

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

August 09, 2024

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT:** Consent to Sublease Under Harbor Lease No. H-82-4, GKM, Inc., Lessee, to Hang Loose Boat Tours LLC, Sublessee for Space 14, located at Honokohau Small Boat Harbor, Kealakehe, North Kona, Hawai'i, Tax Map Key: (3) 7-4-008:042.

APPLICANT:

GKM, Inc. a Hawai'i corporation, whose mailing address is 74-425 Kealakehe Parkway, Kealakehe, Kailua-Kona, Hawai'i as Sublessor, to:

Hang Loose Boat Tours LLC, a Hawai'i corporation (Space 14), as Sublessee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawai'i Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honokohau Small Boat Harbor situated at Kealakehe, North Kona, Hawai'i, identified by Tax Map Key: (3) 7-4-008:042, as shown on the attached map labeled **Exhibits A-1 and A-2**.

LEASE AREA:

Total lease area is 177,860 square feet, consisting of fast and submerged lands, more or less.

SUBLEASE AREA:

1,152 square feet and 480 square foot mezzanine, more or less.

**ITEM J-1**

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admission Act

DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution:

YES \_\_\_ NO X

LEASE CHARACTER OF USE:

GKM, Inc., Lease No. H-82-4 relative to "use" reads, in part:

"for the construction of certain improvements which shall be used principally for marine or marine-related activities which shall include the following:

Sales:

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

Services:

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

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

Sales:

1. Sailboats and power boats and other watercraft (new and brokerage)
2. Charts, maps, and nautical publications

3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice, and fresh bait
6. Outboard and inboard engines and supplies.

Services:

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

The Lessee is made aware that the Lessor does not guarantee that the additional permitted activities listed above shall be for the exclusive use of the Lessee within the boundaries of the Honokohau Small Boat Harbor.”

SUBLEASE CHARACTER OF USE:

Hang Loose Boat Tours LLC (Space 14): Customer service center and storage of a dive and snorkel tour operation. Retail sales of companies' own logo wear, swim/snorkel gear and dive equipment. No check-in or drop-off of guests.

TERM OF LEASE:

Fifty-five (55) years.

Original term of thirty-five (35) years commencing April 1, 1984 and ending on March 31, 2019.

At its meeting on March 24, 2006, under agenda item J-1, the Board approved a twenty (20) year lease extension commencing April 1, 2019 and end on March 31, 2039.

TERM OF SUBLEASE:

Hang Loose Boat Tours LLC (Space 14):  
Beginning on the 1<sup>st</sup> month following BLNR approval for the term of 5 years. Sublease was signed on December 3, 2021. (Exhibit B)

ANNUAL RENTAL:

Rent for the first 5 years was set at \$25,000.00 per year and renegotiates at 5-year intervals.

Original Lease Term (35 Years)

April 1, 1984 to March 31, 1989 - \$25,000/year  
April 1, 1989 to March 31, 1994 - \$60,000/year  
April 1, 1994 to March 31, 1999 - \$60,000/year  
April 1, 1999 to March 31, 2004 - \$60,000/year  
April 1, 2004 to March 31, 2009 - \$70,500/year  
April 1, 2009 to March 31, 2014 - \$70,500/year  
April 1, 2014 to March 31, 2019 - \$120,184/year

Extended Lease Term (20 Years)

April 1, 2019 to March 31, 2024 - \$200,000/year  
April 1, 2024 to March 31, 2029 – Rent Reopens  
April 1, 2029 to March 31, 2034 – Rent Reopens  
April 1, 2034 to March 31, 2039 – Rent Reopens

ANNUAL SUBLEASE RENTAL:

Hang Loose Boat Tours LLC (Space 14):           \$21,036.00

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:       YES X       NO

Registered business name confirmed: YES X NO \_\_\_  
Good standing confirmed: YES X NO \_\_\_

SUBLESSEE:

Place of business registration confirmed: YES X NO \_\_\_  
Registered business name confirmed: YES X NO \_\_\_  
Good standing confirmed: YES X NO \_\_\_

REMARKS:

Harbor Lease No. H-82-4 ("Lease") was sold at public auction in 1982 to Gentry-Pacific, LTD. ("Gentry"). The lease was executed on April 8, 1983, with term of thirty-five years beginning April 1, 1984, and ending March 31, 2019.

On October 15, 2002 Gentry assigned the lease to GKM, Inc. ("GKM").

At its meeting held on March 24, 2006, under agenda item J-1, the Board agreed to the extension of the lease for an additional twenty years, from April 1, 2019, through March 31, 2039.

At its meeting held on June 12, 2020, under agenda J-2, the Board approved the mediated rent settlement of \$200,000 per year for the period commencing April 1, 2019 and ending March 31, 2024.

GKM's sublease requires the sublessee to carry liability insurance naming the lessee and lessee's agent as additional insured. Staff requests that the State of Hawai'i also be named as additional insured on the sublessee's liability insurance policy.

Due to staff shortage/turnover we were not able to address these in a timely manner.

Staff recommends the Board consents to the sublease subject to DOBOR's sublease rent participation policy.

RECOMMENDATION:

That the Board consents to the two subleases under Harbor Lease No. H-82-4 between GKM, Inc., as Sublessor, and Hang Loose Boat Tours LLC, as Sublessee, for Space 14 subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time.
2. Require sublessee to name the State of Hawai'i as additional insured.

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3. Review revision of the rent and rent structure charged to GKM, Inc. in light of the rental rate charged to the proposed sublessee by Lessee.
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



for

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MEGHAN L. STATTS, Administrator  
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



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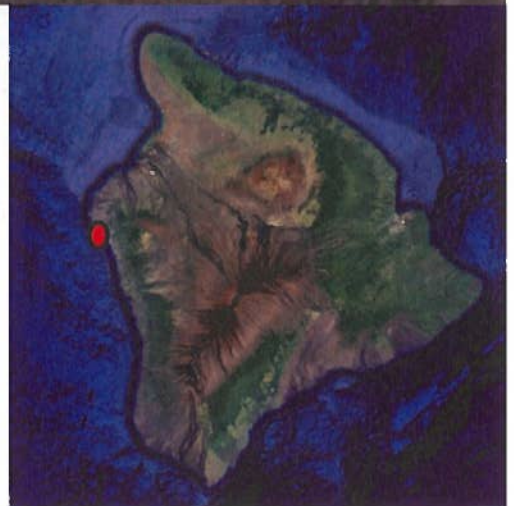
DAWN N.S. CHANG, Chairperson  
Board of Land and Natural Resources

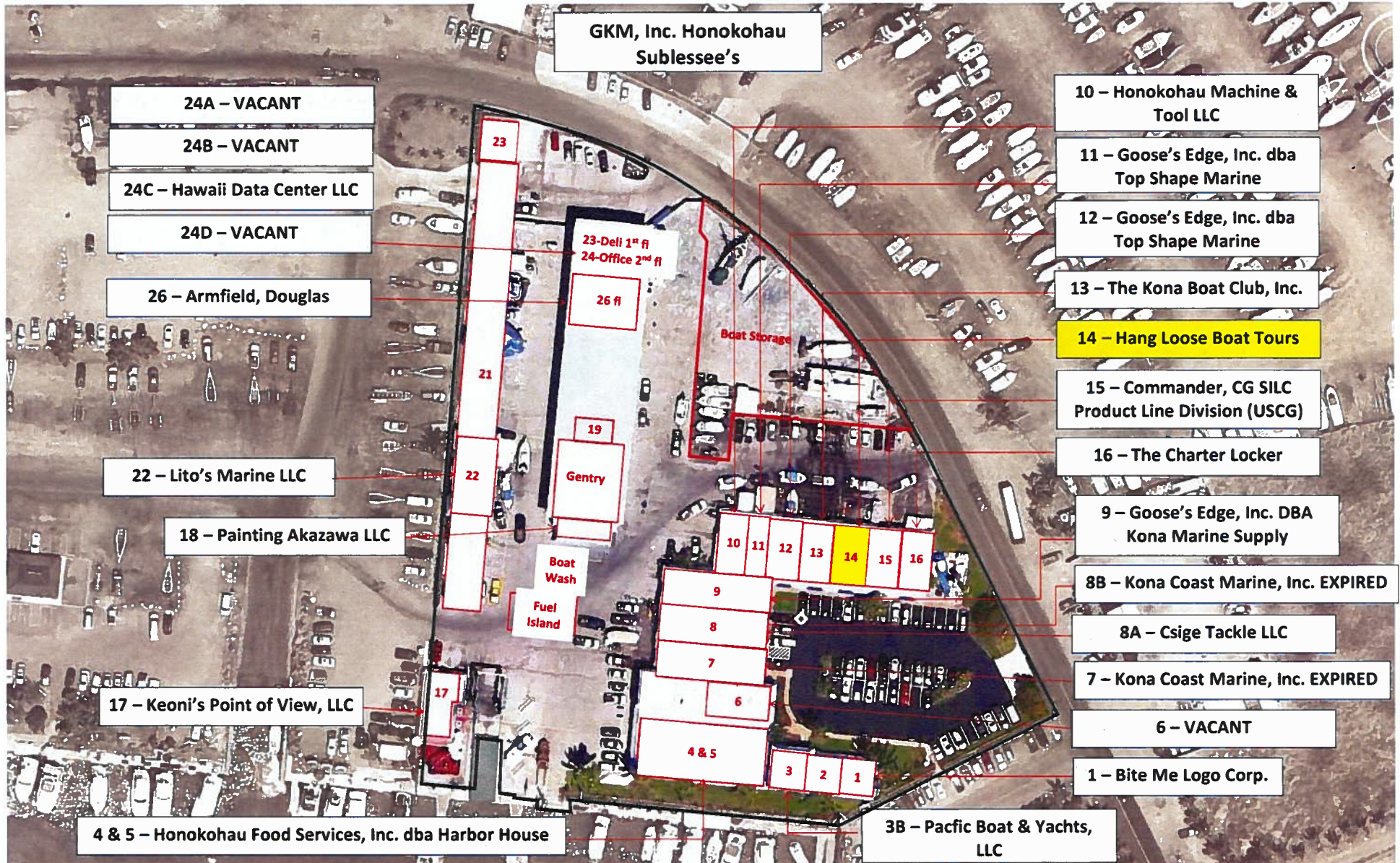
Attachments:

Exhibit A-1 and A-2: Site Plan

Exhibit B: Hang Loose Boat Tours LLC Sublease (Space 14)

**Exhibit A-1**  
**GKM, Inc.**  
**Honokohau Small Boat Harbor**





GKM, Inc. Honokohau  
Sublessee's

24A – VACANT

24B – VACANT

24C – Hawaii Data Center LLC

24D – VACANT

26 – Armfield, Douglas

22 – Lito's Marine LLC

18 – Painting Akazawa LLC

17 – Keoni's Point of View, LLC

4 & 5 – Honokohau Food Services, Inc. dba Harbor House

10 – Honokohau Machine &  
Tool LLC

11 – Goose's Edge, Inc. dba  
Top Shape Marine

12 – Goose's Edge, Inc. dba  
Top Shape Marine

13 – The Kona Boat Club, Inc.

14 – Hang Loose Boat Tours

15 – Commander, CG SILC  
Product Line Division (USCG)

16 – The Charter Locker

9 – Goose's Edge, Inc. DBA  
Kona Marine Supply

8B – Kona Coast Marine, Inc. EXPIRED

8A – Csige Tackle LLC

7 – Kona Coast Marine, Inc. EXPIRED

6 – VACANT

1 – Bite Me Logo Corp.

3B – Pacific Boat & Yachts,  
LLC

23-Deli 1<sup>st</sup> fl  
24-Office 2<sup>nd</sup> fl

26 fl

Gentry

Boat Wash  
Fuel Island

Boat Storage

23

21

22

17

4 & 5

3

2

1

9

8

7

6

10

11

12

13

14

15

16



**Exhibit B**

**GENTRYS KONA MARINA SUBLEASE**

**SPACE No. 14**

**Lessor: GKM, INC.**

**Lessee: Hang Loose Boat Tours LLC**

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THIS SUBLEASE (lease) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between GKM, INC., a Hawaii corporation, whose post office address is 74-425 Kealakehe Parkway, Kailua-Kona, Hawaii 96740, hereinafter called the "Lessor," and Hang Loose Boat Tours LLC whose mailing address is 77-6592 Sea View Circle, Kailua Kona Hawaii 96740, hereinafter called the "Lessee", who agree as follows:

**ARTICLE I**  
**GRANT**

1.1 **Premises; Common Areas.** The Lessor leases to the Lessee, and the Lessee hires from the Lessor, those certain premises more particularly shown and outlined in red on **Exhibit A** attached hereto, and all improvements thereon and therein (the "premises"), within the GENTRYS KONA MARINA situate in the District of North Kona, County and State of Hawaii, on real property identified on the tax maps of the Third Taxation Division of the State of Hawaii as Tax Map Key (3) 7-4-008:042 (Tax Map Key 7-4008:042 and the improvements thereon shall hereafter be collectively referred to as the "Property"). Lessor and Lessee acknowledge that the square footage of the premises set forth above in **Exhibit A** and in **Exhibit C** is merely an approximation of the actual area of the premises. Notwithstanding that the square footage set forth in **Exhibit A** and in **Exhibit C** is an approximation, Lessee agrees that the stated figure shall govern in any question relating to the area of the premises, whether or not the actual square footage of the premises is the same as the approximate square footage set forth in **Exhibit A** and in **Exhibit C**. The square footage figure set forth in **Exhibit A** and in **Exhibit C** shall serve as the base figure in determining the prorata rent reduction/abatement in the event of damage, condemnation or other circumstance requiring such reduction, abatement or other adjustment of rent as provided in this lease.

In addition to the premises, Lessee shall have, as an appurtenance thereto, full right of access to the premises over and across any common entrances, sidewalks, halls, corridors, parking areas and stairways on the Property (the "common areas"), subject, however, in every case to (i) Lessee's observance and performance of its covenants, obligations, promises and agreements set forth in this lease, and (ii) the rights of Lessor reserved in the common areas as described below. All common areas shall at all times be subject to the exclusive control and management of Lessor, and shall be subject to such rules and regulations as Lessor may adopt and promulgate from time to time. Lessee will not use the common areas in such a way as to impede or interfere with the operation of the Property, or with Lessor or any tenant therein or thereon. Lessor shall have the right, in its sole discretion, to increase or reduce the common areas, to rearrange the parking spaces and improvements in the common areas and to make any other changes therein from time to time. There shall be no reduction of Lessee's monthly base rent or any other charges hereunder for any change to the common areas.

1.2 **Acceptance of the Premises.** As of the date the Lessor delivers the premises to the Lessee, Lessee accepts possession of the premises in their "as is, where-is" condition as set forth in Section 5.6. After the commencement date, Lessee shall be solely responsible and liable for the repair, restoration and maintenance of the premises as provided in this lease.

1.3 **Quiet Enjoyment.** Upon payment of the rent and observance and performance of the conditions and agreements on the part of the Lessee to be observed and performed, the Lessee shall peaceably hold and enjoy the premises for the term of the lease without hindrance or interruption by the Lessor or any other person lawfully claiming by, through or under the Lessor except as expressly provided herein.

1.4 **Special Terms.** Any special terms (the Special Terms) applicable to this lease are set forth in **Exhibit D** attached hereto. Upon payment of the rent and observance and performance of the conditions and agreements on the part of the Lessee to be observed and performed, the Lessee shall peaceably hold and enjoy the premises for the term of the lease without hindrance or interruption by the Lessor or any other person lawfully claiming by, through or under the Lessor except as expressly provided herein.

## **ARTICLE II** **TERM**

2.1 **Term.** The term of this lease shall commence (the "commencement date") and terminate (the "termination date") on the dates stated in **Exhibit B** attached hereto (the term). If Lessor, for any reason other than the negligence or willful misconduct of Lessee, cannot deliver access to the premises to Lessee on or before the commencement date, this lease shall not be void or voidable, and Lessor shall not be liable to Lessee for any loss or damage resulting from Lessor's failure to deliver the premises to Lessee. However, during such period of non-delivery, the rent (i.e., monthly base rent and additional rent) payable under this lease shall be abated until Lessors offers occupancy of the premises to Lessee.

2.2 **Option to Extend the Term.** If Lessee shall have the right to extend the term of this lease, such extension shall be upon the terms and provisions set forth in the Option Addendum, if any, attached hereto. Such extension, if any, shall be upon the same terms and conditions of this lease, excepting for this option and the monthly base rent.

## **ARTICLE III** **RENT; SECURITY DEPOSIT**

3.1 **Monthly Base Rent.** Commencing on the commencement date and for each and every calendar month during the term, Lessee shall pay to the Lessor, on or before the first (1st) day of each month, in advance, at Lessor's address, monthly base rent as set forth in **Exhibit B** attached hereto. The monthly base rent, additional rent, security deposit and all other sums payable under this lease to Lessor by Lessee, which security deposit and other sums shall constitute additional rent hereunder, are collectively referred to herein as the "rent." Lessee specifically acknowledges and agrees that the amount of the monthly base rent and other rent set forth in this lease are negotiated figures and shall govern whether or not the actual square footage of the premises is the same as the approximate square footage set forth in **Exhibit A** and in **Exhibit C**.

### 3.2 Additional Rent.

(a) In addition to the monthly base rent, commencing on the commencement date, Lessee agrees to monthly pay, as additional rent, a percentage share of all Property maintenance and operating expenses as hereinafter defined. Lessee's percentage share of the Property maintenance and operating expenses is set forth in Exhibit C attached hereto. Lessee shall have no right to withhold, deduct or offset any amount from the additional rent even if the actual square footage of the premises is less than the approximate square footage of the premises set forth in Exhibit A and in Exhibit C above.

(b) As used in this Section 3.2, "Property maintenance and operating expenses" shall include, without limitation: (i) Lessor's overhead expenses pertaining to the Property and the common areas; (ii) costs of non-structural repairs, line painting, landscaping and irrigation, electricity, maintenance of parking areas, bulb replacement, cleaning up, sweeping and janitorial service; and cost of garbage and refuse removal, and any repairs, improvements or replacements required by law; (iii) costs of any repairs, alterations, modifications, amendments, additions and/or improvements to the Property and/or the premises, not otherwise paid for by any tenant of the Property, necessary, required or appropriate in order to bring the Property and/or the premises into compliance with the requirements, policies and/or procedures of "The Americans with Disabilities Act of 1990," 42 U.S.C. 12101 et. seq., and/or any rules and/or regulations promulgated with respect thereto; (iv) all billing, security, management and legal expenses incurred or paid by Lessor relating to the protection, maintenance and operation of the Property, the common areas and/or the premises not separately payable by any other tenant of the Property; (v) any utility charges for the Property, the common areas and/or the premises not separately metered to or paid for by any tenant of the Property; (vi) the costs of liability, fire and other property damage insurance, including any deductibles payable by the Lessor thereunder, which Lessor shall, in its sole discretion, deem necessary and/or appropriate with respect to the premises, the Property, the common areas and/or Lessee and/or Lessee's business, fixtures, equipment, installations and/or operations in the premises, common areas and/or Property; and (vii) any other costs which the Lessor shall conclude, in its sole discretion, are reasonable and necessary for maintaining and operating the common areas and/or the Property.

(c) Lessee's percentage share of the Property maintenance and operating expenses described in this Section 3.2 above shall be computed on an annual basis, at the beginning of each calendar year, and, to the extent such expenses are not fixed or known in advance, shall be estimated by the Lessor for the ensuing year. Lessee shall pay such expenses, as additional rent, prorata throughout the calendar year, in advance, with the monthly base rent, subject to reconciliation and adjustment as provided below. Lessor shall notify Lessee of Lessee's share of the Property maintenance and operating expenses for the coming calendar year as soon as reasonably possible after the beginning of each year. In the event Lessee's lease term shall commence or end at any other time than the beginning or end of a calendar year, the Lessee's additional rent under this Section 3.2 shall be adjusted prorata for such shortened period. Lessor shall have the right, in the event of unusual or extraordinary maintenance and operating expenses, to assess and collect, as additional rent, either as a one time or continuing charge, additional sums under this Section 3.2 to pay such expenses without affecting the Lessee's liability for the monthly sums hereinabove described.

(d) A statement of Lessee's percentage share of the Property maintenance and operating expenses described in this Section 3.2 shall be provided annually to Lessee within one hundred twenty (120) days of each calendar year end. If the Property maintenance and operating expenses according to such statement shall differ from the Property maintenance and operating expenses estimated by Lessor as provided above, the Property maintenance and operating expenses according to such statement shall be deemed correct and an appropriate adjustment shall be made in the additional rent by prompt payment by Lessee of any deficiency or, in the event of an excess, an adjustment of additional rent thereafter due to Lessor under this Section 3.2 to provide Lessee with reimbursement over a period of time not to exceed twelve (12) months. Notwithstanding the preceding, however, Lessors failure to provide Lessee with a statement of the Property maintenance and operating expenses by the date provided above shall in no way excuse Lessee from its obligation to pay its pro rata share of the Property maintenance and operating expenses or constitute a waiver of Lessor's right to bill and collect such pro rata share of the Property maintenance and operating expenses from Lessee as provided in this Section 3.2.

3.3 **Place of Payment.** The Lessee will pay the rent in legal tender of the United States of America to the Lessor at the address set forth above or at such other address as the Lessor may from time to time designate in writing to the Lessee at the times and in the manner previously set forth and without any deduction, notice, or demand.

3.4 **Security Deposit.** Lessee shall deliver a security deposit to Lessor in the amount set forth in Exhibit B attached hereto. This security deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms, covenants, and conditions of this lease to be kept and performed by Lessee during the term of this lease. If Lessee fails to keep and perform any of the terms, covenants and conditions of this lease to be kept and performed by Lessee, including the payment of rent or any other sum to Lessor, then Lessor, at its option, may appropriate and apply the entire deposit, or so much of the deposit as may be necessary, to compensate Lessor for any overdue rent or other sum or any loss or damage sustained or suffered by Lessor due to such breach by Lessee. Should the entire deposit, or any portion thereof, be so appropriated and applied by Lessor for the payment of losses, damages, overdue rent or other sums due and payable to Lessor by Lessee hereunder, then Lessee shall, upon the written demand of Lessor, forthwith remit to Lessor a sufficient amount to restore the security deposit to the original sum deposited. Lessee's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this lease. If Lessee complies with all of such terms, covenants, and conditions and promptly pays all of the rent and all other sums payable by Lessee to Lessor under this lease as they fall due, then the security deposit shall be returned, without interest, to Lessee at the end of the term of this lease, or upon earlier termination of this lease. Lessor may transfer and/or deliver the security deposit, as such, to the purchaser of the reversion of this lease, in the event that the reversion is sold and thereupon Lessor shall be discharged from any further liability to Lessee in reference thereto.



**ARTICLE IV**  
**TAXES AND OTHER CHARGES**

4.1 **Property Taxes And Assessments**. The Lessee will pay directly to Lessor a percentage share of all real and personal property taxes and assessments of every description for which the premises and the Property, and the improvements on the premises and the Property, or the Lessor or the Lessee in respect of the premises or the Property or the improvements on the premises or the Property, are now or during the term may be assessed or become liable, whether assessed to or payable by the Lessor or the Lessee. Lessee's percentage share of such taxes and assessments is set forth in **Exhibit C** attached hereto. All such taxes shall be prorated between the Lessor and the Lessee as of the commencement and expiration, respectively, of the term, and with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments of principal, together with interest on the unpaid balance, as shall become due and payable during the term.

4.2 **General Excise Tax; Conveyance Tax**. The Lessee shall pay to the Lessor with each payment of rent or any other payment hereunder which is subject to the general excise tax on gross income imposed by the State of Hawaii and all similar taxes imposed from time to time on the Lessor with respect to the rent and other payments (whether actually or constructively received) in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding net income taxes), whether imposed by the United States of America, the State of Hawaii or the County of Hawaii, an amount which, when added to such rent or other payments, shall yield to the Lessor, after deduction of all such taxes payable by the Lessor with respect to all such rent or other payments, a net amount equal to that which the Lessor would have realized if no such tax had been imposed. Lessee will also pay any conveyance taxes imposed by the State of Hawaii in respect of this lease.

4.3 **Master Lease Rent**. The monthly base rent set forth in Section 3.1 above includes a portion of the rent payable by Lessor under the Master Lease ("Master Lease Rent") described in Section 17.16 below as of the commencement date of this lease. If at any time after the commencement date, the Lessors Master Lease Rent for the Property increases over the amount of the Master Lease Rent as of the commencement date, then in such event, as of the date of such increase to Lessor, Lessees share of the Property maintenance and operating expenses payable under Section 3.2 above shall increase by an amount derived by multiplying the amount of the increase in the Master Lease Rent by the Lessee's percentage share set forth in Section 4.1 above. Lessee shall pay such percentage share of the increased Master Lease Rent as additional rent.

4.4 **Substitute Taxes and Additional Taxes**. The Lessee shall not be required to pay any taxes measured by the net income or inheritance, estate or transfer taxes of the Lessor. If at any time during the term the State of Hawaii or any political subdivision or agency or the federal government levies or assesses against the Lessor a tax, fee, or excise on: (i) rents, (ii) the area of the premises, (iii) the occupancy of the Lessee, (iv) any personal property tax, or (v) any other tax, fee, or excise, however described, including, without limitation, a so-called value added tax, as a direct substitution in whole or in part for, or in addition to, any real property taxes or excise tax, Lessee shall pay that tax, fee, or excise on rents before delinquency. The Lessee's share of any such

tax, fee, or excise shall be determined by the Lessor unless separately assessed or allocated by the tax assessor.

4.5 **Utilities and Other Services.** The Lessee will pay directly all charges, duties, rates, and other outgoings of every description for electricity, gas, water, telephone, refuse collection, sewage disposal or any other utilities or services to the premises.

4.6 **Right of Contest.** The Lessee shall have the right to contest the amount, validity or application of any tax, rate, assessment, lien, attachment, judgment, encumbrance, imposition, duty, charge or other outgoing payable by Lessee under this lease by any appropriate proceedings commenced before the disputed item becomes delinquent in the name of Lessee or in the name of Lessor if required by law, provided that (i) such proceeding shall be brought in good faith and diligently prosecuted, (ii) the Lessee shall pay all expenses thereof, and (iii) Lessee shall indemnify, defend and hold the Lessor harmless from and against all claims, demands and liability based on or arising from the Lessee's noncompliance with the matter which is the subject of such contest.

## **ARTICLE V USE OF THE PREMISES**

5.1 **Specific Use Allowed.** The premises shall be occupied and used by the Lessee only for the purpose(s) set forth in **Exhibit B** attached hereto and for no other purposes without the prior written consent of the Lessor. The Lessee shall not use or suffer or permit the premises in whole or part to be operated or to be used for any other purpose or purposes.

5.2 **Improvements Required By Law.** The Lessee will at its own expense make, build, rebuild, and maintain any and all improvements which may be required by law or private agreement to be made, built, rebuilt, and maintained upon or adjoining or in connection with or for the use of the premises in whole or in part. If such improvements shall be built, maintained, or rebuilt by the Lessor, the Lessee shall reimburse the Lessor its costs upon demand.

5.3 **Compliance with Law.** The Lessee shall, at Lessee's expense, comply with all laws concerning the premises or the Lessee's use of the premises, including, without limitation, all requirements, policies and/or procedures of "The Americans with Disabilities Act of 1990," 42 U.S.C. Section 12101 et. seq., and/or any rules and/or regulations promulgated with respect thereto, and all applicable laws pertaining to air and water quality, hazardous materials, waste disposal, air emissions and other environmental matters, and all zoning and land use matters, and the obligation to alter, maintain or restore the premises in compliance with laws relating to the condition, use or occupancy of the premises during the term.

5.4 **Waste or Nuisance.** The Lessee shall not use the premises in any manner that will constitute waste, nuisance or unreasonable annoyance.

5.5 **Vacation and Abandonment.** The Lessee shall not vacate or abandon the premises at any time during the term.

5.6 **Condition of the Premises.** As of the commencement date, the Lessee has examined and accepts the premises in their existing condition and shall be solely responsible for the adequate design, construction, and repair of all improvements now or hereafter made thereon. Except as specifically provided in this lease, the Lessee shall be solely responsible for obtaining at its expense (i) all utility services and connections and any other services or facilities required for or in connection with the use of the premises, and (ii) any governmental zoning, classification, approval, or consent required by law for or in connection with the use of the premises. Lessee agrees that (i) neither Lessor nor any employee, representative or agent of Lessor, has made any representation concerning the suitability of the premises for the conduct of the Lessee's business nor has there been any other representations covering the physical condition of the premises; (ii) Lessee's acceptance of the premises evidenced by Lessee's entry and the possession thereof shall constitute unqualified proof that the premises are, as of the date of commencement of Lessee's occupancy thereof, in a tenable and good condition; and (iii) Lessee shall be deemed to have waived any patent or latent defect in the premises except those latent defects in the premises discovered by Lessee during the period of any contractor's warranty covering such defective condition.

5.7 **Hazardous Materials.**

(a) As used herein, the term "hazardous material" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by the County in which the premises are located, the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the U.S. Food and Drug Administration, the Hawaii Department of Health, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

(b) Lessee agrees not to introduce any hazardous material in, on or adjacent to the premises without (i) obtaining Lessor's prior written approval, (ii) providing Lessor with thirty (30) days prior written notice of the exact amount, nature, and manner of intended use of such hazardous materials, and (iii) complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use, disposal and clean-up of hazardous materials, including, but not limited to, the obtaining of all proper permits.

(c) Lessee shall immediately notify Lessor of any inquiry, test, investigation, or enforcement proceeding by, against or directed at Lessee or the premises concerning a hazardous material. Lessee acknowledges that Lessor shall have the right, at its election, in its own name or as Lessee's agent, to negotiate, defend, approve, and appeal, at Lessee's expense, any action taken or order issued with regard to a hazardous material by any applicable governmental authority.

(d) If Lessee's storage, use or disposal of any hazardous material in, on or adjacent to the premises results in any contamination of the premises, the soil, surface water, groundwater, air, or sea, above, under or around the premises (i) requiring remediation under federal, state or local statutes, ordinances, regulations or policies, or (ii) at levels which are unacceptable to Lessor, in Lessor's sole and absolute discretion, Lessee agrees to clean-up the contamination immediately, at Lessee's sole cost and expense. Lessee further agrees to indemnify, defend and hold Lessor

harmless from and against any claims, suits, causes of action, costs, damages, loss and fees, including attorneys' fees and costs, arising out of or in connection with (i) any clean-up work, inquiry or enforcement proceeding relating to hazardous materials heretofore, currently or hereafter used, stored or disposed of by Lessee or its agents, employees, contractors or invitees on or about the premises, and (ii) the use, storage, disposal or release by Lessee or its agents, employees, contractors or invitees of any hazardous materials on or about the premises.

(e) Notwithstanding any other right of entry granted to Lessor under this lease, Lessor shall have the right to enter the premises or to have consultants enter the premises throughout the term of this lease at reasonable times for the purpose of determining: (1) whether the premises are in conformity with federal, state and local statutes, regulations, ordinances and policies, including those pertaining to the environmental condition of the premises; (2) whether Lessee has complied with this Section 5.7; and (3) the corrective measures, if any, required of Lessee to ensure the safe use, storage and disposal of hazardous materials. Lessee agrees to provide access and reasonable assistance for such inspections. Such inspections may include, but are not limited to, entering the premises with machinery for the purpose of obtaining laboratory samples. Lessor shall not be limited in the number of such inspections during the term of this lease. If, during such inspections, it is found that Lessee's use of hazardous materials constitutes a violation of this lease, Lessee shall reimburse Lessor for the cost of such inspections within ten (10) days of receipt of a written statement therefor. If such consultants determine that the premises are contaminated with hazardous material or in violation of any applicable environmental law, Lessee shall, in a timely manner, at its expense, remove such hazardous materials or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of Lessor and any applicable governmental agencies. If Lessee fails to do so, Lessor, at its sole discretion, may, in addition to all other remedies available to Lessor under this lease and at law and in equity, cause the violation and/or contamination to be remedied at Lessee's sole cost and expense. The right granted to Lessor herein to inspect the premises shall not create a duty on Lessor's part to inspect the premises, or liability of Lessor for Lessee's use, storage or disposal of hazardous materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith.

(f) Lessee shall surrender the premises to Lessor upon the expiration or earlier termination of this lease free of hazardous materials and in a condition which complies with all governmental statutes, ordinances, regulations and policies, recommendations of consultants hired by Lessor, and such other reasonable requirements as may be imposed by Lessor.

(g) Lessee's obligations under this Section 5.7 and all indemnification obligations of lessee under this lease shall survive the expiration or earlier termination of this lease.

(h) Lessor makes no representation, covenant or warranty to Lessee, its successors and assigns, regarding whether or not the premises are in full or partial compliance with any federal, state or local environmental statutes, regulations and ordinances or any other environmental requirements in any way relating to or affecting the premises or storage of hazardous materials.

5.8 **Rules and Regulations.** Lessor shall have the right to promulgate rules and regulations to police, regulate traffic in and control parking and common area use (including controlled access and employee parking), restrict tenant advertising and displays within the Property and otherwise regulate and control the Property, and amend the same from time to time,

The Lessor, Master Lessor or their authorized representatives may enter at any time and without notice to the Lessee in circumstances when persons or property may be in imminent danger, provided, however, that notice of entry shall be given as soon as reasonably possible thereafter.

14.2 **No Liability for Entry.** The Lessor and Master Lessor shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the Lessor's or Master Lessors entry on the premises as provided in this Article, except damage resulting from the willful or grossly negligent acts or omissions of the Lessor, Master Lessor or their authorized representatives. The Lessee shall not be entitled to an abatement or reduction of rent if the Lessor or Master Lessor exercises any rights reserved in this Article in a manner that does not materially interrupt the normal operation of the Lessee's business. The Lessor shall, to the extent reasonably possible, conduct its activities on the premises as allowed in this Article in a manner that will cause the least possible inconvenience, annoyance or disturbance to the Lessee.

## **ARTICLE XV WAIVER**

15.1 **Waiver.** No delay or omission in the exercise of any right or remedy of the Lessor on any default by the Lessee shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by the Lessor of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No act or conduct of the Lessor, including, without limitation, the acceptance of the keys to the premises, shall constitute an acceptance of the surrender of the premises by the Lessee before the expiration of the term. Only a notice from the Lessor to the Lessee shall constitute acceptance of the surrender of the premises and accomplish a termination of the lease. The Lessor's consent to or approval of any act by the Lessee requiring the Lessor's consent or approval shall not be deemed to waive or render unnecessary the Lessor's consent to or approval of any subsequent act by the Lessee. Any waiver by the Lessor of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this lease.

## **ARTICLE XVI SURRENDER OF PREMISES; HOLDING OVER**

16.1 **Surrender of Premises.** At the expiration of the term of this lease, the Lessee shall surrender the premises in the same condition of cleanliness, repair and sightliness as the premises were in upon the commencement date of this lease. Lessee shall surrender all keys for the premises to Lessor at the place then fixed for the payment of rent and shall inform Lessor about all combinations on locks, safes and vaults, if any, in the premises. On such day, unless the Lessor shall, in its sole discretion, require the removal thereof, all buildings, structures, alterations, additions, improvements, all hard surface bonded or adhesively affixed flooring, and all fixtures on the premises other than Lessee's trade fixtures and operating equipment, shall become the property of Lessor and shall remain upon and be surrendered with the premises as a part thereof, without disturbance, molestation or injury, and without credit to Lessee, its sublessees, concessionaires or licensees. On or before the last day of the term or the sooner termination hereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Lessee. In addition, if required by the Lessor, Lessee shall remove any or all buildings, structures,

alterations, additions, improvements, flooring and other fixtures as Lessor shall require. from the premises and repair any damage occasioned by any such removal. If Lessor is required to repair any damage caused to the premises by such removal, Lessee shall repay the Lessor for the cost of the same. Property not so removed shall be deemed abandoned by Lessee. If the premises are not surrendered at such time, Lessee shall indemnify Lessor against loss or liability resulting from delay by Lessee in so surrendering the premises, including without limitation, any claims made by any succeeding tenant based on such delay and/or Lessor's lost rental income. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this lease.

The Lessor may retain or dispose of in any manner any buildings, structures, alterations, trade fixtures or personal property that the Lessee does not remove from the premises on expiration or termination of this lease by giving at least ten days' notice to the Lessee. Title to any such alterations, trade fixtures or personal property that the Lessor elects to retain or dispose of on expiration of the ten-day period shall vest in the Lessor. The Lessee waives all claims against the Lessor for any damage to the Lessee resulting from the Lessor's retention or disposition of any such alterations, trade fixtures or personal property. The Lessee shall be liable to the Lessor for the Lessor's costs for storing, removing, and disposing of any buildings, structures, alterations, trade fixtures or personal property that Lessor was required, but failed, to remove.

16.2 **Liquidated Damages.** If Lessee shall, at the expiration or other termination of this lease, fail to yield possession to Lessor, Lessor shall have the option to require Lessee to pay and Lessee shall pay, as liquidated damages, for each day possession is withheld, an amount equal to double the amount of the daily monthly base rent computed on the basis of a thirty (30)-day month, together with additional rent and any other payments required under this lease.

16.3 **Holding Over.** If the Lessee, with Lessor's written consent, remains in possession of the premises after expiration or termination of the term, or after the date in any notice given by the Lessor to the Lessee terminating this lease, such possession shall be deemed to be a month-to-month tenancy terminable on thirty days' written notice given at any time by either party. All provisions of this lease except those pertaining to term shall apply to the month-to-month tenancy.

## **ARTICLE XVII** **MISCELLANEOUS PROVISIONS**

17.1 **Consent of Parties.** Except as otherwise provided herein, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval and no charge shall be made for consent except for reasonable attorneys fees and out of pocket costs incurred in connection with the review and preparation of the consent.

17.8 **Severability**. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

17.9 **Subordination of Lease**. This lease shall automatically be subordinate to any mortgage, encumbrance or deed of trust heretofore or hereafter placed upon the premises by Lessor, to any and all advances made or to be made thereunder, to the interest on the obligations secured thereby, and to all renewals, replacements and extensions thereof; provided, however, that in the event of foreclosure of any such mortgage or deed of trust or exercise of the power of sale thereunder, Lessee shall attorn to the purchaser at such foreclosure or sale, and recognize such purchaser as lessor under this lease if so requested by such purchaser. Within ten days after request therefor by Lessor, or, in the event that upon Lessor's sale, assignment or hypothecation of the Lessor's interest in land or improvements which comprise the premises, an estoppel or offset statement shall be required from Lessee, Lessee shall deliver in recordable form a certificate to any purchaser, mortgagee under such mortgage, or to Lessor, certifying (if such be the case) that this lease is in full force and effect and that there are no defenses or offsets thereto, or stating those claimed by Lessee, and stating such other facts and conditions as may be reasonably required of Lessee. In the event Lessor is refinancing the premises, Lessee agrees to deliver a current financial statement to the proposed lender. If any mortgagee or beneficiary elects to have this lease superior to its mortgage or deed of trust and gives notice of its election to Lessee, then this lease shall thereupon become superior to the lien of such mortgage or deed of trust, whether this lease is dated or recorded before or after the mortgage or deed or trust. Lessee shall execute promptly after demand, without charge, all forms, documents and instruments required by Lessor to carry out the terms of this Section.

17.10 **Singular and Plural; Pronouns**. When required by the context of this lease, the singular shall include the plural. A pronoun of one gender shall include reference to all genders as the context may require.

17.11 **Binding Effect**. Except as otherwise provided herein, this lease and each and every provision hereof shall be binding on and shall, subject to the required consent of Lessor, inure to the benefit of the parties hereto, their respective personal representatives, successors, heirs, and permitted assigns, and to each and every successor-in-interest of any party hereto, whether such successor acquires any such interest by way of gift, purchase, foreclosure, merger, or by any other method.

17.12 **Right to Estoppel Certificates**. Each party, within ten days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of the base monthly rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the ten days shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate and any successor to the party requesting the certificate, that this lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

17.2 **Exhibits--Incorporation in Lease.** All exhibits referred to are attached to the lease and incorporated by reference.

17.3 **Hawaii Law.** This lease shall be construed and interpreted in accordance with Hawaii law.

17.4 **Integrated Agreement; Modification.** This lease contains the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this lease in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. It is expressly understood and agreed that each and all of the provisions of this lease are conditions precedent to be faithfully and fully performed and observed by the Lessee to entitle Lessee to continue in possession of the premises hereunder; that said conditions are also covenants on the part of Lessee; and that time of performance of each is of the essence of this lease.

17.5 **Notices.** Any notice or demand which a party may or is required to give to the other party or parties to this lease shall be in writing and given to such party, or delivered by a reputable air courier service, e.g., Federal Express or UPS, which provides written evidence of delivery, addressed to it at its address set forth on the first page of this lease, or facsimile number or to such other address, facsimile number as shall be designated by one party in a written notice to the other party or parties. Each such notice or demand shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified and the appropriate confirmation is received, (ii) if given by United States certified mail, return receipt requested with first class postage prepaid, addressed as aforesaid, upon receipt or (iii) if given by any other means, when delivered at the address specified above.

17.6 **Submission to Condominium Property Regime.** Lessor shall also have the right, without the consent of Lessee to submit all or a part of the Property of which the premises are a portion to a Condominium Property Regime under Chapter 514A of the Hawaii Revised Statutes or any successor statute and to execute and record a Declaration of Condominium Property Regime and any amendments thereto, as deemed appropriate or necessary by Lessor; provided, however, that any such submission to a Condominium Property Regime shall be subject to the Lessee's rights under this lease. Lessor shall have the right to add, delete, relocate, realign, reserve and grant all easements and rights of way over, under and on the common areas, the Property and the premises as may be necessary or desirable in connection with such submission of the Property; provided, however, that such easements and rights-of-way shall not materially impair the use of the premises by Lessee. To the extent that the joinder of Lessee shall be required in order to validate any Declaration of Condominium Property Regime or amendment contemplated therein, Lessee hereby agrees to join in and to execute the same, and for purposes of further securing the foregoing covenant, Lessee hereby irrevocably appoints Lessor as its attorney-in-fact, coupled with an interest, for purposes of executing, recording and acknowledging any such Declaration or amendment for and on behalf of Lessee.

17.7 **Rent Payable in U.S. Money.** Rent and all other sums payable under this lease must be paid in lawful money of the United States of America.



17.13 **Attorney's, Architect's, Etc. Fees.** If Lessor and/or its agent shall, without fault, be made a party to any litigation by or against Lessee arising out of Lessee's occupancy of the premises or any act of Lessee concerning the premises or this lease, or if litigation shall be brought for recovery of possession of the premises, for the recovery of rent or any other amount due under the provisions of this lease, or because of the breach of any covenant in this lease to be kept or performed by Lessee, and a breach shall be established, the Lessee shall pay to Lessor and/or its agent all expenses incurred in connection therewith, including attorney's fees. Lessee shall also pay any and all costs and fees incurred or paid by the Lessor, including attorney's fees and the fees of architects or other professionals employed by Lessor, to review, revise or prepare any document, plan or other writing of any nature presented by or on behalf of the Lessee to Lessor for review or approval in connection with Lessee or any action by Lessee under this lease, including, without limitation, requests for consents to assignments, subleases, mortgages or other similar items, or certificates, approvals, opinions, or other agreements with respect thereto, which such items in the opinion of the Lessor require the employment of an attorney or other professional on behalf of the Lessor. Any failure of the Lessee to pay such costs or fees upon demand of the Lessor shall be deemed a default under this lease and the Lessor shall be entitled to exercise its rights on account of such default as provided above. Lessor shall not be obligated to consider, review, execute or deliver any consent, approval, certificate or other item until the costs and fees herein required to be paid by the Lessee have been paid.

17.14 **Additional Improvements Upon Property.** Lessor reserves the right, at any time, to make alterations or additions to, and to build additional stories on the building in which the premises are contained and to build in areas adjoining the premises. Lessor also reserves the right, from time to time, to construct other buildings or improvements on the Property and to make alterations or additions thereto and to build additional stories on any such buildings and to build adjoining the same and to construct controlled or elevated parking facilities. Lessor's exercise of these rights will not require Lessor to compensate Lessee in any way, nor will it result in any liability by Lessor to Lessee or in any way affect Lessee's obligations under this lease.

17.15 **Force Majeure.** In the event that either Lessor or Lessee shall be delayed or hindered in or prevented from the performance from any act required under this lease by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, or other reason of a like nature, not the fault of the party delayed in performing the work or doing the acts required under the terms of this lease then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 17.15 shall not operate to excuse Lessee from the prompt payment of rent, or any other payments required by the terms of this lease.

17.16 **Master Lease.** This lease is subject to that certain Harbor Lease H-82-4 dated April 8, 1983, made by and between the STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, as Lessor (the Master Lessor), and GENTRY-PACIFIC, LTD., as Lessee, recorded in Book 17799, Page 314, in the Bureau of Conveyances of the State of Hawaii, which Harbor Lease was, (a) by mesne assignment, assigned to the Lessor herein by that certain unrecorded Assignment of Lease dated October 15, 2002, consent thereto given by the State of Hawaii, Board of Land and Natural Resources, by unrecorded instrument executed March 19, 2003, and (b) extended by Extension of Harbor Lease No. H-82-4 dated May 12, 2006, recorded as

Document No. 2009-147205 in the Bureau of Conveyances of the State of Hawaii, as the same may hereafter be amended from time to time (the "Master Lease"). Lessee acknowledges having received and reviewed a copy of the Master Lease. If there is any conflict between the provisions of this lease and the provisions of the Master Lease, then, in every such event, the provisions of the Master Lease shall control, to the exclusion of any inconsistent provisions of this lease. Lessee covenants and agrees that it will not violate any term, covenant or condition contained in the Master Lease and on the part of Lessor to be observed and performed. Lessee acknowledges that this lease and the Lessee's right to occupy and use the premises under this lease is subject to and conditioned upon the Master Lessor's approval of this lease and Lessee accepts the risk that the Master Lessor will not approve this lease. In the event the Master Lessor refuses to approve this lease, this lease, and the Lessor's and Lessee's rights, duties and obligations under this lease, will terminate and the Lessor shall not be liable to Lessee for any loss or damage resulting from the Master Lessor's refusal to approve this lease or the termination of this lease by reason thereof.

17.17 **Trademarks.** Lessee acknowledges that Lessor is owner of all right, title and interest in and to the name and mark "Gentry's Kona Marina", that Lessor is owner of all right, title and interest in and to the trade name "Gentry's Kona Marina" apart from Lessor's exclusive rights in the words "Gentry's Kona Marina", and that Lessee may only use the name and mark "Gentry's Kona Marina" with the approval and permission of Lessor. For purposes of this Section, the name and mark "Gentry's Kona Marina", and any modifications of the name and mark which incorporate the words "Gentry's Kona Marina", are collectively referred to as the "Trademarks". Lessee agrees never to contest Lessor's title to the Trademarks or the validity of any Trademark application or registration therefor filed or obtained by Lessor. Lessee shall not use the name of Lessor, the Property, the Trademarks, or words to that effect, except for the use of "Gentry's Kona Marina" as a part of Lessee's address. Lessee acknowledges that Lessor shall be entitled to immediate injunctive relief against any misuse or infringement of the Trademarks by Lessee, and Lessee agrees to pay all attorneys' fees of Lessor resulting from any action taken by Lessor to terminate such misuse, infringement or other violation of this Section. In the event that Lessor changes or modifies any of the Trademarks, Lessor shall not be liable to Lessee for any cost, loss or expense whatsoever incurred by Lessee with respect thereto and Lessor shall have no obligation to purchase from Lessee any inventory, advertising materials or other property of Lessee which utilized the changed Trademark.

## **ARTICLE XVIII** **ARBITRATION**

### **18.1 Arbitration of Disputes.**

(a) **Submission to Arbitration.** Except as otherwise provided in Subsection (d) below, in the event of any dispute or claim arising out of this lease or the parties' performance or default hereunder (other than the nonpayment of rent or other sums expressly due and payable under this lease), such dispute or claim shall be submitted to binding arbitration by a single arbitrator, pursuant to the provisions of Hawaii Revised Statutes Chapter 658A, as amended ("Chapter 658A") and this Article XIX.

(b) **Appointment of Arbitrator.** Except as otherwise provided in Subsection (d) below,

the arbitrator shall be selected by the parties or if they are unable to agree upon the arbitrator, the arbitrator shall be appointed by the Circuit Judge of the Third Circuit Court, as provided in Chapter 658A.

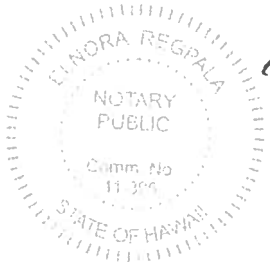
(c) Arbitrator's Decision Final. The award of the arbitrator shall be final and binding subject only to confirmation, modification, correction or vacation as provided in Chapter 658A and judgment may be entered thereon as provided in Chapter 658A; provided, however, that no such award shall provide for an award of punitive damages or other exemplary relief. The costs and fees incurred by the parties in the arbitration, and the costs of the arbitration, shall be paid by the non-prevailing party as determined by the arbitrator; the costs and fees incurred by the parties in any judicial proceeding subsequent to an award, and the cost of such proceedings, shall be paid to the prevailing party as provided in Chapter 658A.

(d) Matters That May be Pursued in Court. Notwithstanding any provision to the contrary in this Article XVIII, the parties have reserved the right to pursue, in a court of competent jurisdiction, (i) a temporary restraining order, preliminary injunction and/or specific performance, as appropriate, where the failure to enjoin a party's breach of an obligation under this lease or the failure to enforce a party's compliance with any obligation or condition of this lease will create irreparable harm to the party seeking such relief and monetary damages would be an inadequate remedy at law, and (ii) an action for summary possession and a writ to be issued therein under Hawaii Revised Statutes Chapter 666, as amended, where Lessee has failed to pay the rent or other sums due and payable under this lease. Regardless of whether the court grants or denies the request for such equitable or summary relief, all issues relating to monetary damages or costs of any type (other than the nonpayment of rent or other sums expressly due and payable under this lease) shall continue to remain subject to arbitration as provided herein.

**SIGNATURE PAGE FOLLOWS**

STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

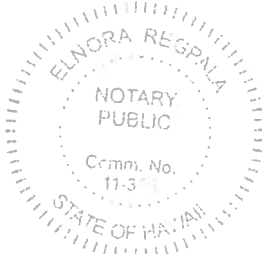
On this 3<sup>rd</sup> day of December, 2021, before me personally appeared Gary Lambert to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Elnora Regpala  
Name: ELNORA REGPALA  
Notary Public, State of Hawaii

My commission expires: 12-18-2023

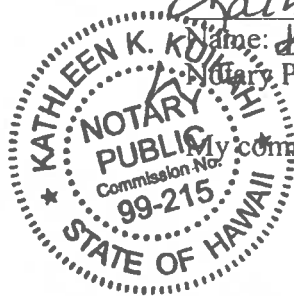
<b>NOTARY CERTIFICATION</b>	
Date	<u>DEC 03 2021</u> Third Circuit
Notary Name	<u>ELNORA REGPALA</u>
Commission Expiration Date	<u>12-18-2023</u>
Notary Signature	<u>Elnora Regpala</u>



STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

On this 2 day of December, 2021, before me personally appeared Simon Uclaj, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Kathleen K. Kuo  
Name: Kathleen K. Kuo  
Notary Public, State of Hawaii  
My commission expires: 5-25-2023





**EXHIBIT B**  
**TERM, USE, SECURITY DEPOSIT AND MONTHLY BASE RENT**

Lessee: Hang Loose Boat Tours LLC  
Premises: Space No. 14

Lessor and Lessee hereby agree and confirm that:

I. **TERM:**

The "commencement date" of the term will begin on the 1<sup>st</sup> of the month following the Board of Land and Natural Resources (BLNR) approval of the sublease  
The "termination date" of the term is five (5) years from the "commencement date".

II. **USE:** Customer service center and storage of a dive and snorkel tour operation.  
Retail sales of companies' own logo wear, swim/snorkel gear and dive equipment.  
No check-in or drop-off of guests.

III. **SECURITY DEPOSIT.** \$1,753.00

IV. **MONTHLY BASE RENT:**

- A. As of the commencement date, the monthly base rent is \$1,753.00 per month.
- B. Commencing a year from the "Commencement date" (or such other date as may be agreed upon by Lessor and Lessee) and on the same day of each calendar year thereafter during the remainder of the term of this lease (the "adjustment date"), the monthly base rent shall be increased 5.00% or an increase equal to the Consumer Price Index, whichever is higher. If the Consumer Price Index for the twelve (12)-month period immediately preceding the adjustment date is higher it will be used and the adjusted monthly base rent shall become the monthly base rent for the next twelve (12) following-month period. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, Honolulu, Hawaii, All Items--Series A. Should the Bureau discontinue publication of its Consumer Price Index, then computation of any adjustment of the monthly base rent during each period shall be based upon the index the Bureau designates as providing the most accurate comparison with consumer prices for each period of the term of this lease, provided, however, that the adjusted monthly base rent shall in no case be less than the monthly base rent during the month immediately preceding the adjustment date.

"LESSOR"  
  
Initials

"LESSEE"  
  
Initials

**EXHIBIT C**  
**PROPERTY MAINTENANCE AND OPERATING EXPENSES,**  
**TAXES AND ASSESSMENTS**  
**(Lessees Percentage Share)**

Lessee: Hang Loose Boat Tours LLC  
Premises: Space No. 14

- I. Approximate total square footage of areas in Gentry's Kona Marina.
- |   |   |                        |
|---|---|------------------------|
| "Class I", which is Improved, Enclosed Space          | = | 27,793 sq. ft.         |
| "Class II", which is Partially Improved, Roofed Space | = | 12,914 sq. ft.         |
| "Class III", which is Open Space                      | = | <u>30,210 sq. ft.</u>  |
|   |   |                        |
| Approximate total leasable sf in GKM                  | = | 70,917 sq. ft.         |
| Approximate common area sf in GKM                     | = | <u>106,955 sq. ft.</u> |
|   |   |                        |
| Approximate total area sf of GKM                      | = | 177,872 sq. ft.        |
- II. Sections 4.1 and 4.3: Computation of Real Taxes, Assessments and Master Lease Rent.
- A. Computation on land - Lessee's percentage share of real property taxes and assessments for land is computed as follows:  $1,152 \text{ sq. ft. (Lessee's Space)}/70,917 \text{ sq. ft. (Approximate total leasable square feet in Gentry's Kona Marina)} = 1.62\%$  (Lessee's percentage share of real property taxes and assessments on all land in GKM)
- B. Computation on buildings and improvements - Lessee's weighted percentage share of taxes and assessments for buildings and improvements is computed as follows:
- "Class I", which is 27,793 sq. ft. (and is to be weighted 6.7)  $\times 6.7 = 186,213 \text{ sq. ft.}$  (which is the weighted amount of Class I improvements)
- "Class II", which is 12,914 sq. ft. (and is to be weighted 2.0)  $\times 2.0 = 25,828 \text{ sq. ft.}$  which is the weighted amount of Class II improvements)
- Total weighted amount of Class I and II improvements = 212,041 sq. ft.
- 1,152 sq. ft of Class I Area (Lessee's Space)  $\times 6.7$ , which is Class I weight = 7,718 sq. ft. (Lessee's weighted space)/212,041 (total weighted space) = 3.64% (Lessee's percentage share of real property taxes and assessments on all buildings)



III. Section 3.2: Computation of Lessee's percentage share of Property maintenance and operating expenses.

Lessee's weighted percentage share of Property maintenance and operating expenses is computed as follows:

"Class I", which is 27,793 sq. ft. (and is to be weighted 6.7) x 6.7 = 186,213 sq. ft.

"Class II", which is 12,914 sq. ft. (and is to be weighted 2.0) x 2.0 = 25,828 sq. ft.

"Class III", which is 30,210 sq. ft. (and is to be weighted 1.0) x 1.0 = 30,210 sq. ft.


Total weighted amount of Class I, II and III spaces = 242,251 sq. ft.

1,152 sq. ft. of Class I area (Lessee's Space) x 6.7, which is Class I weight = 7,718 sq. ft (Lessee's weighted space)/242,251 (total weighted space) = 3.18% (Lessee's percentage share of Property maintenance and operating expenses)

"LESSOR"

  
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(initials)

"LESSEE"

  
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(initials)

**EXHIBIT D**  
**SPECIAL TERMS**

Lessee:            Hang Loose Boat Tours LLC  
Premises:        Space No. 14


Lessor and Lessee agree that the following Special Terms shall be a part of the attached Gentry's Kona Marina Sublease.

- 1) Lessee agrees, that when advertising, Lessee shall use the full name, "Gentry's Kona Marina" in its advertising of the business conducted by Lessee upon the premises. Lessor shall have the right to change the name of "Gentry's Kona Marina" upon ninety (90) days written notice to Lessee. In the event of a change in the name "Gentry's Kona Marina", Lessee agrees to advertise under the new name. Lessee agrees that any name used for the Gentry's Kona Marina, shall be the sole property of, and belong to, the Lessor. From and after the termination or expiration of the term of the Sublease, for any reason whatsoever, Lessee shall cease using the name of Gentry's Kona Marina, or any change thereof, for any reason.
  
- 2) No wash down of vessels/vehicles will be allowed behind premises or in common areas of Gentry's Kona Marina.
  
- 3) Lessee acknowledges acceptance of premises in the current condition including the responsibility to repair and maintain. (See sublease Article 1.2 Acceptance of the Premises). The current condition of the improvements are unknown and may not work at all (i.e. A/C units left behind by prior tenant). If there are any questions with regards to any of the improvements, prior to signing the Sublease, Lessor recommends hiring the proper tradesperson for inspection. Lessee may be responsible for the removal of the improvements upon termination of the agreement pursuant to the terms and conditions of this sublease.

"LESSOR"

  
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(initials)

"LESSEE"

  
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(initials)