Mr. Quinn informed the Board staff would be present beginning on Friday and through the end of the event.

**The Board instructed staff to report to the Board at the completion of the event.**

**No Action.**

**Item E-3: Update to the Board of Land and Natural Resources on action taken at the September 23, 2005 BLNR meeting relating to Kealahou Bay.**

Member Johns made it known that he is still receiving calls and emails from members of the community stating that there has been insufficient time for input prior to this report coming before the Board.

**The Board instructed staff to re-double their efforts in working with the community.**

**No Action.**

**Item A-1: Supplement to January 13, 2006.**

Member Yamamura recused himself.

**Unanimously approved by the remaining Board members (Schuman/Agor).**

**Item A-3: March 9, 2006**

Member DeMello recused himself.

**Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).**

**Item A-5: Minutes of March 16, 2006.**

Member Johns and Yamamura recused themselves.

**The Board made a change on page 2, third paragraph to read**

**“Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate [mediation] action needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation.”**

**Unanimously approved as amended by the remaining Board members (DeMello/Schuman).**

There being no further business, Chairperson Young adjourned the meeting at 10:55 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

March 24, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

ISLAND OF HAWAII

Consent to Mortgage and Amendment for Extension of Lease Term,  
General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona,  
Hawaii, Tax Map Key: 7-4-008-042.

APPLICANT AND REQUEST:

Consent to Mortgage from First Hawaiian Bank, Mortgagee, to GKM, Inc., in an amount not to exceed \$1,000,000.00.

For Mortgagor to qualify for this mortgage, Mortgagee requires extension of General Lease No. H-82-4 of 20 years, commencing on April 1, 1984 and expiring on March 31, 2039 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honokohau Harbor situated at Kailua-Kona, North Kona, Hawaii, identified by Tax Map Key: 7-4-008-042, as shown on the attached map labeled Exhibit A, and A-1.

AREA:

4.083 acres, more or less.

TRUST LAND STATUS:

Section 5(B) Lands of the Hawaii Admission Act  
YES x NO     

ITEM J-I

### CHARACTER OF USE:

Haul-out and repair facility for small marine vessels.

### TERM OF LEASE:

Original term of 35 years, commencing on April 1, 1984 and expiring on March 31, 2019.

Requested extension of 20 years, commencing on April 1, 2019 and expiring on March 31, 2039.

### ANNUAL RENTAL:

Current rent is \$60,000.00, due in quarterly installments of \$15,000.00 on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup> of each year.

### RENTAL REOPENINGS:

Rental reopenings in the original term were scheduled at the end of the 5<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, 25<sup>th</sup>, and 30<sup>th</sup> years of the term, or on March 31, 1989, March 31, 1994, March 31, 1999, March 31, 2004, March 31, 2009, and March 31, 2014. The last rental reopening occurred on March 31, 2004.

Reopening for the extended term shall continue on the same schedule every five years, reopening on March 31, 2019, March 31, 2024, March 31, 2029, and March 31, 2034 with the next scheduled reopening to be March 31, 2039.

Note: An appraisal is in progress for the reopening scheduled on March 31, 2004 and pending final collaboration of three appraisers on the rental value.

### USE OF LOAN PROCEEDS:

Loan proceeds will be used to renovate the existing steel building and add additional square footage. Plans were approved by DLNR on December 29, 2004. GKM, Inc. also proposes to renovate the haul-out slip and travel lift to accommodate larger vessels and make repairs to existing buildings, parking lot, and fencing.

Use of funds as follows:

|                                           |               |
|-------------------------------------------|---------------|
| Foundation                                | \$ 150,000.00 |
| Steel Frame                               | \$ 445,500.00 |
| Rough Frame                               | \$ 86,000.00  |
| Exterior shell, siding, windows and doors | \$ 100,000.00 |
| Electric                                  | \$ 150,000.00 |



|                             |                |
|-----------------------------|----------------|
| Plumbing                    | \$ 50,000.00   |
| Paint                       | \$ 18,500.00   |
| TOTAL COST OF IMPROVEMENTS: | \$1,000,000.00 |

DCCA VERIFICATION:

|                                           |              |              |
|-------------------------------------------|--------------|--------------|
| Place of business registration confirmed: | YES <u>x</u> | NO <u>  </u> |
| Registered business name confirmed:       | YES <u>x</u> | NO <u>  </u> |
| Applicant in good standing confirmed:     | YES <u>x</u> | NO <u>  </u> |

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

GKM, Inc. dba Gentry's Kona Marina operates the only marina/haul-out facility at Honokohau Harbor located on the Big Island. Harbor Lease No. H-82-4 was publicly auctioned in 1982 and executed on April 8, 1983. The term of the lease began on April 1, 1984, and runs for thirty-five years. It is a commercial-industrial lease issued for marine or marine related purposes. Currently GKM, Inc. has, and continues to operate in compliance with its lease terms and conditions. They have consistently made on-time lease payments and maintained the bond and insurance required by the lease agreement. They are current with rent payments, and have no history of default.

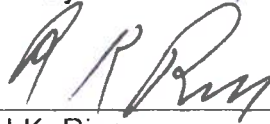
Currently Kona has seen a considerable amount of development, and growth. In addition, recently Jacoby Development, Inc. (JDI) has been selected by the State to develop a portion of land adjacent to Honokohau Harbor. As part of this proposal, JDI is planning construct a harbor alongside the existing Honokohau Harbor with an approximately 800 slips planned. Currently Honokohau has approximately 270 slips. The requested twenty year extension will allow GKM, Inc. an opportunity to secure a loan for the necessary funds to improve its facilities and enhance existing services to accommodate this growth.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

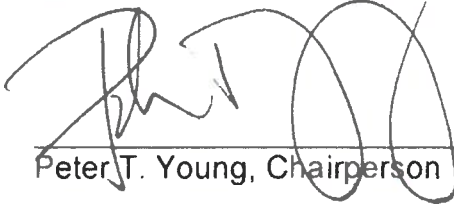
1. Consent to the mortgage between GKM, Inc., Mortgagor, and First Hawaiian Bank, Mortgagee, subject to the following:
  - A. The loan proceeds shall be used solely for the operations or improvements of the leased premises as identified in the "Use of Loan Proceeds" section above. The Lessee shall maintain records of loan expenditures, which may be inspected by the Department;
  - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time.
  - C. Review and approval by the Department of the Attorney General.
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the extension of General Lease No. H-82-4 under the terms and conditions cited above, which are by this reference incorporated herein.
  - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time.
  - B. Review and approval by the Department of the Attorney General.
  - C. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

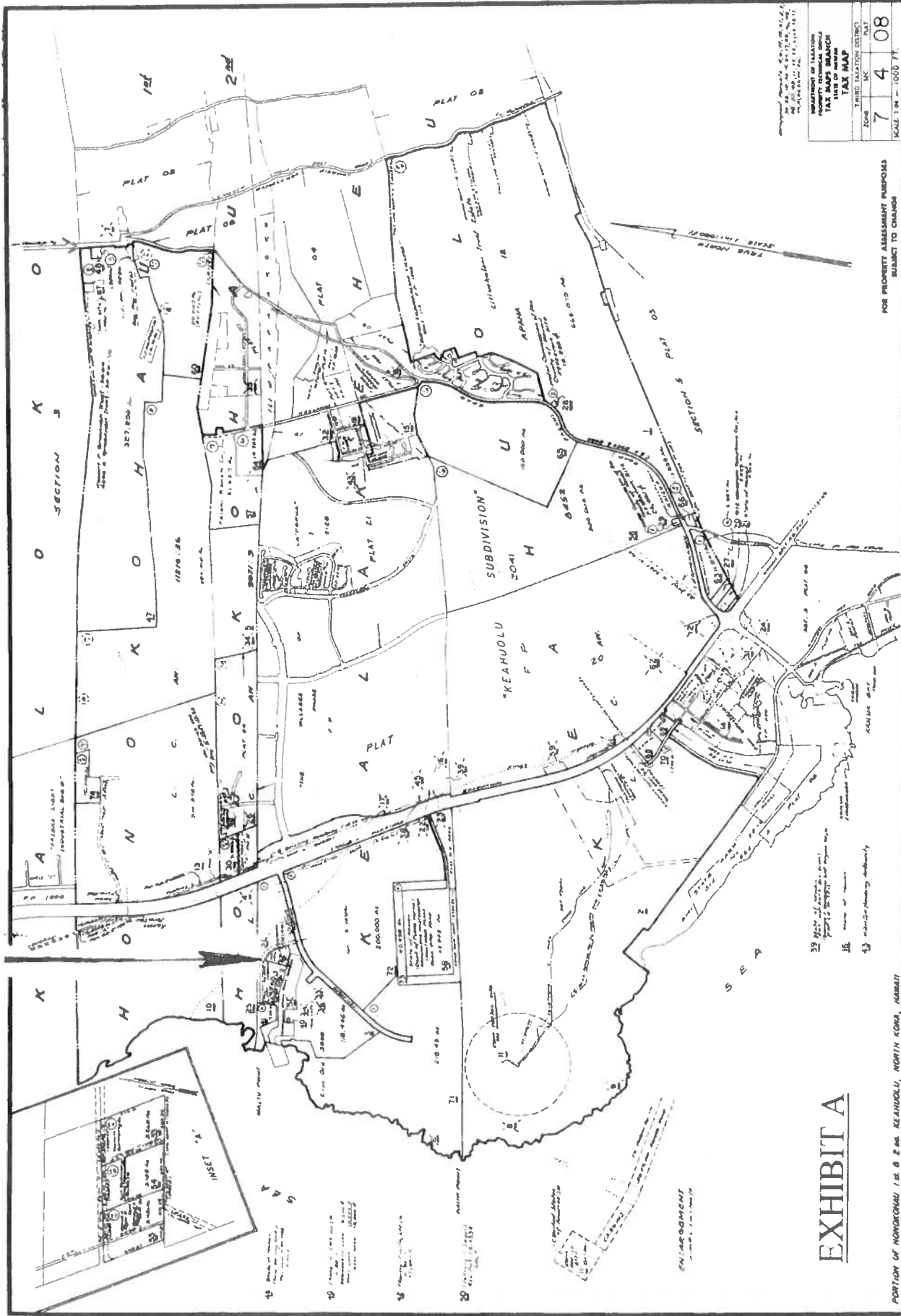
Respectfully Submitted,



Richard K. Rice  
Administrator

APPROVED FOR SUBMITTAL

  
Peter T. Young, Chairperson



# EXHIBIT A

PORTION OF HONOLULU 1/4 & 2/4 KEANUOLU, NORTH KONA, HAWAII

|                                                                                         |    |      |  |
|-----------------------------------------------------------------------------------------|----|------|--|
| DIVISION OF LAND<br>PROPERTY TAX MAPS<br>TAX MAPS BRANCH<br>HONOLULU, HAWAII<br>TAX MAP |    |      |  |
| ZONE                                                                                    | MC | PLAT |  |
| 7                                                                                       | 4  | 08   |  |
| SCALE 1" = 1000 FT.<br>FOR PROPERTY ASSESSMENT PURPOSES<br>SUBJECT TO CHANGE            |    |      |  |



### PLOT PLAN

MAP OF PARCEL 42  
HONOKIAU MARINA  
T.M.K. 3-7-4-008-042  
ISLAND & COUNTY OF HAWAII  
STATE OF HAWAII  
SHOWING EXISTING FEATURES

SCALE N.T.S.  
DATE: AUGUST 28, 2004

is discussed in more detail



Ed. Dillen

Legend

TO TMR 7-4-68

**GENTRY'S KONA MARINA**  
T.M.K. 7-4-008 : 042  
KAPUA - KONA, HAWAII

EXHIBIT A-1

**GENTRY'S  
KONA MARINA  
HONOKOHAU HARBOR**

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

July 17, 2017

JUL20'17PM 1:41BDR ADM

Ms. Keiki E. Kipapa  
Property Manager  
Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
4 Sand Island Access Road  
Honolulu, HI 96819

via Certified Mail  
7016 0750 0000 3284 3406

Re: Letter dated July 13, 2017 regarding a Notice of Intent for Public Auction of Lands at Honokohau Harbor of nine acres and Fuel Sales at Gentry's Kona Marina

Dear Ms. Kipapa:

Did you receive my letter dated June 6, 2017 regarding our request for a Sublease for additional land (West) of Gentry's Kona Marina? I am still waiting for your department's response to our request.

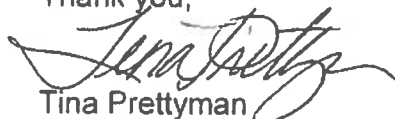
[ With regards to the sales of fuel, GKM, Inc. has correspondence on file with your department and board approval for a convenience store-gas station. ]

In the last 15 years we have written numerous times requesting an extension of the original five-year lease, or a new lease, for the nine acres you are proposing to now put out to public auction. To date, we haven't received a response to any of our requests. Is this your answer?

By the hostile tone of your letter - telling us you are putting a property we have developed after 21 years out to bid and erroneously indicating that we are operating without approval for fuel sales - this feels a lot like harassment. Under our lease we are entitled to "quiet enjoyment" of the leased property.

Please send us copies of any and all correspondence and any bid information, and Request for Proposals for the nine acres you intend to put out to bid at Honokohau Harbor.

Thank you,

  
Tina Prettyman  
General Manager



August 22, 1986

HARBORS DIVISION  
HAWAII  
DEPT. OF TRANS.

'86 AUG 26 AM 11 54

Honokohau Fuel Inc.  
74-425 Kealakehe Parkway  
Kailua-Kona, HI. 96740

Gentry-Pacific Ltd.  
Kona Marina  
POBox 1928  
Kailua-Kona, HI. 96745-1928

RECEIVED

Dear Sirs.

Honokohau Fuel Inc. would like an amendment to our Sublease No. GKM-011.

Item D -- Permitted Use states that Honokohau Fuel Inc. can sell gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area.

Honokohau Fuel Inc. would like it amended to state that we can sell to  
OUTSIDE VEHICLES AND VESSELS.

I hope this will comply with your request of August 6, 1986.

Sincerely,

  
Robert Holmes, Pres.

Honokohau Fuel, Inc.

c/c State of Hawaii-Harbors Division

EXHIBIT I

Dec 18 3 25 PM '89

12-20-89

HARBORS DIVISION

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
M E M O R A N D U M

HAR-H  
279

TO: HAR-PM *af* *10*

DATE: December 14, 1989

THRU: DEP-K *af*

FROM: HAR-H

SUBJECT: Gentry Companies Letter to DEP-K, re Holmes & Sawyer, Log #5286

I was not aware that Holmes and Sawyer had "initiated a lawsuit to determine the extent of the permitted uses" at the Gentry Kona Marina.

My comments and recommendations have remained consistent for several years. They are:

1. We should not consider the fueling of vehicles and boats in the water until there is a demonstrated need for that service.
2. If we allow the fueling, we should require no less than what we receive from The Fuel Dock, i.e., five per cent of the gross.

Our collective failure to terminate Holmes' illegal activity for several years resulted in his feeling he had the right to continue, and led to an assault on my person by friends of his.

  
\_\_\_\_\_  
IAN BIRNIE

IB:acm





August 31, 1989

74-425 KEALAKEHE PARKWAY KAILUA-KONA, HAWAII 96740  
(808) 329-1181

Mr. Gary Lambert  
Gentry's Kona Marina  
Honokohau Harobor, HI. 96740

Dear Gary:

We have been informed repeatedly by not only your head attorney, Harvey Migdal in Honolulu, and by your attorney, Bud Quitiquit, and by Dede Dawson of the State of Hawaii's Attorney General's Office, that any request for modification of the lease between Gentry and the State must come directly from Gentry and not by way of any letter that my attorney, Jim Sogi, may have drafted. A major point has been made of this, and I find it incomprehensible that the State is now acting upon a letter as you have represented in your letter dated August 28, 1989.

The Settlement Agreement between Marina Oil & Fuel and Gentry requires that Gentry use its best good faith efforts to request an amendment from the State to allow me to pump fuel to vehicles at the fuel pump area.

I request that you provide me a copy of Gentry's letter to the State evidencing your good faith compliance with the terms of the Settlement Agreement by requesting the permission of the State to amend the lease to allow vehicular fueling. It has been seven months now since the Settlement Agreement has been in effect, and unless I shortly receive confirmation of your good faith efforts to comply with it, I will have no other alternative but to instruct my attorney to seek court assistance to enforce the terms of the Settlement Agreement over which the Court retains jurisdiction. I have complied with my side of the Settlement Agreement by paying your attorney's fees, and feel it would be only proper for you to comply with your side of the bargain as well. You must also realize that your failure to comply in good faith with the request for the change to allow vehicular fueling from the State has resulted in my continuing damages by way of lost sales in a substantial amount.

In view of the fact that I have complied with my side of the Settlement Agreement by paying your attorney's fees, I request that you comply with yours. I look forward to your prompt response in not only supplying me with a copy of the letter which you have sent to the State.

Truly yours,

A handwritten signature in dark ink, appearing to read "Robert Holmes".

Robert Holmes  
President, Marina Oil & Fuel



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

**MEMORANDUM**

HAR-PM 1117

MAY 7 5 01 PM '90

DATE: MAY 3, 1990

DEPT. OF  
TRANSPORTATION

TO: DIR  
THRU: PMN *AK*  
FROM: DEP-T *Olson* DEP-K *V*

SUBJECT: HONOKOHAU FUEL, INC. (ROBERT K. HOLMES), SUBLEASE NO. GKM-011,  
HARBOR LEASE NO. H-82-4, GENTRY PROPERTIES

QUESTION:

Should sublease be amended to allow fueling of outside vehicles?

FACTS:

Sublease No. GKM-011 dated 2-12-85 was approved by BLNR on 10-12-84 and consented by the State on 12-5-84 for a fueling facility for the sale of gas, diesel and oil to commercial charter and pleasure boats within the leased area (4.083 acres). The sale of fuel to others is prohibited.

Shortly after the sublease was approved by the State, the sale of fuel to outside vehicles was observed by our HAR-H personnel. Although letters were sent to the lessee, Gentry Properties (Gentry), to advise Mr. Holmes to cease the illegal fueling, the activity continued. Fliers were circulated in Kona advertising lowest prices for super, regular and diesel fuels at the facility. An ice/gas sign was observed at the entrance into Gentry's leased area. The sign was subsequently removed by the Harbor Agent due to nonremoval by the sublessee and/or lessee.

Mr. Norman Gentry was reminded by letter that the fueling facility was for the purpose of providing fuel to commercial charter and pleasure boats within the leased area. However, our HAR-H personnel continued to observe the illegal sale of fuels to the general public.

We received a request dated August 22, 1986 from Mr. Holmes to have the sublease amended to allow fueling of outside vehicles. The request was denied based on our decision that the existing fueling facility operated by Mr. Jack Hall, under Harbor Lease No. H-83-2, was sufficient to satisfy the fuel demand at the harbor.

Due to continued fueling of outside vehicles by Mr. Holmes, Gentry was put on notice that the State would initiate legal process to have Harbor Lease No. H-82-4 terminated.

Gentry subsequently filed a court action against Mr. Holmes to have him cease the illegal fueling. The court action succeeded in stopping the illegal fueling by Mr. Holmes. In accordance with the court action, Gentry submitted to the State a formal request to have the sublease amended to allow Mr. Holmes to fuel outside vehicles and to allow the fueling of commercial charter and pleasure boats, and loading of ice and other supplies at a new dockside facility.

Mr. Holmes followed with a letter submitting a petition signed by boaters and the general public to use Mr. Holmes' fueling facility. The names on the petition were analyzed and only a small percentage were boaters in Honokohau Boat Harbor. A majority of the petitioners were nonboat owners.

Harbor Lease No. H-82-4 was leased through public auction for specific uses (Attachment A) of which fueling was not a permitted use. Gentry was the only bidder during the auction.

Harbor Lease No. H-83-2 was leased through public auction primarily for a fueling facility (Attachment B). Mr. Hall was the successful bidder. The lease was subsequently assigned to James and Diane Dahlberg, dba Honokohau Fuel Dock.

#### DISCUSSION:

Based on staff review, we conclude that the Department cannot amend Gentry's sublease to permit an additional marine fueling facility to serve other than Gentry boat repair customers for the following reasons:

1. Safety:

- a. Fire Safety. The marine fuel facility must be able to develop a contingency plan that will provide a safe evacuation route for vessels in case of accident or other emergency. Gentry's location in the corner of Basin No. 2 would preclude safe evacuation of vessels moored along the end of the basin and on the inside of the "T" pier in case of a fire or explosion involving burning fuel floating on the surface. We also believe the fuel facility would be located too close to the existing snack bar and would expose customers to unnecessary risk, as the snack bar is not enclosed by any protective structure.

- b. Operational Safety. Unnecessary congestion is expected to result from vessels having to "back track" to



Gentry's location for fuel. The fairway width was designed to handle only two-way traffic past that location and there is no additional maneuvering room to accommodate vessels waiting in line for fuel. Standard marina design criteria usually calls for a fueling facility to be located as close to the entrance channel and turning basin as possible to allow the fueling of vessels upon entering or leaving the harbor to eliminate unnecessary vessel traffic through the mooring areas. (Reference: U.S. Army Corps of Engineers Special Report No. 2, "Small Craft Harbors: Design, Construction and Operation")

2. Basic Lease Provisions. The primary purpose of Gentry's lease is for a vessel repair facility and related activities. From previous discussion with LEG on this subject, we have been cautioned that all activities within the premises must be related to that function, and that the terms of the lease cannot be expanded to fuel any boats other than those being stored or repaired at that location, nor expanded to include the sale of fuel to automobiles belonging to the general public.
3. Legal Issues. LEG has advised orally that expansion of Gentry's lease to include a marine fueling facility may raise the constitutional issue of "impairment of contract" with respect to Dahlberg's lease (H-83-2), in that the Constitution prevents any person with a contract with another party from taking any action which may subvert that contract. Before a second retail fueling facility would be permitted, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. If the need was clearly there, we would have to put the new fuel facility lease out for public auction which would not be part of Gentry's lease (H-82-4).
4. Fuel Dock as Proposed by Mr. Holmes. Drawing shows the construction of a fueling pier outside the lease area. This will affect five existing berths which we cannot afford to delete. We cannot legally amend the Gentry lease to add this additional facility since it was leased through public auction and for specific uses of which a fueling facility was excluded.

A lawsuit by the current fuel dock facility lessee, James and Diane Dahlberg, may occur if we consent to the proposed

DIR  
MAY 3, 1990  
Page 4

HAR-PM 1117

amendment since his attorney has already sent us a letter indicating that legal action was contemplated.

The public was properly informed by conducting informational meetings prior to the disposition of the fuel facility lease and the boat repair lease. We made it clear that we would be issuing one fuel facility lease. Under the provisions of the existing fuel facility lease, the State may issue a second fueling facility lease. However, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. Currently, the existing fuel dock is open twelve hours per day and it has been observed that there is seldom a wait for fuel except during large tournaments.

CONCLUSION:

We do not see the need for a second fueling facility at the present time. The existing fueling facility operated by the Dahlberg's is satisfactorily providing the necessary fuel for all the vessels currently at Honokohau Boat Harbor.

RECOMMENDATION:

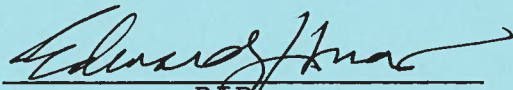
Deny the request to amend Sublease No. GKM-011 (Robert K. Holmes) to allow fueling of outside vehicles.

ADR:jls

Att. (2)

c: HAR-H

APPROVED/~~DISAPPROVED~~:

  
\_\_\_\_\_  
DIR

  
\_\_\_\_\_  
Date



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

**MEMORANDUM**

HAR-PM 1117

TO: DIR  
THRU: PMN  
FROM: DEP-T  DEP-K

DATE: MAY 3, 1990

SUBJECT: HONOKOHAU FUEL, INC. (ROBERT K. HOLMES), SUBLEASE NO. GKM-011,  
HARBOR LEASE NO. H-82-4, GENTRY PROPERTIES

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Shortly after the sublease was approved by the State, the sale of fuel to outside vehicles was observed by our HAR-H personnel. Although letters were sent to the lessee, Gentry Properties (Gentry), to advise Mr. Holmes to cease the illegal fueling, the activity continued. Fliers were circulated in Kona advertising lowest prices for super, regular and diesel fuels at the facility. An ice/gas sign was observed at the entrance into Gentry's leased area. The sign was subsequently removed by the Harbor Agent due to nonremoval by the sublessee and/or lessee.

Mr. Norman Gentry was reminded by letter that the fueling facility was for the purpose of providing fuel to commercial charter and pleasure boats within the leased area. However, our HAR-H personnel continued to observe the illegal sale of fuels to the general public.

We received a request dated August 22, 1986 from Mr. Holmes to have the sublease amended to allow fueling of outside vehicles. The request was denied based on our decision that the existing fueling facility operated by Mr. Jack Hall, under Harbor Lease No. H-83-2, was sufficient to satisfy the fuel demand at the harbor.

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Gentry subsequently filed a court action against Mr. Holmes to have him cease the illegal fueling. The court action succeeded in stopping the illegal fueling by Mr. Holmes. In accordance with the court action, Gentry submitted to the State a formal request to have the sublease amended to allow Mr. Holmes to fuel outside vehicles and to allow the fueling of commercial charter and pleasure boats, and loading of ice and other supplies at a new dockside facility.

Mr. Holmes followed with a letter submitting a petition signed by boaters and the general public to use Mr. Holmes' fueling facility. The names on the petition were analyzed and only a small percentage were boaters in Honokohau Boat Harbor. A majority of the petitioners were nonboat owners.

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#### DISCUSSION:

Based on staff review, we conclude that the Department cannot amend Gentry's sublease to permit an additional marine fueling facility to serve other than Gentry boat repair customers for the following reasons:

1. Safety:

- a. Fire Safety. The marine fuel facility must be able to develop a contingency plan that will provide a safe evacuation route for vessels in case of accident or other emergency. Gentry's location in the corner of Basin No. 2 would preclude safe evacuation of vessels moored along the end of the basin and on the inside of the "T" pier in case of a fire or explosion involving burning fuel floating on the surface. We also believe the fuel facility would be located too close to the existing snack bar and would expose customers to unnecessary risk, as the snack bar is not enclosed by any protective structure.

- b. Operational Safety. Unnecessary congestion is expected to result from vessels having to "back track" to



Gentry's location for fuel. The fairway width was designed to handle only two-way traffic past that location and there is no additional maneuvering room to accommodate vessels waiting in line for fuel. Standard marina design criteria usually calls for a fueling facility to be located as close to the entrance channel and turning basin as possible to allow the fueling of vessels upon entering or leaving the harbor to eliminate unnecessary vessel traffic through the mooring areas. (Reference: U.S. Army Corps of Engineers Special Report No. 2, "Small Craft Harbors: Design, Construction and Operation")

2. Basic Lease Provisions. The primary purpose of Gentry's lease is for a vessel repair facility and related activities. From previous discussion with LEG on this subject, we have been cautioned that all activities within the premises must be related to that function, and that the terms of the lease cannot be expanded to fuel any boats other than those being stored or repaired at that location, nor expanded to include the sale of fuel to automobiles belonging to the general public.
3. Legal Issues. LEG has advised orally that expansion of Gentry's lease to include a marine fueling facility may raise the constitutional issue of "impairment of contract" with respect to Dahlberg's lease (H-83-2), in that the Constitution prevents any person with a contract with another party from taking any action which may subvert that contract. Before a second retail fueling facility would be permitted, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. If the need was clearly there, we would have to put the new fuel facility lease out for public auction which would not be part of Gentry's lease (H-82-4).
4. Fuel Dock as Proposed by Mr. Holmes. Drawing shows the construction of a fueling pier outside the lease area. This will affect five existing berths which we cannot afford to delete. We cannot legally amend the Gentry lease to add this additional facility since it was leased through public auction and for specific uses of which a fueling facility was excluded.

A lawsuit by the current fuel dock facility lessee, James and Diane Dahlberg, may occur if we consent to the proposed

DIR  
MAY 3, 1990  
Page 4

HAR-PM 1117

amendment since his attorney has already sent us a letter indicating that legal action was contemplated.

The public was properly informed by conducting informational meetings prior to the disposition of the fuel facility lease and the boat repair lease. We made it clear that we would be issuing one fuel facility lease. Under the provisions of the existing fuel facility lease, the State may issue a second fueling facility lease. However, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. Currently, the existing fuel dock is open twelve hours per day and it has been observed that there is seldom a wait for fuel except during large tournaments.

CONCLUSION:

We do not see the need for a second fueling facility at the present time. The existing fueling facility operated by the Dahlberg's is satisfactorily providing the necessary fuel for all the vessels currently at Honokohau Boat Harbor.

RECOMMENDATION:

Deny the request to amend Sublease No. GKM-011 (Robert K. Holmes) to allow fueling of outside vehicles.

ADR:jls

Att. (2)

c: HAR-H

APPROVED/DISAPPROVED:




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DIR

5/14/90

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Date

  
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CH. HAR

C. O.  
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HAR-S

  
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HAR-PM



November 30, 1984

HAR-PM 2132

Mr. Colin L. Love  
Attorney at Law  
77-6400 Nalani Street  
Kailua-Kona, Hawaii 96740

Dear Mr. Love:

Harbor Lease No. H-83-2, Honokohau  
Boat Harbor, Hawaii (Kona U-Cart, Inc.)

This is in response to your letter dated November 9, 1984  
pertaining to Gentry's fueling of trailer boats.

The fueling facility within Gentry's leased area was  
approved by the State with the condition that fuel will be sold  
only to its tenants and not intended as a retail fuel facility  
to service the general public.

Kona U-Cart, Inc. is expected to provide the fuel retail  
sales to the general public, other than Gentry's tenants. It  
is our conclusion that there is no conflict between the two  
activities.

Very truly yours,



Adam D. Vincent  
Deputy Director

ADR:jls

bcc: HAR-B  
HAR-H

HAR-B —

C.O.  
R.S.

W.S. *dh*  
R.P.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
Harbors Division

11/29/84 DOT 3-1  
(HAR r10)

DATE: 11/28 19 84

FROM: HAR. B SUBJECT: LEASE No H-83-2, HONOKOHAU SBH (KONA U-CART, INC)

TO: ☐ DIR..... ☐ HAR.....  
☐ DEP-S..... ☐ HAR-S.....  
☐ DEP-H..... ☐ HAR-SE.....  
☐ DEP-P..... ☐ HAR-SF.....  
☐ DEP-A..... ☐ HAR-SP.....  
☐ DIR-P..... ☒ HAR-PM.....  
☐ BUS..... ☐ HAR-SO.....  
☐ CSS..... ☐ HAR-B.....  
☐ INF..... ☐ HAR-BA.....  
☐ LEG..... ☐ HAR-BO.....  
☐ MVS..... ☐ HAR-E.....  
☐ PER..... ☐ HAR-EP.....  
☐ PMN..... ☐ HAR-ED.....  
☐ PPB..... ☐ HAR-EC.....  
☐ PRO..... ☐ HAR-EM.....  
☐ STP..... ☐ HAR-O.....  
☐ VIP..... ☐ HAR-OC.....  
☐ OFC..... ☐ HAR-OM.....  
☐ AIR..... ☐ HAR-OO.....  
☐ HWY..... ☐ HAR-H.....  
☐ ..... ☐ HAR-M.....  
☐ ..... ☐ HAR-K.....  
☐ ..... ☐ Secretary.....

FOR: ☐ Appropriate Attention & Action  
☐ Arrange Meeting  
☐ Comments & Recommendations  
☐ Draft Reply  
☐ For Your Direct Action/Reply  
☐ Information  
☐ See Me  
☐ Signature  
☐ File  
☐ .....  
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SUSPENSE DATE \_\_\_\_\_

GENTRY'S LEASE INCLUDES A FUEL FACILITY FOR USE  
BY THEIR TENANTS, AND WAS NOT INTENDED AS A  
RETAIL FUEL FACILITY TO SERVICE THE GENERAL  
PUBLIC. THE SALE OF FUEL TO TRAILER BOATERS  
USING THE RAMP IS NOT ANTICIPATED, ALTHOUGH THE  
FUELING OF BOATS WHICH MAY BE STORED IN THE  
DRY STACK-STORAGE FACILITY IS PERMISSIBLE.

KONA U-CART, INC. IS EXPECTED TO PREPARE THE  
FUEL RETAIL SALES TO THE GENERAL PUBLIC, OTHER  
THAN GENTRY TENANTS. NO CONFLICT IS CONSIDERED TO EXIST

*[Signature]*

