

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

January 28, 2022

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

Land Board Members:

SUBJECT: Approval of Issuance of Direct Lease for Certain Lands in Manele Small Boat Harbor, Lanai, Hawaii to Coon Brothers, Inc. pursuant to *Petition of Coon Brothers Inc. to Negotiate a Lease of Certain Submerged and Fast Lands and Dock at Manele Small Boat Harbor, Lanai, Hawaii* (Item J-1 on March 22, 2013).

BACKGROUND:

At its meeting on March 22, 2013 as agenda item J-1, the Board of Land and Natural Resources (Board) gave approval to the Division of Boating and Ocean Recreation (DOBOR) to negotiate a lease with Coon Brothers, Inc. (hereinafter "Applicant") for fast and submerged lands at the loading dock at Manele Small Boat Harbor to run concurrently with Applicant's existing Boating Lease No. B-93-02 at a rate based on fair market value in accordance with Section 171-17, Hawaii Revised Statutes (HRS).

Exhibit A.

The parties were unable to agree on lease rent terms and entered mediation as required by HRS Section 171-17(b). The parties negotiated many aspects of the lease related to the appraised fair market value including nature of use, use of submerged lands, sufficiency of the legislative concurrent resolution for use of submerged lands, requirements of federal funding, lease term, rent, and escalation terms.

APPLICANT:

Coon Brothers, Inc., a Hawaii Corporation, whose business address is 207 Kupuohi Street, Lahaina, Hawaii 96761, and mailing address is P.O. Box 1119, Lahaina, Hawaii 96767.

LEGAL REFERENCE:

Sections 171-6, 171-13, 171-17, 171-35, 171-36, 171-53(c), and 171-59(b), HRS.

LOCATION:

Portion of state lands at Manele Small Boat Harbor, situated at Palawai, Lanai, Hawaii, as described by the August 27, 2021 revised C.S.F. No. 25,891 description and map indicating Manele Bay Small Boat Harbor Lease Areas 1 and 2, (**Exhibit B**) further identified by Tax Map Key No. (2) 4-9-017:006 (por.).

AREA:

Manele SBH Lease Areas 1 and 2 consisting of a loading dock area of approximately 1,055 sq. ft. of fast land and approximately 4,225 sq. ft. of adjacent submerged land.

ZONING:

State Land Use District: Conservation
County of Maui: CZO: (Draft): Lanai Project District

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act: YES
DHHL 30% entitlement lands pursuant to the Hawaii Constitution: NO

CURRENT USE STATUS:

Currently encumbered by Revocable Permit No. 38 to Coon Brothers, Inc., which commenced January 1, 2018.

CHARACTER OF USE:

For preferential non-exclusive use as a loading dock, including mooring of Applicant's vessels, for passenger loading and unloading, and other permitted uses under applicable county zoning, and other ancillary facilities, improvements, and activities as approved by the Department, but shall allow reasonable accommodation for mooring by other small boat harbor users to the extent they do not interfere with Applicant's use and uses during inclement conditions as required by the federal funding in the construction of the loading dock. Other terms and conditions are stated in **Exhibit C**.

CHAPTER 343 - ENVIRONMENTAL IMPACT STATEMENTS:

In accordance with HAR Chapter 11-200.1 and the "Exemption List for the Department of Land and Natural Resources", concurred by the Environmental Council on Nov. 10, 2020, this proposal involves the operation of an existing facility and does not constitute a change in use since its construction. This proposal is therefore exempt from the preparation of an environmental assessment pursuant to Exemption Type 1:

"Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item No. 40: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

A final environmental assessment with finding of no significant impact was previously accepted by the Department as the reviewing agency, and published in OEQC's Environmental Notice on August 8, 2005, re: Manele Small Boat Harbor Ferry System Improvements, Lanai Island, Hawaii. Replacement of the loading dock was exempted from the preparation of an EIS, and under federal analysis had a NEPA categorical exclusion.

LEASE TERM:

Thirty-five (35) years. Lease to commence upon signing.

Notwithstanding the recommendation adopted by the Board on March 22, 2013 as agenda item J-1, specifying that the lease term run concurrently with Harbor Lease No. B-93-02 (which ends September 13, 2048), Applicant took the position that a lease term of thirty-five (35) years from the lease commencement date was merited.

DOBOR notes that agenda item J-1 from March 22, 2013 clearly states that the lease is to run concurrently with Harbor Lease No. B-93-02. However, meeting minutes indicate an approved Board amendment to delegate authority to the Chairperson to negotiate the lease terms, pursuant to which an agreement was reached to set the lease term at thirty-five (35) years.

ANNUAL LEASE RENT AND RENTAL ESCALATION:

DOBOR obtained an appraisal from CBRE Valuation & Advisory Services ("CBRE") to determine the lease rental rate for the premises. CBRE's appraisal included an annual lease rent or a percentage of gross receipts, and included an annual rental based on the construction cost of the reconstructed dock. The appraisal was disputed by the Applicant, who obtained their own appraisal from Medusky & Co., Inc. ("Medusky").

Applicant objected to percentage rent on the basis that pursuant to HAR §13-234-25,¹ it

¹ **HAR §13-234-25 Fees for commercial use permits.** (a) The following fees and charges shall be

was already paying three percent of gross receipts for other boats owned through the Applicant's subsidiaries.

The parties then entered into mediation and selected Keith W. Hunter, of Dispute Prevention & Resolution, Inc., as mediator. In the course of the mediation, Mr. Hunter suggested the nonbinding use of a "neutral advisory appraiser" to gain perspective on the different appraisal amounts. The May 6, 2019 neutral advisory appraiser's report concluded "there is a scarcity of adequate market rent comparable for similar harbor properties on Lanai"² and so adopted Medusky's appraisal methodology.

The mediation produced the following rent settlement which included fixed step-ups every ten (10) years in lieu of rental re-openings:

Period	Annual Lease Rent
Years 1-10	\$45,000.00
Years 11-20	\$51,750.00
Years 21-30	\$59,512.50
Years 31-35	\$68,439.38

PERFORMANCE BOND:

An amount equal to two times the annual rental then payable.

APPLICANT REQUIREMENTS:

On March 22, 2013, the Board found that a lease to Applicant would encourage competition within maritime or maritime-related operations within the Manele Small Boat Harbor and approved the negotiation of a lease with Applicant as authorized by HRS Section 171-59, for the rebuilt loading dock, submerged lands, and any necessary adjoining land. The Board imposed further requirements (shown in **Exhibit A**) consistent with a lease of submerged or reclaimed public land under HRS Section 171-53(c), such as lands beneath tidal waters, including:

- Prior approval of the Governor;
- Prior authorization of the Legislature by concurrent resolution;

assessed for services provided by the department relating to commercial use of state boating facilities, waters of the State, and navigable streams: (1) The fee per month per vessel for a permittee with a commercial use permit and regular mooring permit who moors in and uses a small boat harbor or any of the facilities in the harbor shall be the greater of two times the mooring fees as provided in section 13-234-3 or three per cent of the monthly gross receipts. In addition to the mooring fee as provided in this section and section 13-234-3, the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.

² The Lanai Resorts, LLC dba Pulama Lanai lease was signed on November 6, 2019 for a floating dock and adjacent fast lands (not the loading dock) in the Manele Small Boat Harbor under the same TMK. Annual lease rent is \$46,240.00 and 10% of quarterly gross receipts for the first five years.

- Reconstruction of the loading dock with federal funding as approved by the Board and the successful completion of the new loading dock;
- All federal funding requirements and applicable federal and state laws to be incorporated into the lease;
- Rent to be based on fair market value determined in accordance with HRS Section 171-17;
- Term of the lease to run concurrently with the term of boating lease no. B-93-02 issued to Trilogy Corporation; and
- Use of the most current standard form of the Board's lease, including all terms and conditions.

The Department obtained Governor's approval for issuance of a submerged lands lease for the premises described in **Exhibit B**.

Senate Concurrent Resolution No. 158 (2013), includes a provision recognizing a potential 35-year lease term (**Exhibit D**).³ While SCR 158 (2013) does not cite the particular fast and submerged lands contemplated in agenda item J-1 from March 22, 2013, it does cite the tax map key covering the entire Manele Small Boat Harbor and therefore can be interpreted to authorize a lease up to the entire Manele Small Boat Harbor. The Manele Small Boat Harbor loading dock was under construction until 2016 using federal funds.

LAND COURT DEREGISTRATION:

As part of the prior authorization to negotiate issuance of a new lease and easement within the Manele Small Boat Harbor to Lanai Resorts, LLC, dba Pulama Lanai, on April 12, 2019 as agenda item J-1, the Board authorized the voluntary deregistration of Manele Small Boat Harbor, Certificate of Title No. 89,708, Lot 745-B, Map 54, Land Court Application No. 862 from the Land Court pursuant to applicable law and regulations, and the land was deregistered.⁴ The parcel is inclusive of the loading dock and submerged lands that are part of this proposed disposition.

Agenda item J-1 from March 22, 2013 recognized that the rebuilt loading dock would be located at Manele Small Boat Harbor at Berth 24, for which Applicant currently has a regular mooring permit. Rather than rebuilding on Berth 24, the loading dock was rebuilt adjacent to Berth 24 in the same location of the former loading dock that

³ "WHEREAS, the State of Hawaii and particularly those Trilogy Corporation's employees on Lanai would benefit from a lease of the loading dock and adjacent submerged lands to run for a term of thirty-five years and a delegation of authority to the Chairperson of the Board of Land and Natural Resources to negotiate its additional terms;"

⁴ The purpose of the deregistration was to accelerate the process for the issuance of leases, easements, permits, and other processes as the Board has approved or will approve in the future. The Voluntary Request for Deregistration of Certificate of Title No. 89708 (Lot 745-B, Map 54, Land Court Application 862), dated June 27, 2019, was recorded at the Bureau of Conveyances on July 10, 2019 (**Exhibit E**).

Applicant built in the 1970s while the harbor was then under the jurisdiction of the Hawaii Department of Transportation.

DISCUSSION:

Manele Small Boat Harbor was originally constructed in 1965. The harbor provides small boat slips, a rock groin for the Lanai ferry and chartered vessels, unpaved parking areas, a comfort station, harbormaster's office, boat ramp, and a loading dock. Infrastructure improvements replaced many of the existing facilities, including a new comfort station, administrative office, covered waiting areas, paved access roads, vehicle and trailer parking areas, water mains and fire hydrants, sewage pump station and force main, telephone and electrical utilities, streetlights, and landscaping.

The pier, comprising a portion of the demised premises, was constructed as Phase II of the Manele Small Boat Harbor Ferry System Improvements for \$3.4 million, with the cost of the project split 80/20 between the U.S. Department of Transportation, Federal Transit Administration ("FTA") and the State of Hawaii. The project replaced a functionally obsolete pier, which also happened to be damaged by a 2011 Tsunami.

The Board approved agenda item J-1 from March 22, 2013, amended to issue a lease by direct negotiation, finding that a disposition by direct negotiation would encourage competition within commercial maritime-related operations in the harbor. The approval states that the lease "shall incorporate all federal funding requirements and applicable federal and state laws."

During the appraisal phase, Applicant indicated that its use would occur only during certain scheduled loading and unloading times related to its sailing schedule, which had been worked out with other harbor users to avoid conflicts. Applicant later requested exclusive "24/7" use of the premises as part of its lease negotiations but agreed to "preferential non-exclusive use" to incorporate the federal funding requirements regarding use by the Maui-Lanai Ferry, honor Applicant's commitments to other harbor users, and avoid re-negotiating the circumstances of appraisal.

Applicant has notified DOBOR that it takes exception to certain statements in this submittal, which DOBOR understands will be addressed in Applicant's testimony on this item.

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
2. Find that pursuant to Section 171-59, HRS, this proposed lease may be disposed of through negotiation because the public interest demands it, and under subsection (b) of the same provision, the lease disposition encourages competition within maritime and maritime-related operations in Manele Small Boat Harbor.

Authorize the modification of standard terms of lease provisions by approving:

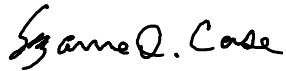
- (i) a term of thirty-five (35) years from the lease commencement date;
- (ii) the annual base rent of \$45,000;
- (iii) annual rent step-ups of fifteen percent (15%) at the end of the 10th, 20th and 30th years of the lease;
- (iv) elimination of the percentage rent provision; and
- (v) the applicant's "preferential non-exclusive use" of the premises, and issuance of a lease to Coon Brothers, Inc. for certain fast and submerged lands at and adjacent to the Manele Small Boat Harbor loading dock under the amended terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current applicable lease as may be amended from time to time for issuance to Applicant;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



EDWARD R. UNDERWOOD
Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Attachments:

- A. Board Submittal dated 3/22/13; minutes
- B. Site Map; Description
- C. Boating Lease Between State of Hawaii and Coon Brothers, Inc.
- D. 2013 Senate Concurrent Resolution No. 158
- E. Voluntary Request for Deregistration (Doc. No. A-71300691)
- F. Governor's Approval

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
333 Queen Street
Honolulu, Hawaii 96813

March 22, 2013

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

**PETITION OF COON BROTHERS INC. TO NEGOTIATE A LEASE OF
CERTAIN SUBMERGED AND FAST LANDS AND DOCK AT MANELE SMALL
BOAT HARBOR, LANAI, HAWAII**

Applicant:

Applicant Coon Brothers Inc. is a Hawai'i corporation. Its principal business is the transportation of passengers between the islands of Maui and Lanai by boat. Applicant presently conducts business through three wholly owned subsidiaries, including Trilogy Corporation, under use permits issued by the Division of Boating and Ocean Recreation for Manele Small Boat Harbor.

Legal reference:

Hawaii Revised Statutes §§ 171-59, 171-17, and 171-53(c). § 171-53(c) requires prior approval of the Governor and authorization of the Legislature by concurrent resolution for the leasing of state submerged land. § 171-59(b) allows for the disposition of leases by negotiation for specified operations, including maritime and maritime-related operations, subject to certain requirements, including that the disposition must encourage competition.

Character or proposed use:

Lease of a passenger loading dock that will be re-constructed by the Department with federal funds, which lease shall be subject to federal funding requirements and federal and state law.

Location:

Berth 24, Manele SBH, island of Lanai, as shown on the attached map labeled Exhibit "A."

Area:

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

MAR 22 2013

ITEM J-1

Exhibit A

The area to be leased will include a loading dock to be re-built with federal funds (approximately 1,100 square feet) and the adjoining water column (approximately 4,000 square feet, more or less), along with the submerged land and necessary adjoining fast land.

Zoning:

State Land Use District: Conservation

Ceded Land Status:

Section 5(b) lands of the Hawaii Admission Act

YES X NO __

DHHL 30% entitlement lands pursuant to the Hawaii State

Constitution: YES _ NO X

Current Use:

Trilogy uses berth 24 and surrounding waters to moor three sailboats in the course of transporting passengers to and from the island of Lanai. Passengers board and disembark the vessels from a loading dock on the northeast side of the berth. One of Trilogy's vessels occupies berth 24 under a regular mooring permit; its other vessels use the waters adjacent to the berth 24 loading dock on a transient basis as "vessels moored elsewhere."

Character of Use:

Commercial use

Commencement Date:

To be determined by the Chairperson

Lease rental and other financial terms:

To be determined by appraisal pursuant to HRS §171-17

Term of Lease:

To run concurrently with the term of boating lease no. B-93-02 issued to Trilogy Corporation.

Chapter 343 – Environmental Assessment:

The subject request is exempt from the requirement of an environmental assessment pursuant to Haw. Rev. Stat. ch. 343. H.A.R. § 11-200-8(a)(1) exempts from assessment "[o]perations, repairs and maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." Furthermore, such lease would be exempt under the exemption list for the Division of Boating and Ocean Recreation under Exemption Class 1: "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Discussion:

The Applicant requests a long term lease of a loading dock to be rebuilt by the Department with federal funds if approved by the Board. Currently, there is a dock built by Trilogy. Trilogy built the dock when small boat harbors were under the jurisdiction of the Department of Transportation. The Applicant has used the dock and adjoining waters to conduct tour boat operations at Manele SBH. However, the dock is currently unsafe and must be replaced.

The Applicant requests that it receive a lease by negotiation pursuant to Haw. Rev. Stat. § 171-59(b) based on Applicant's reasoning quoted below as follows:

Haw. Rev. Stat. § 171-59(b) allows the disposition of such lands for marine, maritime, and maritime-related operations by negotiation if such disposition would "encourage competition." Applicant's request readily meets these criteria.

First, Trilogy's long standing use of the dock is a paradigm of maritime commerce. Webster's Third New International Dictionary confirms the common usage of the term "maritime" as "[p]ertaining to the sea or ocean or the navigation thereof; or to commerce conducted by navigation of the sea [.]" *Webster's Third New International Dictionary* page ____ (19__). __/

Second, a lease of the dock and underlying state submerged lands would *encourage competition* for visitors wishing to travel to Lanai by sea.

Section 171-59(b) does not define the italicized words.¹ When a statute does not provide a different definition, Hawaii courts will look to legal or other well accepted dictionaries as one way to determine the ordinary meaning of the words used. *Estate of Roxas v. Marcos*, 121 Hawai'i 59, 66, 214 P.3d 598, 605 (2009); see also HRS § 1-14 (1993) (the words of a law are to be understood in light of their common and generally accepted meaning). *Gillan v. Gov't Employees Ins. Co.*, 119 Hawai'i 109, 115, 194 P.3d 1071, 1077 (2008).

The relevant definition of "encourage" found in Webster's Third New International Dictionary includes "to spur on;" "stimulate;" and "to give help to." *Webster's Third New International Dictionary* page _____ (19__). "Competition" is defined in the eighth edition of Black's Law Dictionary as "[t]he struggle for commercial advantage; the effort or action of two or more commercial interests to obtain the same business from third parties." *Black's Law Dictionary* 302 (8th ed. ____).

A long term lease of the loading dock will preserve and promote Trilogy's ability to compete in the market for water transportation services. Applicant's principal competitor at Manele is Hone Heke Corporation dba Expeditions. Expeditions is a certificated common carrier of passengers and property by water between Lahaina and Manele Small Boat Harbors. Under its PUC license, Expeditions markets transportation services and activity packages to the same individuals and groups targeted by Trilogy. Expeditions offers several scheduled sailings daily aboard a ferry that may carry more than 100 passengers.

Trilogy estimates that 85% of its Lanai business involves free independent travelers or FITs; the remaining 15% involves individuals travelling as a group. The same is expected to hold true for Expeditions. Together they transport to Lanai the overwhelming majority of island visitors who arrive by sea.

Trilogy and Expeditions are competitors by any measure. Their advertising targets the same FIT visitor. They advertise using common

¹The statute does define the phrase "maritime-related" to mean "a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry." Applicant's business centers on transportation services which requires physical facilities to load and disembark passengers.

themes. Trilogy features a "Discover Lanai Excursion," while Expeditions promotes various tour packages involving a similar range of water sports and terrestrial activities. Both use printed brochures or rack cards; rely on bookings through activity desks; and pay comparable commissions. Both use websites to describe a common range of activities including transportation and land-based activity packages

Apart from differences in price, Expeditions has been afforded distinct competitive advantages. As a certificated water carrier, Expeditions is not subject to the limit on the number of commercial vessels that may be permitted to operate from Manele SBH or the requirement that commercial users pay a use fee equal to three percent of the vessel's gross receipts. Haw. Rev. Stat. § 200-9(d).² Expeditions also enjoys preferential use of publicly financed loading facilities at Manele Small Boat Harbor. Trilogy built and has maintained its loading dock at little or no cost to the public.

Finally, Trilogy pays Lanai Company \$8.33 per person to defray the cost of maintaining Hulopoe Beach Park; Expeditions pays nothing. As a result, ferry passengers as members of the "general public" enjoy free access to Hulopoe seven days a week; in contrast, Trilogy abides by the Unilateral Agreement and limits visits to the beach to weekdays.

The financial viability of Applicant requires continued use of its loading dock on terms no less favorable than those enjoyed by Expeditions. A negotiated long term lease of that facility will level the playing field and foster competition based on quality of service and ultimately stability in the marketplace. Trilogy's long-term presence will secure employment of as many as 60 island residents, and also provide

² Section 200-9(d) provides in part: "Notwithstanding any limitations on commercial permits for Maui county small boat facilities, vessels engaging in inter-island ferry service within Maui county shall be afforded preferential consideration for ferry landings, including the issuance of a commercial operating permit and the waiver of any applicable fees, at Maui county small boat facilities; provided that:

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route within Maui county;

* * *

- (3) The vessel operations will not result in unreasonable interference with the use of Maui county small boat facilities by other vessels; . . ."

second tier commercial operators with competition on price and quality of experience, factors that are vital to a robust tourism based economy.

Lastly, phase two of the Federal Transit Authority's ferry pier improvement project is currently in the design phase. A condition of the current project states that the loading dock currently used by the Applicant must be made available to the ferry should the ferry operator need to engage in repairs, maintenance, docking during inclement weather, or increase operations by adding additional vessels. These terms can be addressed in the proposed lease to the Applicant should the Board support the leasing of the loading dock and submerged lands.

RECOMMENDATION:

1. That the Board find that the subject request is exempt from the requirement of an environmental assessment as explained above.
2. If the Board agrees with the Applicant that the lease to Applicant would encourage competition within maritime or maritime-related operations, approve the negotiation of a lease by the Chairperson for the rebuilt loading dock, submerged land, and any necessary adjoining land, as described above and incorporated herein, subject to the following:
 - a. Issuance of the lease is subject to prior approval of the Governor and authorization of the Legislature by concurrent resolution in accordance with Haw. Rev. Stat. § 171-53(c).
 - b. Issuance of the lease is dependent upon reconstruction of the loading dock with federal funding as approved by the Board and the successful completion of the new loading dock.
 - c. The lease shall incorporate all federal funding requirements and applicable federal and state laws.
 - d. Rent will be based on fair market value determined in accordance with Haw. Rev. Stat. § 171-17.
 - e. The term of the lease shall run concurrently with the term of boating lease no. B-93-02 issued to Trilogy Corporation.
 - f. The most current standard form of the Board's lease, including all terms and conditions, shall be used.


g. Other terms and conditions as prescribed by the Chairperson to serve the best interests of the State shall be applicable.

h. All recommendations above and the terms and conditions of the lease shall be subject to review and approval by the Department of the Attorney General.

RESPECTFULLY SUBMITTED,


ED UNDERWOOD
Administrator

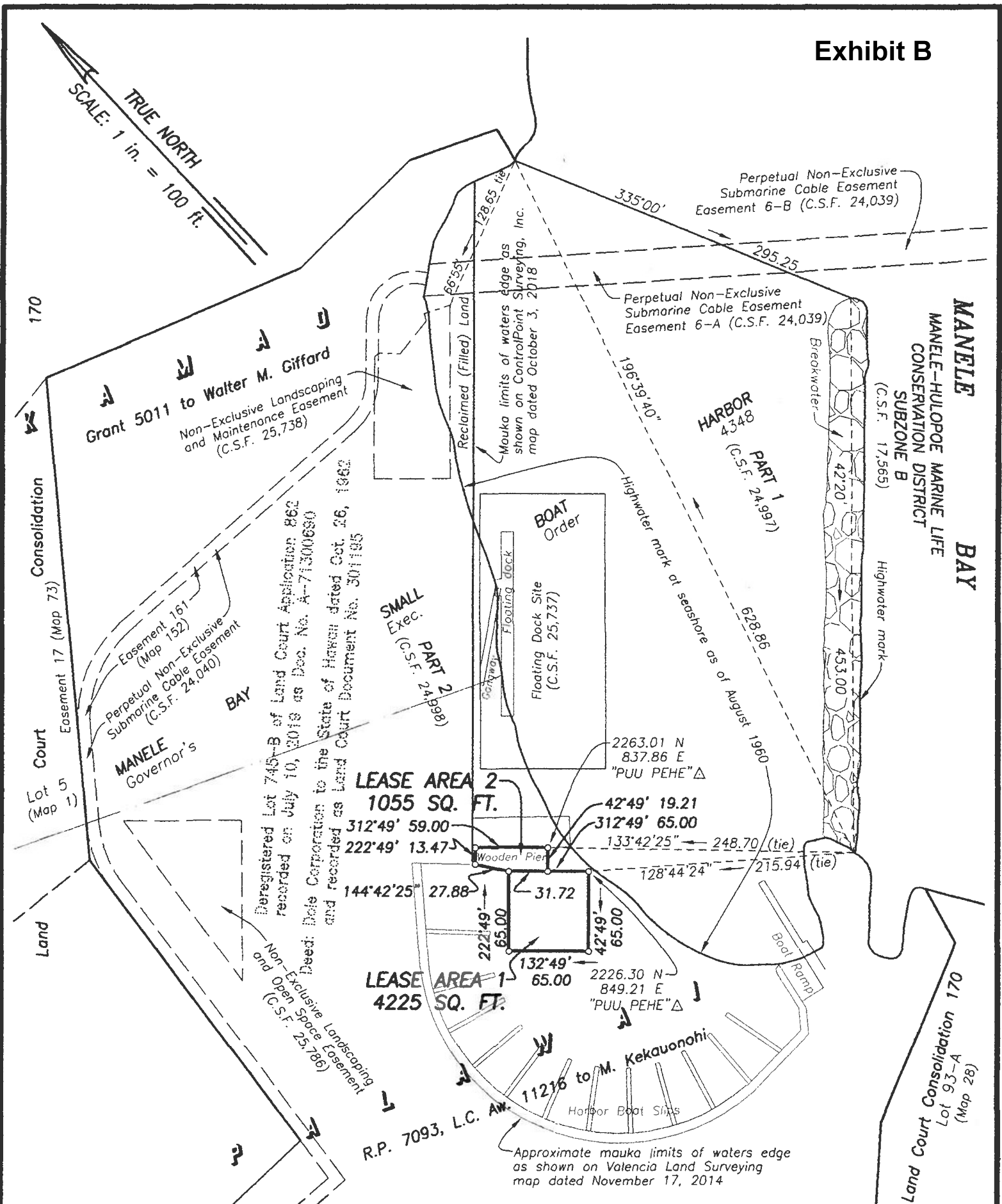
APPROVED FOR SUBMITTAL


WILLIAM J. AILA, JR.
Chairperson

[illegible]

EXHIBIT A

Exhibit B



(REVISED-AUGUST 2021) MANELE BAY SMALL BOAT HARBOR LEASE AREAS 1 AND 2

Palawai, Lanai, Hawaii

Scale: 1 inch = 100 feet

Job L-170(16)
C. BK.

TMK: 4-9-17: Pors. 06

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

C.S.F. NO. 25,891

GZY August 27, 2021



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

C.S.F. No. 25,891

August 27, 2021

(REVISED – AUGUST 2021)
MANELE BAY SMALL BOAT HARBOR

LEASE AREAS 1 AND 2

Palawai, Lanai, Hawaii

Being portions of Royal Patent 7093, Land Commission Award 11216 to M. Kekauonohi conveyed to the State of Hawaii by Dole Corporation by deed dated October 26, 1962 and recorded as Land Court Document No. 301195, being also a portion of deregistered Lot 745-B of Land Court Application 862 recorded on July 10, 2019 as Document No. A-71300690.

Being also portions of the submerged land within Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348.

LEASE AREA 1

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PEHE" being 2226.30 feet North and 849.21 feet East, thence running by azimuths measured clockwise from True South:-

1. 42° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
2. 132° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
3. 222° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;

4. 312° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348 to the point of beginning and containing an AREA OF 4225 SQUARE FEET.

LEASE AREA 2

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PEHE" being 2263.01 feet North and 837.86 feet East, thence running by azimuths measured clockwise from True South:-

1. 42° 49' 19.21 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
2. 132° 49' 31.72 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
3. 144° 42' 25" 27.88 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
4. 222° 49' 13.47 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;

5. 312° 49'

59.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348 to the point of beginning and containing an AREA OF 1055 SQUARE FEET.

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

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

Compiled from map and desc. furn. by Valencia Land Surveying. Said map and desc. have been examined and checked as to form and mathematical correctness but not on the ground by the Survey Division.

REGULAR SYSTEM

Exhibit C

fast and submerged lands at the Manele Bay Small Boat Harbor

Lease Areas 1 and 2

situate at Palawai and Kamao, Lanai, Hawaii

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

BOATING LEASE NO. LM-21-002

THIS LEASE, made this _____ day of _____, 2021, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and COON BROTHERS, INC., a Hawaii corporation, whose address is Post Office Box 1119, Lahaina, Hawaii 96797, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to sections 171-53 and 171-59(b), Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises and existing improvements situate at Manele Bay Small Boat Harbor, and identified as "Lease Areas 1 and 2," being a portion of the loading dock site and adjacent submerged land together containing an area of approximately 5,280 square feet (approximately 1,055 square feet of fast land and approximately 4,225 square feet of submerged land, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B", attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of thirty five (35) years, commencing on the _____ day of _____, 20____, (the "Commencement Date") up to and including the _____ day of _____, _____, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal quarterly installments on _____ of each and every year during the term as follows:

A. For the first ten (10) years, the sum of FORTY

FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) per annum.

B. For the eleventh through twentieth years, the sum of FIFTY ONE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$51,750.00) per annum.

C. For the twenty-first through thirtieth years, the sum of FIFTY NINE THOUSAND FIVE HUNDRED TWELVE AND 50/100 DOLLARS (\$59,512.50) per annum.

D. For the thirty-first through thirty-fifth years, the sum of SIXTY EIGHT THOUSAND FOUR HUNDRED THIRTY NINE AND 38/100 DOLLARS (\$68,439.38) per annum.

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

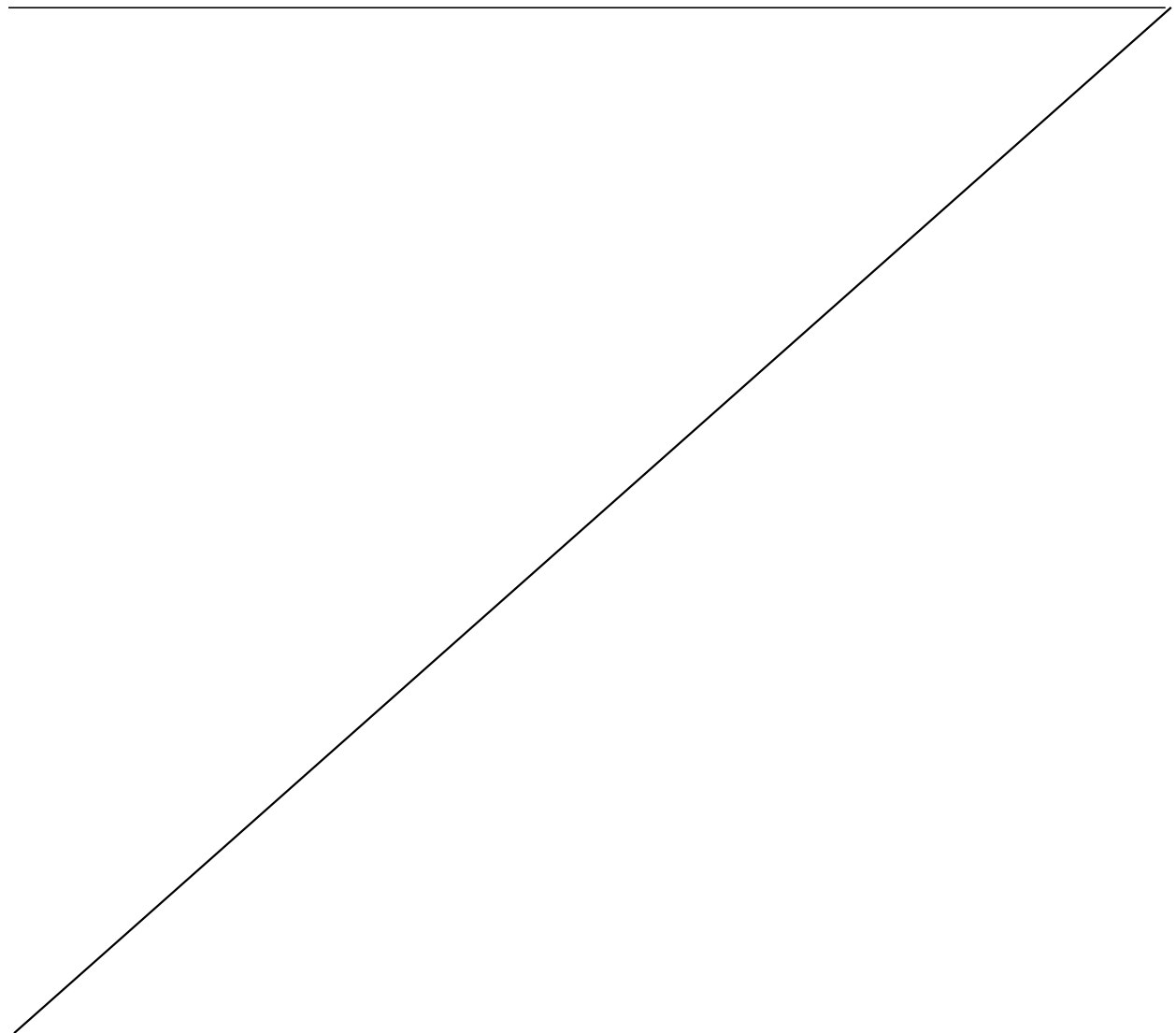
RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved

in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to the loading dock and railings located on the land underlying the premises prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

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



THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

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

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description,

including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

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

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

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

destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

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

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

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

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted. The Lessee shall not be liable for damages to the premises through no fault of the Lessee, including without limitation, use of the premises by other users or events outside of Lessee's control (e.g., hurricane, tsunami, etc.).

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

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for the purposes of preferential non-exclusive use as a loading dock, including mooring of Lessee's vessels, for passenger loading and unloading,

including other permitted uses under applicable county zoning, and other ancillary facilities, improvements, and activities as approved by the Lessor, but including reasonable accommodation for mooring by other small boat harbor users to the extent they do not interfere with Lessee's use, and uses during inclement conditions as required by the federal funding in the construction of the loading dock.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

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

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

14. Subletting. The Lessee shall not sublet the whole or any part of the demised premises except with the approval of the Board; provided that prior to the approval, the

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

15. Release and indemnity. The Lessee shall release, indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

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

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not

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

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a policy(s) or other documentation required by the Lessor showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the Lessor on deposit during the entire lease term, and furnish a like policy(s) or other documentation required by the Lessor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period or other documentation required by the Lessor.

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

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease.

Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's or the Lessee's employees, agents, officers, or invitees' negligence or neglect connected with this lease.

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

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

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

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

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to

foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable.

The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee;

furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

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

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or

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

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

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

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

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

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or

relieved from any obligation.

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

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

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

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

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous

materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

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

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

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

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

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

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

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

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

40. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided further, that if the portion withdrawn renders the remainder unusable or unfeasible for Lessee's purposes, the Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability, explicitly excepting all liability accruing prior to the surrender of the lease and all obligations and duties that survive the early termination, surrender, or expiration of the lease.

SPECIAL CONDITIONS

41. Property insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease fire and extended coverage insurance, and physical property insurance, all risk coverage, written on a replacement cost basis, insuring against physical loss or damage to covered property, defined as but not limited to: floating or fixed piers, wharfs, docks, platforms, gangplanks, pilings, moorings and buoys; anchors and floats used with floating docks; buildings or storage sheds affixed to any floating or fixed piers, wharfs, docks or platforms; and travel lifts or cranes, with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

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

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

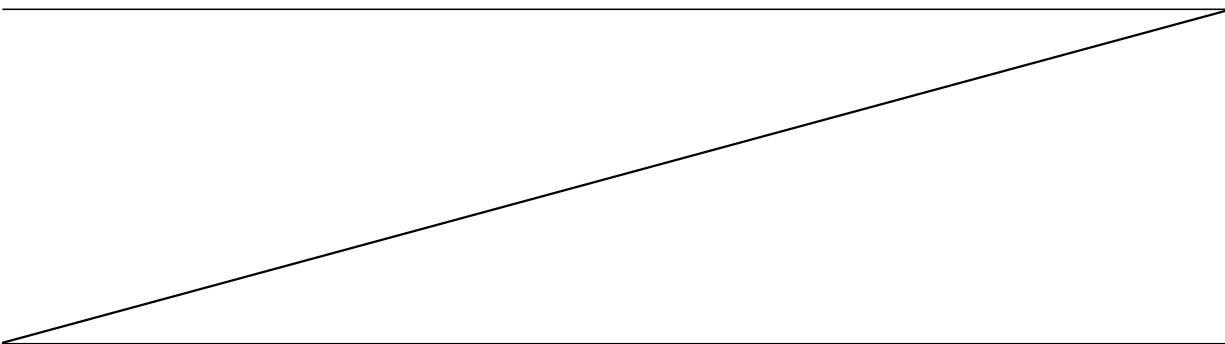
All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

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

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

44. Governor's approval. Section 171-53(c), Hawaii Revised Statutes, requires the prior approval of the Governor of the State of Hawaii to be obtained for this lease. The Governor of the State of Hawaii's approval was obtained on August 31, 2021.

45. Legislative approval. Section 171-53(c), Hawaii Revised Statutes, requires the prior authorization of the Legislature by concurrent resolution to be obtained for this lease. Senate Concurrent Resolution No. 53 was adopted, the House of Representatives concurring, in final form on April 24, 2013.



DEFINITIONS

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

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

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

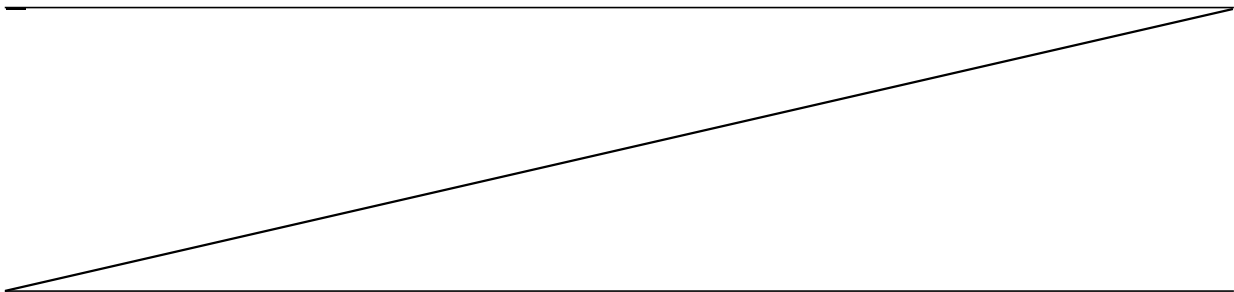
(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

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

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

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

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



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

Approved by the Board
of Land and Natural
Resources at its meeting
held on _____.

STATE OF HAWAII

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

APPROVED AS TO FORM:

LESSOR

COLIN J. LAU
Deputy Attorney General Dated: _____

COON BROTHERS, INC., a Hawaii
corporation

By _____

Its _____

By _____

Its _____

LESSEE

STATE OF HAWAII)
)
) SS.
COUNTY OF)

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

Notary Public, State of Hawaii

My commission expires: _____



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

C.S.F. No. 25,891

August 27, 2021

(REVISED – AUGUST 2021)
MANELE BAY SMALL BOAT HARBOR

LEASE AREAS 1 AND 2

Palawai, Lanai, Hawaii

Being portions of Royal Patent 7093, Land Commission Award 11216 to M. Kekauonohi conveyed to the State of Hawaii by Dole Corporation by deed dated October 26, 1962 and recorded as Land Court Document No. 301195, being also a portion of deregistered Lot 745-B of Land Court Application 862 recorded on July 10, 2019 as Document No. A-71300690.

Being also portions of the submerged land within Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348.

LEASE AREA 1

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PEHE" being 2226.30 feet North and 849.21 feet East, thence running by azimuths measured clockwise from True South:-

1. 42° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
2. 132° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
3. 222° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;

4. 312° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348 to the point of beginning and containing an AREA OF 4225 SQUARE FEET.

LEASE AREA 2

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PEHE" being 2263.01 feet North and 837.86 feet East, thence running by azimuths measured clockwise from True South:-

1. 42° 49' 19.21 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
2. 132° 49' 31.72 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
3. 144° 42' 25" 27.88 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
4. 222° 49' 13.47 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;

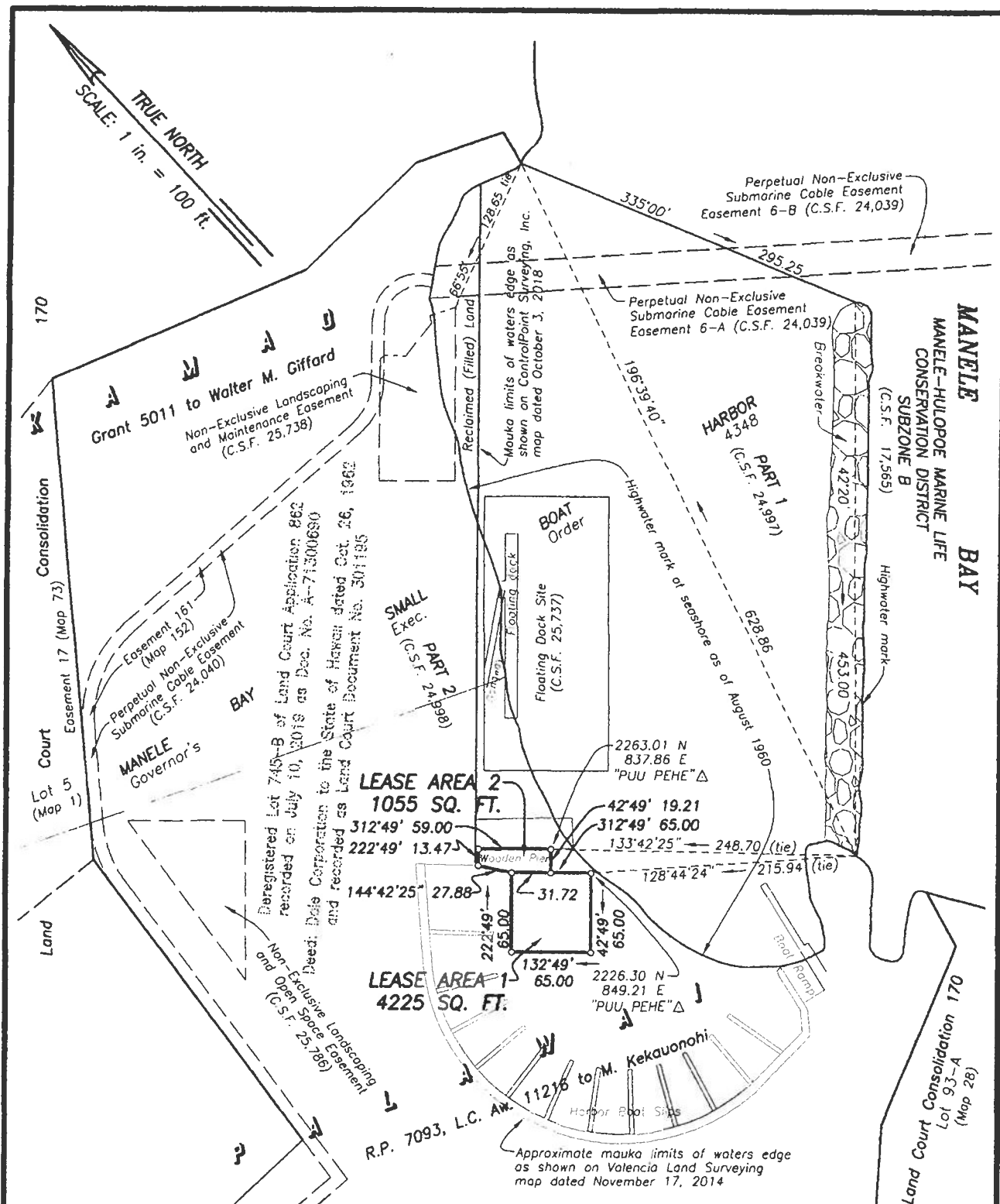
5. 312° 49'

59.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348 to the point of beginning and containing an AREA OF 1055 SQUARE FEET.

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

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

Compiled from map and desc. furn. by Valencia Land Surveying. Said map and desc. have been examined and checked as to form and mathematical correctness but not on the ground by the Survey Division.



(REVISED—AUGUST 2021)
MANELE BAY SMALL BOAT HARBOR
LEASE AREAS 1 AND 2

Palawai, Lanai, Hawaii

Scale: 1 inch = 100 feet

Job L-170(16)

C. BK.

TMK: 4-9-17: Pors. 06

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

C.S.F. NO. 25,891

GZY August 27, 2021

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

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

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

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

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

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

4. Qualifications of Assignee.

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

EXHIBIT "C"

5. Consideration to be Paid.

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

6. Payment of Premium.

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

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

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

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

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

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

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

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

7. Non-qualifying Deductions.

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

8. Subsequent Assignments.

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

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

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

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

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

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

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

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

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

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

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

2. Depreciation

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

3. Depreciated Cost of Improvements or Renovations

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

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

<u>Example</u>	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
	Expired term:	57 mos.
	Whole term:	408 mos.
1. Adjusted Cost of Improve- ments or Renovations		

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

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

2. Depreciation

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

3. Adjusted Depreciated Cost of Improvements or Renovations

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

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

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

2. Depreciation.

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

3. Depreciated Cost of Trade Fixtures.

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

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

Refrigerator

<u>Example</u>	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	
 Actual Cost X $\frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$		
 \$1,510 X $\frac{118.1}{104.6}$ + \$1,705		
2. Depreciation		
 \$1,705 X $\frac{57 \text{ mos.}}{96 \text{ mos.}}$ = \$1,012		
3. Adjusted Depreciated Cost of Trade Fixture		

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

SCHEDULE C. Premium Percentages

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

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

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

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

SCHEDULE D. Assignment of Lease Calculations

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

Example

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

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

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

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

SCHEDULE E. Subsequent Assignment of Lease Calculations

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

Example

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

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

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

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

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

$$\begin{array}{rcl} \$716,708 & \times & \frac{107 \text{ mos.}}{408 \text{ mos.}} \\ & & = \end{array}$$
-187,960
Adj Dep Value Consideration: - 528,748
4. Excess: \$ 471,252
5. Premium: Percentage: 45% \$ 212,063

SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS AT MANELE BAY,
LANAI, FOR RENOVATION OF MANELE SMALL BOAT HARBOR.

1 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
2 the prior approval of the Governor and prior authorization of
3 the Legislature by Concurrent Resolution to lease state
4 submerged lands; and
5

6 WHEREAS, Coon Brothers Inc. is a Hawai'i corporation that
7 owns and operates tour boats between the islands of Maui and
8 Lanai through three subsidiaries collectively known as Trilogy
9 Corporation; and
10

11 WHEREAS, Trilogy Corporation began conducting commercial
12 operations from Manele Small Boat Harbor in 1973 in an area that
13 was to become berth 24; and
14

15 WHEREAS, in 1993, the Board of Land and Natural Resources
16 and Trilogy Corporation entered into a renewable, thirty-five
17 year lease of 18,000 square feet of undeveloped land adjacent to
18 berth 24; and
19

20 WHEREAS, Trilogy Corporation obtained the thirty-five year
21 lease in order to construct a first class pavilion at Manele
22 Small Boat Harbor so that passengers upon arrival from Maui
23 would have shelter from the elements and a comfortable venue for
24 the lunch and entertainment Trilogy Corporation provides as an
25 integral part of its tour packages; and
26

27 WHEREAS, in 2005, Coon Brothers Inc. completed a major
28 renovation of the loading dock used by Trilogy Corporation's
29 three vessels; and
30

31 WHEREAS, the State of Hawaii and particularly those Trilogy
32 Corporation's employees on Lanai would benefit from a lease of

SCR158 SD2 LRB 13-2670.doc



1 the loading dock and adjacent submerged lands to run for a term
2 of thirty-five years and a delegation of authority to the
3 Chairperson of the Board of Land and Natural Resources to
4 negotiate its additional terms; and

5
6 WHEREAS, as lessee of the loading dock and appurtenant
7 submerged lands, Trilogy Corporation would assume responsibility
8 for maintenance and upkeep of that area and be required to pay
9 fair market lease rent for an area badly in need of repair; now,
10 therefore,

11
12 BE IT RESOLVED by the Senate of the Twenty-seventh
13 Legislature of the State of Hawaii, Regular Session of 2013, the
14 House of Representatives concurring, that the Board of Land and
15 Natural Resources is authorized to issue a term, non-exclusive
16 thirty-five-year lease of an easement covering a portion of
17 state submerged lands identified as tax map key (2) 4-9-17:06;
18 and

19
20 BE IT FURTHER RESOLVED that a certified copy of this
21 Concurrent Resolution be transmitted to the Chairperson of the
22 Board of Land and Natural Resources.



DO NOT



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

July 10, 2019 3:29 PM

Doc No(s) A-71300691



/s/ LESLIE T. KOBATA
REGISTRAR

1 2/2 CHC
B-33355265

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail () Pickup (X)

Pages ____

State of Hawaii, Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819
Tel. No.: 587-1966

TMK: (2) 4-9-017:006

VOLUNTARY REQUEST FOR DEREGISTRATION
OF CERTIFICATE OF TITLE NO. 89708
(Lot 745-B, Map 54, Land Court Application 862)

TO: Assistant Registrar of the Land Court
State of Hawaii

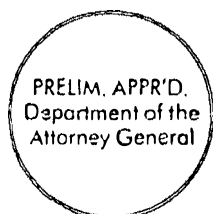
DATE: JUN 27 2019

1. This Voluntary Request for Deregistration ("Deregistration Request") is made by the following entity which is the registered owner of the fee interest of registered land ("Owner"):

STATE OF HAWAII, Board of Land and Natural Resources.

2. Pursuant to Section 501-261.5, Hawaii Revised Statutes ("HRS"), Owner requests that the fee interest in registered land described in Exhibit "A" attached hereto and hereby made a part hereof (the "Property") be deregistered.

3. As the Property is owned by the STATE OF HAWAII, no title insurance is required to be provided by Owner, and Owner's waiver of claims against the State of Hawaii is not necessary.



4. Owner requests that the Assistant Registrar:

A. Record in the Bureau of Conveyances of the State of Hawaii, pursuant to Chapter 502, HRS, the current Certificate of Title for the fee interest in the Property; provided that prior thereto, the assistant registrar shall note on the certificate of title all documents and instruments that have been accepted for registration and that have not yet been noted on the certificate of title for the Property, as provided in Section 501-261.5(2)(A), HRS;

B. Record this Deregistration Request in the Bureau of Conveyances of the State of Hawaii pursuant to Chapter 502, HRS, as provided in Section 501-261.5(2)(B), HRS; and

C. Cancel the Certificate of Title for the Property as provided in Section 501-261.5(2)(C), HRS.

Approved by the Board of
Land and Natural Resources
at its meeting held on
April 12, 2019.


STATE OF HAWAII, BOARD OF LAND AND
NATURAL RESOURCES



Name: SUZANNE D. CASE
Title: Chairperson

Owner

APPROVED AS TO FORM:



DAVID D. DAY
Deputy Attorney General

Dated: June 21, 2019

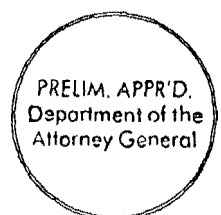


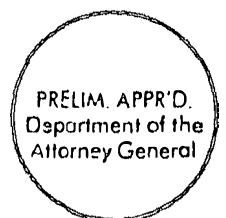
EXHIBIT "A"

All of that land situate at Palawai and Kamao, Lanai, Hawaii, described as follows:

Lot 745-B, area 8.525 acres, as shown on Map 54 of Land Court Application No. 862 of Hawaiian Pineapple Company, Limited.

BEING all of the land described in Transfer Certificate of Title No. 89708, issued to the State of Hawaii.

END OF EXHIBIT "A"



DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

2108111

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 17, 2021

MEMORANDUM

TO: The Honorable David Y. Ige, Governor
State of Hawai'i

FROM: Suzanne D. Case, Chairperson *SDC*
Board of Land and Natural Resources *EBU*

SUBJECT: Request Governor's Approval of the Issuance of a Term, Non-Exclusive Easement Covering a Portion of State Submerged Lands at Manele Bay, Lana'i, for Renovation of Manele Small Boat Harbor, Tax Map Key (TMK): (2) 4-9-017:006 (Portion) Manele Bay, Island of Lana'i

Pursuant to Section 171-53(c), Hawaii Revised Statutes (HRS), the Board of Land and Natural Resources (Board) may lease state submerged lands with prior approval from the Governor and the prior authorization of the Legislature by Concurrent Resolution.

At the regularly scheduled March 22, 2013 meeting of the Board of Land and Natural Resources (the "Board") under Agenda Item J-1, the Division of Boating and Ocean Recreation ("DOBOR") obtained the Board's consent for the issuance of a lease to Coon Brothers, Inc., situated at Manele Small Boat Harbor, Lana'i. Pursuant to the request of the applicant, Coon Brothers, Inc., the Board approved a lease for Submerged lands surrounding Berth 24, Manele Small Boat Harbor, Lana'i.

The 2013 Legislature adopted Senate Concurrent Resolution 158, Senate Draft 2, which authorizes the issuance of the lease described above. We respectfully request your approval of this matter, pursuant to Section 171-53(c), HRS. If you have any questions, please contact Edward Underwood, DOBOR Administrator, at (808) 587-1966. Thank you for considering this matter.

APPROVED:

David Y. Ige

DAVID Y. IGE, Governor
State of Hawai'i

Aug 31, 2021

Date

Signature: *Edward Underwood*
Email: ed.r.underwood@hawaii.gov

Signature: *Suzanne D. Case*
Email: suzanne.case@hawaii.gov

Exhibit F