

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

November 8, 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-70-14, Keehi Marine, Inc. ("Keehi Marine"), Lessee, Cates Marine Services LLC, a Hawaii Corporation, Sublessee, Ke'ehi Small Boat Harbor, Kalihi, Honolulu, Hawaii, Tax Map Key: (1) 1-2-023:030.

APPLICANT:

Keehi Marine Inc., a Hawaii corporation, located at 24 Sand Island Access Road, Honolulu, Hawaii 96819, as Sublessor, to:

Cates Marine Services LLC, a Hawaii Corporation.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

A portion of Government lands situated at the Keehi Small Boat Harbor, Kalihi-Kai, Honolulu, Oahu, identified by Tax Map Key: (1) 1-2-023:030, as shown in **Exhibits A-1 and A-2**.

LEASE AREA:

Total lease area is 8.141 acres, consisting of 3.726 acres of fast land and 4.415 acres of submerged land, more or less.

SUBLEASE AREA:

1,067 square feet of unimproved fenced in area. See **Exhibit A-3 and A-4**.

TRUST LAND STATUS:

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

LEASE CHARACTER OF USE:

Keehi Marine, Inc. Boating Lease No. H-70-14 ("Lease") allows for the following purposes:

The construction, operation, and maintenance of:

- Marine railway for boat repairs
- Marine retail store for the sale of services of marine equipment
- A marina
- A clubhouse for boat clubs

Other related activities as approved in writing by the Lessor.

SUBLEASE CHARACTER OF USE:

A support office for marine salvage and service operation.

TERM OF LEASE:

Sixty Five (65) years

Original term of Harbor Lease No. H-70-14 of forty-five (45) years commencing February 1, 1971, and ending January 31, 2016.

At its meeting on March 24, 2000, under agenda item J-1, the Board approved a ten (10) year extension commencing February 1, 2016, and ending on January 31, 2026.

At its meeting on March 22, 2024, under agenda item J-3, the Board approved a ten (10) year extension commencing on February 1, 2026, and expire on January 31, 2036, for an aggregate term of 65 years (initial 45 year term, the prior 10 year extension, and the requested 10 year extension).

TERM OF SUBLEASE:

November 01, 2024, through December 31, 2025. **(See Exhibit B).**

ANNUAL LEASE RENTAL:

Rent for the first 5 years was set at \$39,600 per year and renegotiates at 5-year intervals.

Original Lease Term (45 Years)

February 1, 1971 to January 31, 1976 - \$ 39,600.00/year
February 1, 1976 to January 31, 1981 - \$ 39,600.00/year
February 1, 1981 to January 31, 1986 - \$ 39,600.00/year
February 1, 1986 to January 31, 1991 - \$105,280.00/year
February 1, 1991 to January 31, 1996 - \$162,500.00/year
February 1, 1996 to January 31, 2001 - \$260,000.00/year
February 1, 2001 to January 31, 2006 - \$295,000.00/year
February 1, 2006 to January 31, 2011 - \$330,000.00/year
February 1, 2011 to January 31, 2016 - \$330,000.00/year

Extended Lease Term (10 Years)

February 1, 2016 to January 31, 2019 - \$576,750.00/year
February 1, 2019 to January 31, 2023 - \$676,750.00/year
February 1, 2023 to January 31, 2026 - \$776,750.00/year

ANNUAL SUBLEASE RENTAL:

\$15,120.24/year

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

SUBLESSEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

REMARKS:

The lease, issued in 1971 to Keehi Drydock Corporation, was assigned to Amfac Distributing Company Ltd. in 1977.

Amfac Marine Supply, Inc., as successor in interest to Amfac Distribution Company Ltd., assigned the lease to Keehi Marine Center LP in 1984.

In 1999, Keehi Marine Center LP was converted from a limited partnership to a

corporation (Keehi Marine, Inc.), which is the current lessee.

Keehi Marine's sublease requires the sublessee to carry commercial general liability insurance coverage with the following limits: \$1,000,000 per occurrence; \$1,000,000 per person; and \$1,000,000 property damage. These differ from the limits contained in the State of Hawaii's leases for general liability insurance, which have limits of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate.

At its meeting on May 13, 2022, under agenda item J-4, the Board approved a mediated settlement of the tenant's base rent reopening for the period beginning February 1, 2016, to the end of its lease on January 31, 2026. Included in the settlement was an agreement for the lessor not to seek participation in the lessee's sublease rents for that 10-year period due to the six-year after-the-fact nature of the rent reopening. However, DOBOR reserved the right to participate in sublease rents if the lease term were extended beyond January 31, 2026.

At its meeting on March 22, 2024, under agenda item J-3, the Board approved a ten (10) year extension commencing on February 1, 2026, and expire on January 31, 2036, for an aggregate term of 65 years (initial 45 year term, the prior 10 year extension, and the requested 10 year extension).

Staff recommends that the sublessees' general liability insurance policy limits be changed to bring them in line with those contained in State leases and be issued by insurance carriers licensed to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII". In addition, staff recommends the State of Hawaii be named as additional insured on the sublessees' general liability insurance policy.

RECOMMENDATION:

That the Board consent to the subleases under Harbor Lease No. H-70-14 between Keehi Marine, Inc., as Sublessor and Shaka Engineering, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. Sublessees' general liability insurance policies shall:
 - a) Contain limits in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate;
 - b) Be issued by carriers licensed to do business in the State of Hawaii, with an AM Best rating of at least A-, VIII;
 - c) Name the State of Hawaii as additional insured;
2. The standard terms and conditions of the most current consent to sublease form,

as may be amended from time to time;

3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



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

Attachments:

- A-1 Keehi Small Boat Harbor on the Island of Oahu
- A-2 Keehi Marine, Inc. location in Keehi Small Boat Harbor
- A-3 Sublessee location on the Premises
- A-4 All tenant locations on the Premises
- B Sublease Document

Exhibit A-1

Keehi Marine, Inc.



Exhibit A-1

Exhibit A-2

Keehi Marine, Inc.



Keehi Marine, Inc.

Exhibit A-3

Cates Marine Services LLC – Unimproved Area



**Cates Marine Services LLC
(Approx. 1,067 Sq. Ft.)**

Exhibit A-3

Exhibit A-4

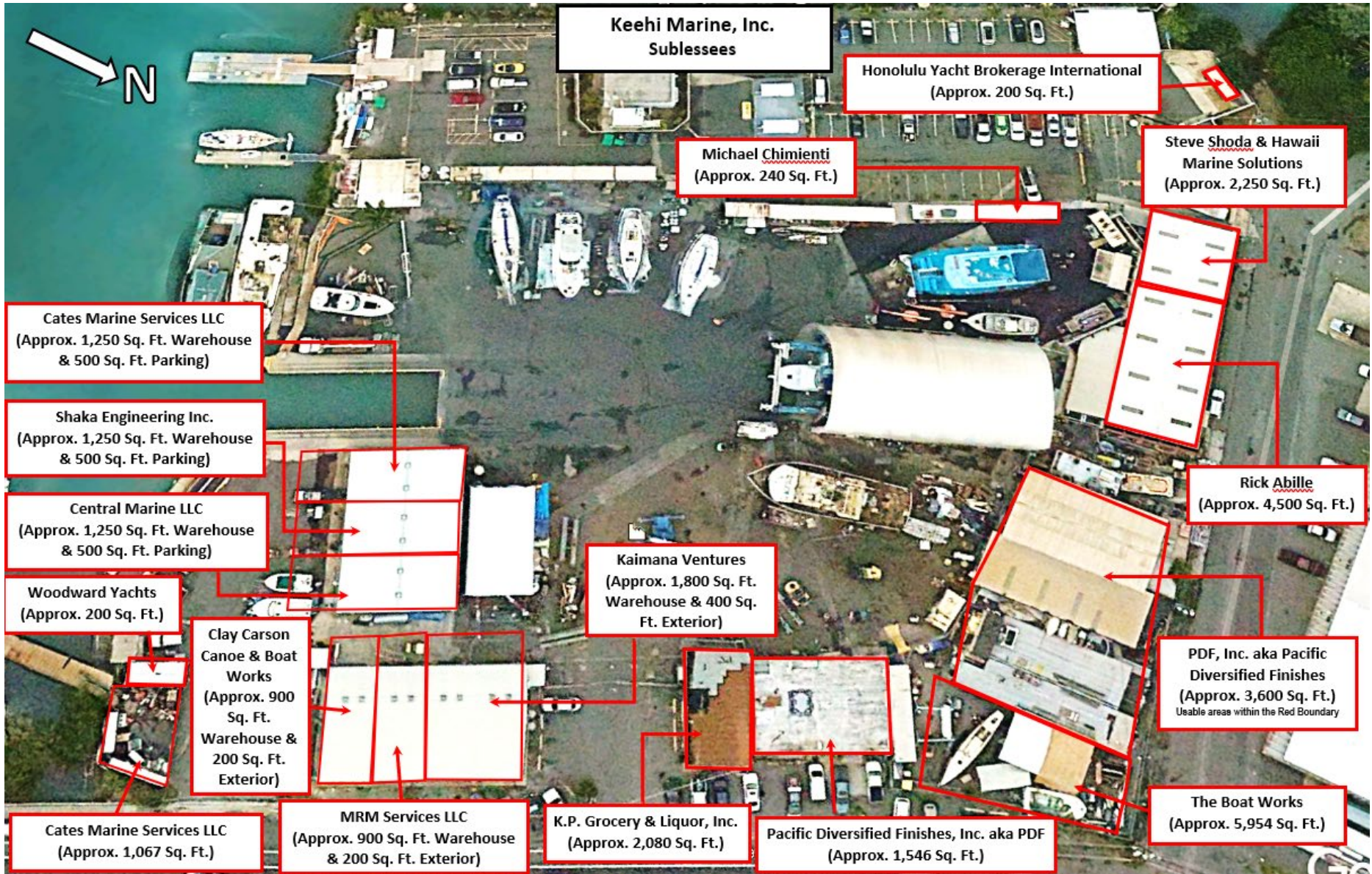


Exhibit A-4

Exhibit B

SUBLEASE

This Sublease is made as of September 3, 2024 by and between KEEHI MARINE, INC., a Hawaii Corporation, whose address is 24 Sand Island Access Road, Honolulu, Hawaii 96819 (hereinafter called "Sublessor", and **Cates Marine Services LLC**, whose address is [REDACTED] (hereinafter called "Sublessee").

WITNESSETH THAT:

WHEREAS, Sublessor is the current lessee under that certain Lease dated February 1, 1971 (the "Master Lease") by and between the State of Hawaii, as lessor (the "Master Lessor"), and Keehi Drydock Corporation, as lessee, which Master Lease is recorded in the Bureau of Conveyances of the State of Hawaii in Liber 17826, page 428; and

WHEREAS, the land leased pursuant to the Master Lease (the "Land") together with the improvements thereon are known as the Keehi Marine Center (the "Center"); and

WHEREAS, Sublessee desires to sublease from Sublessor those certain Premises more particularly described herein (the "Premises");

NOW, THEREFORE, for and in consideration of the premises and the covenants and agreements contained herein, and other good and valuable consideration, the Sublessor does hereby sublease, demise, and let unto Sublessee the Premises together with the non-exclusive right to use those areas of the Center which are not reserved for the exclusive use of Sublessor or any one Tenant ("Common Areas") for ingress and egress to the Premises and sublessee does hereby hire and take from Sublessor the Premises.

SECTION 1. SPECIFIC SUBLEASE TERMS.

1.1 Name and Address of Sublessee:

Cates Marine Services LLC
24 Sand Island Access Road
Honolulu, Hawaii 96819

1.2 Premises.

The "Premises" consist of following:

1.2.1 Land Area: Approximately 1,067 square feet of unimproved fenced in area.

1.2.2 Parking: One assigned parking space for vehicle use only. Boats, trailers, equipment, etc. are not allowed in the space. No storage of vehicles. All vehicles must have current registration and safety sticker.

1.2.3 Improvements: Fence.

- 1.3 Term. –
This Sublease shall commence on November 1, 2024 ("commencement Date") and end on December 31, 2025
- 1.4 Rent.
- 1.4.1 "Base Rent" : \$1,320.00 per month including 4.712% Hawaii General excise tax.
- 1.4.2 "Percentage Rent" : N/A.
- 1.4.3 All other sums designated in the "Standard Terms and Conditions."
- 1.5 Use. The Premises may be used for the following purpose (s) and no other purpose (s) :
Support area for marine salvage and service operation.
- 1.6 "Security Deposit" : \$1,320
- 1.7 Sublessee's "Prorata Share": 1%
- 1.8 Insurance. Sublessee shall maintain the following types of insurance with the following minimum limits:
- 1.8.1 Commercial General Liability Insurance (including products, contractual, and personal injury liability) with a minimum per occurrence limit of US\$ 1,000,000 and minimum per person limit of US \$1,000,000 and a minimum limit of US\$ 1,000,000 for property damage.
- 1.8.2 Casualty Insurance on all of Sublessee's property insuring such property (including all fixtures and improvements) to the full replacement value thereof as of the time of loss. N/A
- 1.8.3 Business Interruption Insurance as described in the Standard Terms and Conditions. N/A
- 1.8.4 Environmental Pollution Insurance as described in the Standard Terms and Conditions. N/A

1.8.5 Insurance during any construction upon or improvement or alteration of the Premises shall be maintained as described in the standard Terms and conditions. N/A

1.9 Notices. All notices required to be given under this sublease shall be given as follows:

If to Sublessor:

KEEHI MARINE, INC.
24 Sand Island Access Road
Honolulu, Hawaii 96819
Attention :General Manager
Facsimile No. 808 841-6610

If to Sublessee:

Cates Marine Services LLC
24 Sand Island Access Road
Honolulu, HI 96819
Attention: Randy Cates

or to such other address of which a party hereto shall give the other party ten (10) days' written notice.

SECTION 2. STANDARD TERMS AND CONDITIONS.

In addition to the foregoing Specific Sublease Terms, Sublessor and Sublessee agree to the Standard Terms and Conditions attached hereto as Exhibit B and incorporated herein by this reference.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterparts.

IN WITNESS WHEREOF, Sublessor and Sublessee have executed these presents as of the day and year first above written.

KEEHI MARINE, INC., a Hawaii
Corporation

By: _____

Its: *Yoshiyuki Munaka*
Secretary / Treasurer
"Sublessor"

Cates Marine Services LLC

By: *John F. Cates*

Its: *CEO*
"Sublessee"


Exhibits: A - Premises

B - Standard Terms and Conditions

PERSONAL GUARANTEE: The undersigned, who acknowledge good and valuable consideration herefor, do hereby personally, jointly and severally warrant and guarantee to Sublessor, Sublessees's full and faithful performance of all terms, conditions, and covenants of Sublease Agreement.

9-12-2024

Date



Guarantor

Date

Guarantor

Acknowledgment of Limited Liability Company

State of Hawaii

County (and/or City) of Honolulu

On this 12th day of September in the year 2024 before me,
Marlene M. Agas (name of notary), a Notary Public in and for said state,
personally appeared John R. Cates (name of manager or member) of
Cates Marine Services LLC (name of limited liability company), known to me
to be the person who executed the within

Sublease (type of document) in behalf of
said limited liability company and acknowledged to me that he executed the same for the purposes
therein stated.

Marlene M. Agas
Notary Public

Print Name: Marlene M. Agas

My commission expires:
10/23/2024



NOTARY PUBLIC CERTIFICATION

Marlene M. Agas First Judicial Circuit
Doc. Description: Sublease

No. of Pages: 40 Date of Doc. 9/3/2024

Marlene M. Agas 9/12/2024
Notary Signature Date

My commission expires: 10/23/2024

CORPORATION)
)

STATE OF HAWAII,) ss.
City and County of Honolulu)

on this 9th day of October, A.D. 2024, before me appeared

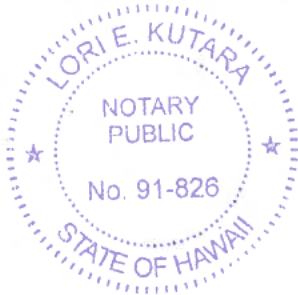
to me personally known, who, being by me duly sworn, did say that they are the

Yoshiyuki Munaka, Secretary / Treasurer

respectively of Kechi Marine, Inc

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Yoshiyuki Munaka

acknowledged said instrument to be the free act and deed of said corporation.



[Signature]
LORIE E. KUTARA
Notary Public, First Judicial Circuit,
State of Hawaii

My Commission Expires 11-28-2027

Doc. Date: 09-03-24 # Pages 43
Notary Name: Lori E. Kutara First Circuit
Doc. Description Sublease



[Signature] OCT 09 2024
Notary Signature Date
NOTARY CERTIFICATION

DESCRIPTION OF PREMISES

EXHIBIT A

KEEHI DRYDOCK AND MARINA COMPLEX
KALUAPULU AND KALIWA, KALIHI
HONOLULU, OAHU, HAWAII

Comprising the following:

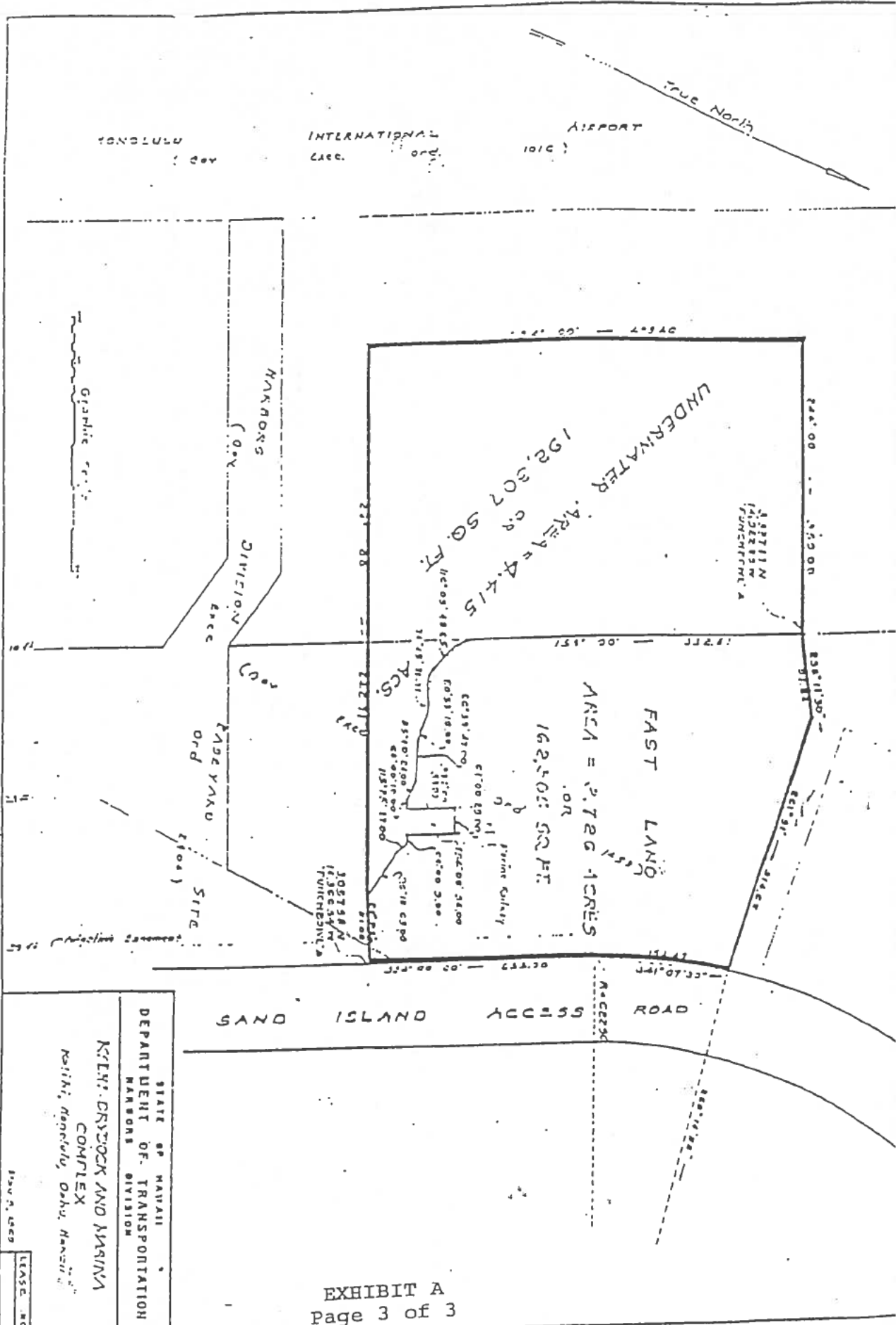
- A. Portion of R.P. 6888 Apana I, L. C. Award 3237 Part I to Hewahewa (Portion of Pahouiki Fish Pond now filled) conveyed to the Territory of Hawaii by the Trustees, Under the Will and the Estate of S. M. Damon by Exchange Deed dated September 5, 1950 and recorded on Pages 181-193 in Liber 2410 filed in the Bureau of Conveyances at Honolulu (Land Office Deed 9318).
- B. Portion of the underwater area (now partially filled) of the sea fishery of Kaliawa, the fishing and other rights having been acquired by the Territory of Hawaii from the Trustees, Under the Will and of the Estate of S. M. Damon by Quit-Claim Deed dated June 20, 1946 (Land Office Deed 7993) and from John Waterhouse, et al, by FINAL ORDER OF CONDEMNATION LAW NO. 16653 dated July 18, 1946 and recorded on Pages 79-94 in Liber 1981 filed in the Bureau of Conveyances at Honolulu (Land Office Deed 7993).
- C. Portion of the underwater area (now partially filled) of the sea fishery of Mokauea acquired by the Territory of Hawaii by EMINENT DOMAIN, LAW NO. 16696 commenced on August 29, 1941 and by Quit-Claim Deed by Hawaiian Dredging Company, Limited, to Territory of Hawaii, dated August 6, 1952 and recorded on Pages 27-40 in Liber 2613 filed in the Bureau of Conveyances at Honolulu (Land Office Deed 10605).

Beginning at the East corner of this parcel of land and on the Southwest side of Sand Island Access Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,057.98 feet North and 14,366.54 feet West, thence running by azimuths measured clockwise from True South:

1. 61° 25' 00" 81.00 feet along remainder of Harbors Division Baseyard Site (Governor's Executive Order 2404) and remainder of Harbor Development and Boat Facilities (Governor's Executive Order 1458);
2. 64° 00' 00" 646.71 feet along remainder of Harbor Development and Boat Facilities (Governor's Executive Order 1458) and along remainder of Kaliawa Fishery;

3. 154° 00' 00" 498.46 feet along remainder of Kaliawa Fishery;
4. 244° 00' 00" 350.00 feet along remainder of Kaliawa Fishery;
5. 238° 11' 30" 97.84 feet;
6. 261° 51' 00" 314.62 feet to the Southwest side of Sand Island Access Road;
7. Thence along the Southwest side of Sand Island Access Road, on a curve to the left with a radius of 622.96 feet, the chora azimuth and distance being: 341° 07' 39" 154.47 feet;
8. 334° 00' 20" 255.00 feet along Southwest side of Sand Island Access Road to the point of beginning and containing an area of 354,612 square feet or 8.141 acres.

Subject, however, to the Avigation Easement and other rules and regulations as set forth by Airports Division, Department of Transportation, State of Hawaii. All prehistoric and historic remains found on said demised premises are reserved to the State, its successors and assigns.



HONOLULU
HAWAII

INTERNATIONAL
CARRIAGE

AIRPORT
1010

TRUE NORTH

UNDERWATER AREA
192,307 SQ. FT.
AREA = 4.415

FAST LAND
AREA = 3,726 ACRES
OR
162,500 SQ. FT.

SAND ISLAND ACCESS ROAD

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HAKONO'S DIVISION

KYLE, DRYDOCK AND MARINA
COMPLEX
Kahala, Honolulu, Oahu, Hawaii

ISSUE NO. LEASE NO.

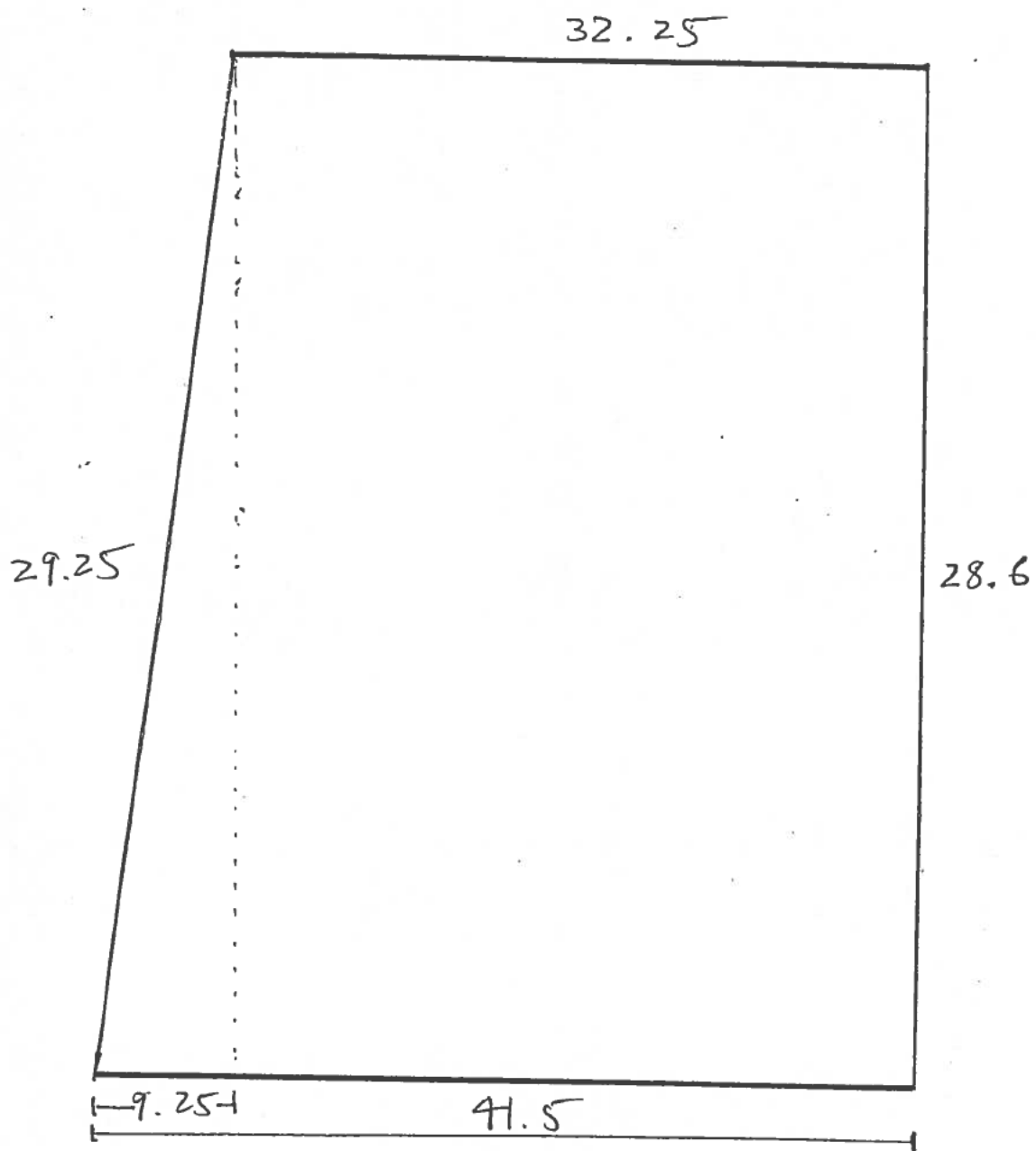
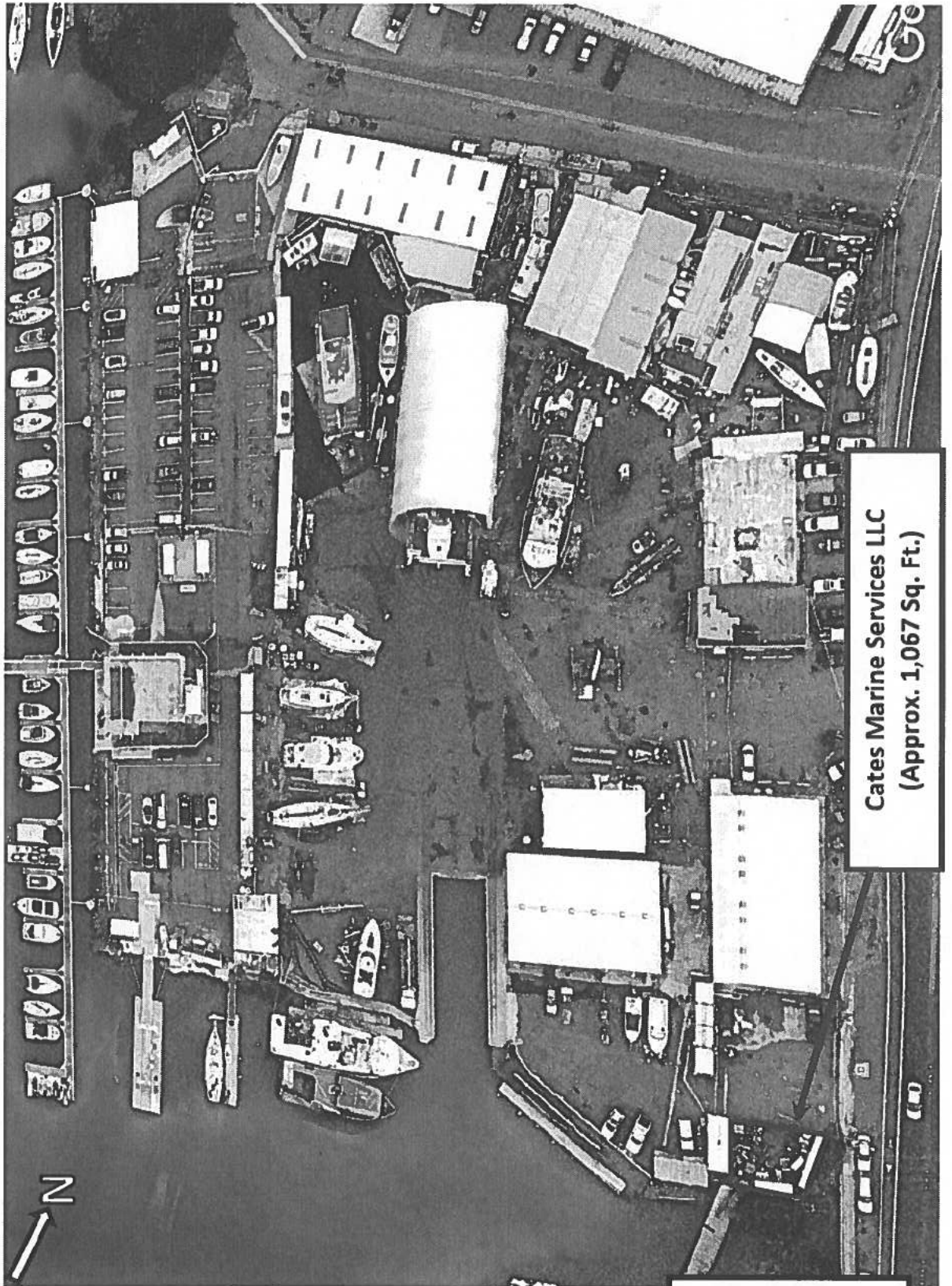


Exhibit A

Keehi Marine, Inc.



Cates Marine Services LLC
(Approx. 1,067 Sq. Ft.)

Exhibit A

STANDARD TERMS AND CONDITIONS

TABLE OF CONTENTS

SECTION 1. MASTER LESSOR'S CONSENT. 1

SECTION 2. SURRENDER, AND HOLDOVER 1

SECTION 3. RENT, EXPENSES, AND OTHER CHARGES 2

SECTION 4. USE 9

SECTION 5. CONDITION OF THE PREMISES 9

SECTION 6. INSURANCE AND BONDS 9

SECTION 7. OBSERVANCE OF AND COMPLIANCE WITH LAWS 13

SECTION 8. REPAIR AND MAINTENANCE, HAZARDOUS MATERIALS, AND ALTERATIONS 13

SECTION 9. LIENS AND MORTGAGES 16

SECTION 10. ASSIGNMENT AND SUBLETTING 16

SECTION 11. CONDEMNATION 17

SECTION 12. RESTORATION IN CASE OF DESTRUCTION 18

SECTION 13. INDEMNITY 19

SECTION 14. DEFAULT, REMEDIES 19

SECTION 15. RIGHT TO CURE 22

SECTION 16. SUBORDINATION, ATTORNMENT AND ESTOPPEL 22

SECTION 17. MASTER LEASE 24

SECTION 18. INTEREST AND LATE CHARGES 24

SECTION 19. LOSS OR DAMAGE SUSTAINED BY SUBLESSEE 25

SECTION 20. PARKING 25

SECTION 21. MISCELLANEOUS PROVISIONS 26

STANDARD TERMS AND CONDITIONS

SECTION 1. MASTER LESSOR'S CONSENT.

In the event that Sublessor does not obtain Master Lessor's consent to this Sublease by December 1, 1994, Sublessor may terminate this Sublease. Sublessor agrees to use its best efforts to obtain such consent. NOT APPLICABLE. *y*

SECTION 2. SURRENDER, AND HOLDOVER.

2.1 Surrender.

At the end of the term or sooner termination of this Sublease, Sublessee shall peaceably surrender possession of the Premises, including without limitation all improvements by whomsoever made, in good condition and repair, in conformance with all laws, rules, or regulations (then in effect) applicable to the Premises, free of any Hazardous Materials (as hereinafter defined), to the satisfaction of Sublessor and in compliance with all governmental laws, rules, or regulations (then in effect), and free and clear of any and all liens and/or encumbrances, to Sublessor, except as otherwise provided herein.

2.2 Disposition of Improvements.

At the end of the term or sooner termination of this Sublease, if Sublessee is not in default of any of its obligations hereunder, Sublessee may remove its trade fixtures from the Premises, at Sublessee's sole cost and expense. Sublessor, in its sole discretion, may require that Sublessee remove any part or all of the fixtures or improvements on, in, or about the Premises at the time that Sublessee surrenders the Premises, at Sublessee's sole cost and expense.

2.3 Repair and Restoration.

If, upon surrender, Sublessor determines that the Premises are not in good condition and repair, in conformance with all laws, rules, or regulations (then in effect) applicable to the Premises, or not free of any "Hazardous Materials" (as hereinafter defined), Sublessee shall, at its own cost and expense, perform or cause to be performed all work, to put the Premises in the condition specified in Section 2.1 (including the removal of any and all Hazardous Materials and the remediation of any and all damage caused by such Hazardous Materials to the Premises or the Land). If Sublessee removes any trade fixtures or other improvements as provided in Section 2.2, Sublessee, at its sole cost and expense, shall repair any damage to the Premises caused by such removal.

2.4 Holdover.

If Sublessee remains in possession of the Premises or any portion thereof after the end of the term or sooner termination of this Sublease or if Sublessee is in breach of any of the covenants contained in Sections 2.1, 2.2, or 2.3, it shall occupy the Premises as a tenant from month-to-month. Sublessor may terminate such Tenancy by giving Sublessee twenty-eight (28) days' written notice of termination. Except as provided below, Sublessee shall be subject to all of the provisions of this Sublease, insofar as they are applicable to month-to-month tenancy. During such month-to-month tenancy, the Base Rent shall be two (2) times the Base Rent for the month immediately preceding the commencement of the month-to-month tenancy.

2.5 Survival of Covenants.

The obligations and covenants of in the foregoing sections shall survive the termination of this Sublease.

SECTION 3. RENT, EXPENSES, AND OTHER CHARGES.

3.1 General.

The terms "Rent," or "Rentals" mean the Base Rent, Percentage Rent (if any), and any other sums designated as "Additional Rent" herein. The terms "Expenses" and "Other Charges" mean any and all other charges or sums designated as such, and all costs, expenses, fees, or other amounts described herein.

Sublessee shall make all of the payments provided for herein in the lawful money of the United States of America at the times and in the manner set forth herein, without deduction or off set and without any notice or demand, at Sublessor's address as set forth in the Specific Sublease Terms.

3.2 Rent.

Sublessee shall pay to Sublessor the Base Rent, Additional Rent and all other Expenses and Other Charges payable to Sublessor together with the Base Rent on the first day of each and every month during the term of this Sublease. Percentage Rent shall be paid in accordance with Section 3.3.6.

3.3 Expenses and Other Charges.

In addition to the Rent, Sublessee shall pay the following Expenses and Other Charges to Sublessor or as otherwise provided herein. Unless a different payment date is specified herein, Sublessee shall pay the following Expenses and Other

Charges together with the Rent on the dates on which Rent payments are due.

3.3.1 Excise Taxes. Sublessee shall pay to Sublessor and amount equal to the Hawaii General Excise Tax which Sublessor shall be required to pay on account of its receipt of Rent or any other sums payable hereunder (including, without limitation, amounts payable under this section) which may be determined to be taxable under Chapter 237 of the Hawaii Revised Statutes, as it now exists or is hereafter amended, or under the provisions of any other successor law or any other law similar thereto, which shall tax the gross receipts of Sublessor on account of Sublessee's payment of any sums payable under this Sublease.

3.3.2 Conveyance Taxes. Sublessee shall pay any and all taxes attributable to the leasing of the Premises by Sublessor to Sublessee or any conveyance of this Sublease including, without limitation, conveyance taxes.

3.3.3 Rates and Other Charges.

3.3.3.1 If the same are separately metered, Sublessee shall pay directly before the same shall become delinquent all utility charges and other charges and outgoings of every description which the Premises or any part thereof, may during the term of this Sublease become liable, whether assessed to or payable by Sublessor or Sublessee.

3.3.3.2 If the same are not separately metered, Sublessee shall pay to Sublessor, within 10 days after Sublessor has billed Sublessee therefor, Sublessee's share of the electricity charges. Sublessor may in its sole discretion allocate and determine Sublessee's share of the electricity charges. If Sublessee disputes or otherwise disagrees with its electricity charges, Sublessee's sole remedy shall be to have a separate electricity meter installed, at Sublessee's sole expense, for Sublessee's Premises.

3.3.4 Operating and Maintenance Expenses. Sublessee shall pay its Prorata Share of all of the costs and expenses incurred by Sublessor in operating and maintaining the Premises, the Center (including the Common Areas) ("Operating and Maintenance Expenses").

3.3.4.1 Operating and Maintenance Expenses include all out of pocket and administrative expenses of Sublessor in operating and maintaining the Premises, and the Center (including the Common Areas). Such

expenses include (but are not limited to) the following: (1) all real property taxes and assessments assessed or charged against the Premises and the Center (including the Common Areas); (2) water and sewer charges; (3) electricity and other utility charges; (4) air conditioning; (5) pest control; (6) maintenance and repair of the Center (including the Common Areas); (7) Common Area furnishings; (8) painting of interior and exterior of the Center (including the Common Areas); (9) repair and maintenance of the parking area (including, without limitation, repaving and repainting); (10) landscaping; (11) irrigation; (12) replacement of plants; (13) the cost of maintenance, repairs, or restoration of capital improvements; (14) the cost of capital improvements to the Center (including the Common Areas) which are undertaken to effect a direct cost savings or anticipated cost savings in Operating and Maintenance Expenses or which are required to comply with any rule, regulation, or law affecting the ownership, use or operation of the Center (including the Common Areas); (15) all rents and other charges charged or assessed against the Premises or the Center under the Master Lease and payable by the Sublessor thereunder; and (16) any and all insurance Sublessor deems necessary. Operating and Maintenance Expenses shall not include Sublessor's financing or similar costs for the Center.

If the Center and Sublessor's other properties are insured under the same insurance policy or the premiums therefore are made in one payment, Sublessor may, in a reasonable manner, allocate to Operating and Maintenance Expenses for the Center a portion of such insurance premiums from those insurance policies which insure the Premises and/or the Center and Sublessor's other properties.

With respect to any capital items and/or the maintenance, repairs, replacement or restoration of capital items, Sublessor may, in its sole discretion, elect to have the cost thereof (plus a reasonable rate of interest) included in Operating and Maintenance Expenses on an amortized basis over a reasonable time.

Sublessor shall deduct from the Operating and Maintenance Expenses all amounts paid by any lessee, including Sublessee, for the period for which such expenses are being determined, to Sublessor on account of the cost of repairs or extra services for which such lessee is directly responsible that may have been included in such Operating and Maintenance and Expenses.

3.3.4.2 Extraordinary Expenses. If at any time Sublessor incurs or anticipates incurring any additional or previously unforeseen Operating and Maintenance Expenses, Sublessor shall send a statement to Sublessee for Sublessee's Prorata Share of such expense and Sublessee shall pay Sublessor the amount shown in the statement within the time specified in the statement.

3.3.4.3 Payment of Operating and Maintenance Expenses. At the commencement of this Sublease and at the beginning of each calendar year during the term of this Sublease, Sublessor shall provide Sublessee with an estimate of Sublessee's Prorata Share of the Operating and Maintenance Expenses ("Estimated Operating and Maintenance Expenses"). Sublessee shall pay such amounts together with its payment of Base Rent each month. In the event that Sublessee's actual Prorata Share of the Operating and Maintenance Expenses exceeds the Estimated Operating and Maintenance Expenses paid by Sublessee for any calendar year, Sublessee shall pay the deficit between the actual Maintenance and Operating Expenses and the Estimated Operating and Maintenance Expenses. In the event Sublessee's actual Prorata Share of Operating and Maintenance Expenses is less than the Estimated Operating and Maintenance Expenses paid by Sublessee for any calendar year, Landlord shall credit such excess against Sublessee's rent or shall pay Sublessee the difference. The obligation to pay any of the foregoing described amounts on the part of the Sublessor or Sublessee shall survive the termination of this Sublease.

Sublessor shall, within sixty (60) days of the end of each calendar year, provide Sublessee with a summary of Sublessor's Operating and Maintenance Expenses for that calendar year and an invoice for the amounts owed by Sublessee. Sublessee shall pay such sums within ten (10) days of the receipt of the summary and invoice.

3.3.5 Additional Rent. Sublessee shall pay Sublessor, as Additional Rent, and within ten (10) days after the date of mailing, personal delivery, or facsimile transmission to the address or the facsimile number set forth in the Specific Sublease Terms, of statements therefor, all costs and expenses paid or incurred by Sublessor and required to be paid by Sublessee under any provision of this Sublease, or as a result of or in connection with any action, claim, or demand of a third party against or in relation to Sublessee.

3.3.6 Percentage Rent. If Sublessee is required to pay Percentage Rent, within ten (10) days after the end of each calendar month, Sublessee shall pay Sublessor, as additional rent, the Percentage Rent described in the Specific Sublease Terms for such month.

3.3.6.1 The term "Gross Revenues" shall mean the entire amount of the actual sales price, whether for cash or otherwise, of all sales of merchandise or services, and all other receipts whatsoever of all business conducted at, in, from or upon the Premises, including without limitation, all deposits not refunded to purchasers, and sales by Sublessee, any sub-sublessee, concessionaire or licensee or otherwise at, in, from or upon the Premises. Each sale, whether for cash or upon installment or credit, shall be treated as a sale for the full price in the month during which such sale shall be made irrespective of the time of payment. No deduction shall be allowed for uncollected or uncollectible credit accounts.

3.3.6.2 Payment of Percentage Rent. Sublessee shall submit to Sublessor on or before the 10th day of each and every calendar month (excluding the 10th day of the first month but including the 10th day of the calendar month following the end of the term of this Sublease) at the place then fixed for the payment of rent, together with the remittance of monthly Percentage Rent, a written statement signed by and duly certified by an executive officer of the Sublessee or by a person duly authorized by Sublessee showing in reasonably accurate detail the amount of Gross Revenues for the preceding calendar month. The statements

referred to herein shall be in such form and style and contain such details and breakdown as the Sublessor may reasonably determine. Percentage Rents shall be determined monthly and shall not be or recalculated on an annual or other basis.

3.3.6.3 For the purpose of ascertaining the amount of Percentage Rent Sublessee agrees to prepare and keep on the Premises for a period of not less than three (3) years following the end of each calendar year or until Sublessor's auditors have had reasonable opportunity to audit the same, whichever is later, adequate records of Gross Revenues which shall show receipts from all sales and other transactions on the Premises by Sublessee and any other persons conducting any business upon said Premises.

3.3.6.4 Without prejudice to any remedies herein provided for such default, if Sublessee shall fail to promptly furnish any report or statement required by this Sublease, Sublessor may have such report prepared on Sublessee's behalf by an accountant to be selected by Sublessor, at the expense of Sublessee. Sublessee shall furnish to such accountant all records requested for the purpose of preparing such reports, and shall upon demand pay to Sublessor as additional rent all expense incurred by Sublessor in generating such reports.

3.3.6.5 Sublessee grants unto Sublessor and its agents, and shall require that all users of any portion of the Premises grant to Sublessor and its agents the right at all reasonable times to have access to all books, accounts, records and reports, including, without limitation, gross income tax reports and purchase orders, that may be kept by any person or entity with respect to its business on the Premises, and at any reasonable time on twenty-four (24) hours' notice will permit a complete audit to be made by Sublessor's accountant or by a certified public accountant of all records relating to the business conducted on the Premises which could generate Percentage Rent for the period covered by any statement issued by Sublessee. Sublessee will cooperate fully in the making of any inspection, examination or audit. Should any audit disclose that rental has been underpaid by three percent (3%) or more for any period under examination, Sublessor shall be entitled to reimbursement of the reasonable cost of any such audit as additional rent, in addition to the deficiency.

3.3.6.6 The acceptance by the Sublessor of payments of Percentage Rent shall be without prejudice to the Sublessor's rights hereunder such as, without limitation, rights to verify the correct amount of Percentage Rents.

3.3.6.7 With respect to Gross Revenues, Sublessee, or any seller, shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers serviced in Honolulu by an established agency. Cash registers shall have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to the customer as to the amount rung, and a seven-digit cumulative capacity or greater, as determined by Sublessor based on the type of business, with a four-digit overrun counter. Sublessee shall furnish to Sublessor a statement from an established agency that the transaction number, the cumulative total, and the overrun counter have been sealed in a manner approved by the Sublessor. The cash register shall also have other features as may be required by Sublessor. Upon the installation or removal of any cash register used at the Premises, Sublessee shall immediately furnish to Sublessor notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s). Any repair agency employed by the Sublessee to repair or replace any cash register is hereby authorized and directed to disclose and furnish to Sublessor or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register. Sublessee shall issue to each customer a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. Sublessor's agents shall have the right during business hours to examine the cash register(s) totals and inspect for conformance with this Section. Sublessee further agrees to keep for at least three (3) years following the end of each calendar year all pertinent original sales records including cash register tapes, serially numbered sale slips and such other sales records, as would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Gross Revenues.

3.3.7 Late Charges and Interest. Sublessee shall pay Sublessor on all sums past due from Sublessee payable

under this Sublease or expended or advanced by Sublessor on Sublessee's account, a late charge equal to five percent (5%) of each billing rendered by Sublessor to Sublessee, which late charge is estimated to be Sublessor's administrative and other costs.

Sublessee shall also pay Sublessor interest on all sums past due from Sublessee payable under this Sublease or expended or advanced by Sublessor on Sublessee's account from the due date or date of demand, as the case may be, to and including the date of payment, at the rate of interest specified in Section 18.

3.4 Security Deposit.

Sublessee shall, at all times, maintain with Sublessor a Security Deposit (or "Deposit") equal to at least one (1) month's Base Rent. Sublessor may, but is not obligated to, apply any portion of the Deposit to cure any breach of this Sublease by Sublessee. Sublessee shall, immediately upon receiving a demand therefor from Sublessor, deposit such additional amounts with Sublessor which will cause the Deposit held by Sublessor to be equal to one month's Base Rent. Sublessor may commingle the Deposit with any of its own funds and shall not pay Sublessee any interest thereon. Sublessee may not in any way pledge or encumber the Deposit.

SECTION 4. USE.

Sublessee shall use the Premises solely for the purposes specified in the Specific Sublease Terms. Any use of the Premises for any other purpose shall constitute a breach of this Sublease.

SECTION 5. CONDITION OF THE PREMISES.

Sublessee has inspected the Premises and accepts them "As Is" and "Where Is," together with any and all improvements existing thereon. Sublessor makes no representation or warranty with respect to the condition of the Premises or any of the improvements thereon, or any other matter pertaining thereto. Sublessee accepts and assumes any and all risks of defects known or unknown.

SECTION 6. INSURANCE AND BONDS.

6.1 General Requirements.

Except as otherwise provided herein, all policies of insurance or bonds required hereunder shall conform to the requirements set forth below.

6.1.1 Insurers. All policies of insurance or bonds shall be effected by valid and enforceable policies or other undertaking issued by responsible insurance companies authorized to do business in the State of Hawaii, with a Best's rating of A- or better, financial category VIII or larger.

6.1.2 Primary Undertaking. All Policies of insurance or bonds shall contain an agreement by the insurer(s) that the policy or undertaking constitutes primary insurance or a primary obligation of the insurer or issuer, without contribution.

6.1.3 Cancellation. All policies of insurance or bonds shall contain a provision that they shall not be cancelled or materially altered without at least thirty (30) days' prior written notice to Sublessor.

6.1.4 Waiver of Subrogation. All policies of insurance required to be maintained by Sublessee shall provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim any right of set off, counterclaim, apportionment, proration or contribution against Sublessor or by any reason of any other insurance obtained by Sublessor or for any other tenant of Sublessor, including Sublessee.

6.1.5 Increased Hazard. All policies of insurance shall not contain any provision relieving the insurer from liability for loss occurring while the hazard to the Premises or improvements thereon is increased, whether or not within the knowledge or control of Sublessor or Sublessee or because of any breach of any warranty or condition or any other act or neglect of Sublessor, Sublessee, or any other person.

6.1.6 Insureds. Except as otherwise specified herein, all policies of insurance shall name Sublessor and Master Lessor as an additional insured.

6.2 Premiums and Notices.

6.2.1 Sublessee shall pay all premiums and all fees and expenses for the insurance or bonds required hereunder when due and will deliver true and correct copies of all policies to Sublessor or certificates of insurance satisfactory to Sublessor within twenty (20) days prior to the expiration dates of expiring policies. Certificates of insurance naming Sublessor as an additional insured will be provided to Sublessor.

6.2.2 Binders binding issuance of policies of insurance for the coverage specified in this Section shall be accepted by Sublessor in the event such policies or contracts are not obtainable by Sublessee at the time in question due to any building or improvement being in the course of construction.

6.2.3 If Sublessee defaults in obtaining any insurance required by this Sublease or in delivering the policies or certificates, Sublessor, at its option, but without being obligated to do so, may obtain such insurance from year to year and pay the premiums, and Sublessee will reimburse Sublessor on demand for any premiums paid, together with a ten percent (10%) administrative fee and with interest from the time of payment at the rate set forth in Section 18 of this Sublease.

6.3 Bond and Insurance for Construction.

Prior to the commencement of the construction of any improvements, alterations, or repair the value of which exceeds \$5,000.00, on the Premises, Sublessee shall furnish Sublessor with the following.

6.3.1 Bond. Sublessee shall furnish Sublessor with satisfactory evidence that the contractor therefor has procured a 100% performance and lien payment bond or guaranty, naming Sublessor and Sublessee as co-obligees, in form and with a surety (or sureties) reasonably satisfactory to Sublessor, for the full and faithful performance of the construction contract free and clear of any and all mechanics' and materialmen's liens from such construction and the payment of all subcontractors and labor and materialmen. This bond shall be in an amount and form and written by a company as Sublessor shall approve, which approval shall not be unreasonably withheld.

6.3.2 Liability and Property Damage. Sublessee shall deposit with Sublessor a certificate or other satisfactory evidence that a standard builder's risk insurance policy has been obtained and, to the extent reasonably available, a "difference in conditions" rider to such builder's risk policy.

Sublessee shall maintain for Sublessor, at its own cost and expense, Commercial General Liability and broad form property damage insurance on an "occurrence" basis (and not on a "claims made" basis) insuring Sublessor and Sublessee, without limitation, against loss or damage to third parties or their property from hazards normally insured against in

the construction industry and shall also insure Sublessor against liability with minimum limits set forth in the Specific Sublease Terms for bodily injury and property damage liability.

6.3.3 Worker's Compensation Insurance. Sublessee shall provide Sublessor with satisfactory evidence that worker's compensation insurance has been procured to cover all persons employed in connection with the construction of any improvements or alterations to the Premises.

6.4 Insurance During the Term of the Sublease.

6.4.1 Liability Insurance. Sublessee shall, at all times during the term of this Sublease, maintain for Sublessor, at its own cost and expense, Commercial General Liability and broad form property damage insurance on "occurrence" basis (and not on a "claims made" basis) and shall furnish to Sublessor broad form property damage insurance insuring Sublessor for liability with the minimum limits set forth in the Specific Terms and Conditions for bodily injury and property damage liability, insuring against the liability of Sublessee, its servants, agents, and employees, for personal injury (including death) and property damage arising out of or in connection with the Sublessee's use and occupancy of the Premises, the Common Areas, and Land. Sublessor shall be entitled to recovery under the policy for any loss to Sublessor, its agents, and employees, for the acts, omissions, and/or negligence of Sublessee and those claiming under Sublessee.

6.4.2 Fire and Casualty Insurance. Sublessee will, at all times during the term of this Sublease, cause all of Sublessee's improvements now or hereafter existing on the Premises, and all of the personal property of Sublessee located in or on the Premises to be insured against all direct causes of physical loss commonly referred to as the "special form," in an amount equal to the full replacement cost at time of loss (without deduction for depreciation). The insurance policy shall be issued in the joint names of Sublessor and Sublessee, payable in case of loss to said insureds jointly for disposition as herein provided. All proceeds in case of loss or damage shall be used as provided in this Sublease. The adequacy of the coverage afforded by such insurance shall be subject to review such that if a prudent businessman in Hawaii operating a business similar to that operated by Sublessee on the Premises would insure the Premises against additional perils when such insurance is commonly available in Hawaii, Sublessee shall forthwith provide insurance against such additional perils.

6.4.3 Business Interruption Insurance. Sublessee shall, at all times during the term of this Sublease, at its own cost and expense, keep in effect a policy of business interruption insurance with respect to the Premises and the business operated by Sublessee and/or any sub-tenants at the Premises naming Sublessor as insured. Sublessor shall be entitled to the proceeds or portions thereof of said insurance policy in an amount equal to the amount owed to Sublessor by Sublessee pursuant to the terms of this Sublease.

6.4.4 Environmental Pollution Insurance. Sublessee shall, at all times during the term of this Sublease, maintain for Sublessor, at its own cost and expense, insurance which will cover the cost of complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use or disposal, and clean-up of Hazardous Materials in, on or about the Premises, with a minimum limit in an amount acceptable to Sublessor.

SECTION 7. OBSERVANCE OF AND COMPLIANCE WITH LAWS.

Sublessee will at all times, during the term hereof, observe and perform all laws, ordinances, rules and regulations (including without limitation, all laws, ordinances, rules and regulations regarding Hazardous Materials laws and the Americans with Disabilities Act) now or hereafter made by any governmental or quasi-governmental authority applicable to the Premises and any improvements thereon. The costs or expenses connected with such compliance or observance by Sublessee shall be borne solely by Sublessee.

Sublessee 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 thereof.

Sublessee will at all times, during the term hereof, possess all applicable permits and other governmental approvals required for the operation of Sublessee's business on the Premises.

SECTION 8. REPAIR AND MAINTENANCE, HAZARDOUS MATERIALS, AND ALTERATIONS.

8.1 Repairs and Maintenance.

Sublessee shall, throughout the term of this Sublease, at its own cost and expense, and without any expense to Sublessor, keep the Premises including, without limitation, all improvements, fixtures, and alterations of every kind, and all

appurtenances thereto, in good, sanitary, and neat order, condition and repair, and shall restore and rehabilitate any improvements, fixtures, alterations, or appurtenances of any kind which may be destroyed or damaged by fire, casualty, or any other cause, whatsoever.

8.2 Hazardous Materials.

As used in this Sublease, the term "Hazardous Material(s)" 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, without limitation, all of those materials and substances designated as hazardous or toxic by the city or state in which the Premises are located, the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the Food and Drug Administration, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Material(s)" shall also include all of those materials and substances requiring remediation under federal, state or local statutes, ordinances, regulations or policies.

Sublessee shall not introduce, place, store, or release, or allow or cause to be introduced, placed, stored, or released, any Hazardous Material or substance in, on, or below the Premises, Common Areas, or Land, without Sublessor's prior written consent and without (1) providing Sublessor with thirty (30) days' prior written notice of the exact amount, nature, and manner of such Hazardous Materials, and (2) complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use or disposal, and clean-up of Hazardous Materials, including, but not limited to, the obtaining of proper permits.

In the event that any Hazardous Material is introduced, placed, stored, or released in on or below the Premises or Land by Sublessee, its employees, agents, or anyone claiming through Sublessee, Sublessee shall clean up any contamination caused thereby and shall indemnify, defend and hold Sublessor harmless from and against any claims, suits, causes of action, costs, fees, including without limitation attorney's fees and costs, arising out of or in connection with any clean-up work, inquiry or enforcement proceeding in connection therewith, or any Hazardous Materials on or about the Premises. This indemnity shall survive the termination of this Sublease.

Notwithstanding any other right of entry granted to Sublessor under this Sublease, Sublessor shall have the right to enter the Premises or to have consultants enter the Premises

throughout the term of this Sublease for the purpose of determining: whether the Premises and any operation or material thereon or therein are in conformity with federal, state and local statutes, regulations, ordinances, and policies including those pertaining to the environmental condition of the Premises; whether Sublessee has complied with this section; the corrective measures, if any, required of Sublessee to ensure the safe use, storage and disposal of Hazardous Materials, or to remove Hazardous Materials. Sublessee agrees to provide access and reasonable assistance for such inspections. Such inspections may include, but are limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples. Sublessor shall not be limited in the number of such inspections during the term of this Sublease. If such consultants determine that the Premises are contaminated with Hazardous Materials, Sublessee shall reimburse Sublessor for the cost of such inspections within ten (10) days of receipt of a written statement therefor and 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 Sublessor and any applicable governmental agencies. The right granted to Sublessor herein to inspect the Premises shall not create a duty on Sublessor's part to inspect the Premises, or liability of Sublessor for Sublessee's use, storage or disposal of Hazardous Materials, it being understood that Sublessee shall be solely responsible for all liability in connection therewith.

Sublessee shall immediately notify Sublessor of any inquiry, test, investigation, or enforcement proceeding by or against Sublessor or the Premises concerning a Hazardous Material. Sublessee acknowledges that Sublessor, as the owner of the Premises, shall have the right, at its election, in its own name or as Sublessee's agent, to negotiate, defend, approve, and appeal, at Sublessee's expense, any action taken or order issued with regard to a Hazardous Material by an applicable governmental authority.

8.3 Alterations.

Sublessee shall not make any alterations or improvements to the Premises or any part thereof without the prior written consent of Sublessor. Prior to the commencement of any such alterations or improvements, Sublessee shall submit to Sublessor complete plans and specifications therefor, for Sublessor's approval. Sublessee shall reimburse Sublessor for all of Sublessor's costs and expenses incurred in reviewing such plans and specifications. Any such alterations or improvements shall be made pursuant to the applicable requirements of this Sublease.

SECTION 9. LIENS AND MORTGAGES.

9.1 Liens.

Sublessee will not commit or suffer any act or omission whereby the Premises, any portion thereof, or any interest of Sublessor or Sublessee therein shall, at any time during the term hereof, become subject to any attachment, judgment, lien charge or encumbrance whatsoever, except as herein expressly provided. Sublessee will not incur any cost or expense including, without limitation, contractors', materialmen's, architects' or engineers' charges, which, if unpaid, would give rise to a lien against the Premises or any portion thereof or any interest of Sublessee or Sublessor therein, until Sublessee has given Sublessor written evidence satisfactory to Sublessor that Sublessee has or is entitled to sufficient funds to pay such costs or expenses in full.

Sublessee shall defend, indemnify, and hold Sublessor harmless from and against any and all loss, costs, and expense with respect to the foregoing (including, without limitation, reasonable attorney's fees and costs).

9.2 Mortgages.

Sublessee shall not mortgage or allow any mortgage in whole or in part, of this Sublease without Sublessor's prior written consent.

SECTION 10. ASSIGNMENT AND SUBLETTING.

10.1 Assignment.

Sublessee shall not assign or mortgage this Sublease or its interest herein without Sublessor's prior written consent.

10.2 Subletting.

Sublessee will not rent, sublet, or part with possession of the Premises or any part thereof without the prior written consent of Sublessor.

10.3 Change in Structure.

If Sublessee is a corporation, partnership, or trust, the term "assignment of this Sublease" shall include any sale or sales or transfer by operation of law or otherwise by which an aggregate of fifty (50%) percent or more of the total capital stock or a corporate tenant or the total partnership interests of a partnership tenant, or the beneficial interest in a trust tenant shall become vested in one or more individuals, firms, or

corporations who or which are not stockholders, partners, or beneficiaries thereof, either legally or equitably, as of the date of this Sublease or Sublessee's subsequent acquisition of this Sublease by assignment.

The ownership of capital stock, partnership interests, and beneficial interest shall be determined in accordance with the principles contained in Section 544 of the Internal Revenue Code of 1986, as amended, as of the date of this Sublease, or any successor section or provision of the Internal Revenue Code and any change in such ownership shall be deemed a transfer of such ownership.

This Section shall not apply to the transfer of shares of a corporate tenant whose capital stock is listed on a national stock exchange.

10.4 Transfer of Sublessor's Interest.

Sublessor may sell or transfer its interest in the Premises and shall be as of the date of the transfer released from all obligations and liabilities accruing thereafter under this Sublease. Any prepaid rent or other funds of Sublessee in the hands of Sublessor at the time of the transfer shall be delivered to the transferee of Sublessor and Sublessee agrees to attorn to the transferee of Sublessor, provided all of Sublessor's obligations under this Sublease are assumed in writing by the transferee.

SECTION 11. CONDEMNATION.

11.01 Total Taking.

11.0.1 Termination of Sublease. If at any time or times during the term of this Sublease, the Premises or any part thereof shall be required, taken, or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Sublessee in the Premises or part thereof so required, taken, or condemned shall at once cease.

11.0.2 Compensation. Sublessee shall not by reason of the foregoing be entitled to any claim against Sublessor or others for compensation or indemnity for its interest.

All compensation and damages payable for or on account of such taking or condemnation of the Premises shall be payable to and be the sole property of Sublessor.

11.1 Partial Taking.

11.1.1 Reduction in Rent. If only a part of the Premises shall be so required, taken or condemned, the Base Rent payable for the remaining period of the term of this Sublease shall be reduced by the ratio that the area of the Premises taken bears to the total area of the Premises immediately prior to such event.

11.1.2 Compensation. All compensation and damages payable to for or on account of such taking or condemnation of a part of the Premises shall be payable to and be the sole property of Sublessor, except compensation and damages payable on account of the improvements located in, on, or about the Premises, which shall be payable to Sublessee. Sublessee shall use such amounts to promptly repair and restore such improvements on or to the remaining Premises according to plans and specifications therefor first approved in writing by Sublessor, as provided herein, it being expressly understood that any deficiency shall be paid by Sublessee from its own funds and any excess shall be divided between Sublessor and Sublessee, Sublessee receiving the amount equal to the product of the excess amount multiplied by the fraction, the numerator of which is the unexpired portion of this Sublease and the denominator of which is the total term of this Sublease, and Sublessor receiving the amount equal to the product of the excess amount multiplied by that the fraction, the numerator of which is the expired portion of this Sublease and the denominator of which is the total term of this Sublease.

11.2 Condemnation of Subleasehold Interest.

Condemnation of Sublessee's leasehold interest in the Premises or any part thereof shall not terminate this Sublease nor excuse Sublessee from full performance of its covenants for the payment of money or any other obligations hereunder capable of performance by Sublessee, but in such case Sublessee may claim and recover from the condemning authority all compensation and damages payable on account of such subleasehold interest.

SECTION 12. RESTORATION IN CASE OF DESTRUCTION.

Destruction of or damage to any part of the Premises (including any improvement thereon) shall not be grounds for cancellation of this Sublease or excuse the performance of the Sublessee hereunder.

Upon destruction of or damage to any part of the any improvement owned by Sublessor which is a part of the Premises, Sublessor shall determine whether Sublessor shall rebuild or

restore such improvement. Within sixty (60) days after such damage or destruction, Sublessor shall give Sublessee written notice of its decision. If Sublessor elects to rebuild or restore such improvement this Sublease shall continue in full force and effect. Rent for the period in which the improvements are being rebuilt or restored shall be abated in proportion to that part of the Premises that is unfit for use by Sublessee, unless the destruction or damage is caused by Sublessee, in which case Rent shall not be abated. If Sublessor elects not to rebuild or restore the damage or destruction, this Sublease shall be terminated.

Within sixty (60) days after or as soon as practically possible (taking into account Sublessor's rebuilding or restoration of the improvements that are part of the Premises) in case of loss or damage, Sublessee shall promptly use all proceeds of any insurance covering the Premises or improvements on the Premises for rebuilding or otherwise reinstating the Premises and improvements in a good and substantial manner according to the original plans and specifications therefore, and conforming to the laws, regulations, and rules then in effect, as shall first be approved by Sublessor. To the extent there is insufficient insurance coverage or proceeds with respect to such loss or damage to rebuild, repair, or restore the Premises, Sublessee shall make up any deficiency in such proceeds.

SECTION 13. INDEMNITY.

In addition to and without limiting any other indemnity contained elsewhere in this Sublease, Sublessee will defend, indemnify, and hold Sublessor and Master Lessor and their employees, agents, and assigns harmless from and against all claims and demands for loss or damage including, without limitation, property damage, personal injury, and wrongful death, arising out of or in connection with the use or occupancy of the Premises or any part thereof, the Common Areas, or Land, including any liability for any accident or fire in or on the Premises or any part thereof or any nuisance made or suffered thereon, or any failure by Sublessee to keep the Premises in good order and repair or any breach of any covenant of this Sublease by Sublessee.

This indemnity shall survive the termination of this Sublease.

SECTION 14. DEFAULT, REMEDIES.

14.1 Events of Default.

Any of the following events set forth below shall constitute an event of default under this Sublease.

14.1.1 Failure to Pay Rent. If Sublessee fails to pay the Rent provided for in this Sublease within five (5) days after it becomes due, whether the same shall or not have been legally demanded, it being expressly understood that no demand for the payment of Rent is necessary under this Sublease.

14.1.2 Failure to Observe and Perform.

14.1.2.1 If Sublessee shall fail to observe and perform faithfully any of Sublessee's covenants or agreements contained in this Sublease performable by the payment of money (other than the payment of Rent) and such default shall continue for a period of ten (10) days after a statement therefor is given to Sublessee.

14.1.2.2 If Sublessee shall fail to observe or perform faithfully any of Sublessee's other covenants or agreements contained in this Sublease and such default shall continue for fifteen (15) days after written notice thereof is given to Sublessee.

14.1.3 Abandonment. If Sublessee shall abandon the Premises. Any cessation of business on the Premises for more than ten (10) consecutive days shall be deemed abandonment.

14.1.4 Attachment and Execution. If this Sublease or any estate or interest of Sublessee hereunder shall be sold under any attachment or execution.

14.1.5 Bankruptcy and Insolvency. If Sublessee shall become bankrupt or insolvent or seek protection or be subject to a petition under any bankruptcy or insolvency law whether filed by Sublessee or its creditors or if any assignment shall be made of Sublessee's property for the benefit of creditors.

14.1.6 Liens. If any lien including, without limitation, any mechanic's or materialmen's lien, shall attach to the Premises, or any part thereof, or Sublessee's estate or interest therein and shall not be discharged or released within five (5) days after the entry of any order or judgment for the foreclosure or the enforcement of such lien.

14.1.7 Breach of Covenants. If Sublessee shall breach any term or covenant contained in this Sublease

whether or not specified in this section or denominated a breach of this Sublease.

14.2 Remedies.

In the event of any breach of this Sublease or any Event of Default hereunder, Sublessor may exercise the following remedies. All remedies of Sublessor's hereunder are cumulative and the exercise of one right of remedy by Sublessor shall not impair Sublessor's right to any other remedy provided herein or which Sublessor may otherwise have.

14.2.1 Re-Entry. Sublessor may, in any such event, at once re-enter the Premises, or any part thereof, and upon or without physical entry, at its option, terminate this Sublease by giving notice to Sublessee, and thereupon take possession of the Premises and become wholly vested with all rights, title and interest of Sublessee. Sublessor may expel and remove from the Premises Sublessee or those claiming under Sublessee and their effects. Sublessor may proceed as provided herein, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may thereby be occasioned and without prejudice to any other remedy or right of action which Sublessor may have for collection of arrears of rent or for the same or any preceding or breach of covenant by Sublessee.

14.2.2 Re-Let. Sublessor may from time to time, without terminating this Sublease, re-let for the account of Sublessee the Premises or any part thereof, for all or any portion of the remainder of the term of the Sublease to a tenant satisfactory to Sublessor, and at such rental or rentals as may, in the sole discretion of Sublessor.

Sublessor shall have the right to put said Premises in good order and condition and to make reasonable alterations and repairs to facilitate such re-letting at Sublessee's expense.

Sublessor shall receive such rentals and apply them, first, to the payment of the expense of recovering possession of the Premises and the re-renting thereof, together with such expense as Sublessor may have incurred in putting the Premises in good order and condition or in making such alterations and repairs, and then to the payment of the Rent due under this Sublease and to the fulfillment of the covenants of Sublessee. If any sums remain after such payments, it will be paid over to Sublessee, provided that Sublessee shall remain liable for any deficiency which Sublessee agrees to pay as the same may accrue.

Notwithstanding any such re-letting without termination, Sublessor may at any time thereafter elect to terminate this lease for such previous breach. Anything in this Section to the contrary notwithstanding, if this Sublease is terminated by Sublessor for any breach thereof by Sublessee or because of any other event entitling Sublessor to do so set forth above, Sublessor, at its option, may elect and shall be entitled to recover from Sublessee in addition to all costs of reletting (including without limitation attorneys' fees and costs) an amount equal to the value at the time of such termination, of the excess, if any, of the amount of Rent payable hereunder by Sublessee for or on account of the Premises for the balance of the term of the Sublease or any shorter period of time, over the reasonable rental value of the Premises at the time of such termination for the same period and on the same terms, except as to rent, as herein set forth to the extent reasonably applicable. The cause of action for such damage shall accrue upon such termination.

SECTION 15. RIGHT TO CURE.

Should Sublessee fail to perform any of its obligations under this Sublease within the earlier of thirty (30) days or other time specified elsewhere in this Sublease after the giving of written notice to Sublessee (but in any event, regardless of that notice or the lack thereof, promptly before the accrual of any penalty as provided by law), Sublessor may, but is not obligated to, perform those obligations. If Sublessor performs said obligations, it may add any sum(s) paid or expended in that performance to any Rent then due or thereafter falling due under this Sublease and those sum(s) shall become additional rental.

SECTION 16. SUBORDINATION, ATTORNMENT AND ESTOPPEL.

16.1 Subordination.

Without the necessity of any additional document being executed by Sublessee for the purpose of effecting a subordination, this Sublease may, if Sublessor so elects, be subject and subordinate at all times to the lien of any mortgage, trust indenture, or other encumbrance agreed to by Sublessor, which may now exist or thereafter be executed in any amount for which the Premises or Sublessor's interest or estate therein is specified as security. Notwithstanding the foregoing, Sublessor shall have the right to subordinate or cause to be subordinated any such liens to this Sublease. Sublessee covenants and agrees to execute and deliver, upon demand by Sublessor and in the form requested by Sublessor, any documents evidencing the priority or subordination of other encumbrance, and specifically to execute,

acknowledge, and deliver to Sublessee from time to time within ten (10) days after written request to do so a subordination of this Sublease. Failure of Sublessee to do so shall be a material default hereunder. Sublessee hereby irrevocably appoints Sublessor as its attorney-in-fact to execute, deliver and record any such documents in the name and on behalf of Sublessee if it fails to comply with the foregoing.

16.2 Attornment.

Sublessee shall attorn to any assignee, transferee or purchaser of Sublessor of this Sublease from and after the date of notice to Sublessee of such assignment, transfer or sale in the same manner and with the same force and effect as though this Sublease were made, in the first instance, by and between Sublessee and such assignee, transferee or purchaser. In the event of the exercise of the power of sale under, or the foreclosure of, any mortgage or other encumbrance placed by Sublessor against all or any portion of the Premises, Sublessee shall upon demand attorn to the purchaser upon the effective date of any such sale or foreclosure of such mortgage or other encumbrance, and shall recognize the purchaser or judgment creditor as Sublessor under this Sublease.

16.3 Estoppel Certificate.

Sublessee shall, from time to time within ten (10) days after prior written notice from Sublessor, execute, acknowledge and deliver to Sublessor a statement in writing as may be customarily required by Sublessor: certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect); the date to which the Rent and other charges are paid in advance, if any; acknowledging that there are not, to Sublessee's knowledge, any uncured defaults on the part of Sublessor hereunder, (or specifying such defaults if they are claimed); and containing such other matters as are set forth in such form. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or any portion thereof or interest therein. Sublessee's failure to deliver such statement within such time shall be conclusive upon it that this Sublease is in full force and effect, without modification except as may be represented by Sublessor, that there are no uncured defaults in Sublessor's performance. Failure of Sublessee to so deliver such statement shall be a material default hereunder. Sublessee hereby irrevocably appoints Sublessor as its attorney-in-fact to execute and deliver such statement to any third party in the name and on behalf of Sublessee if it fails to comply with the foregoing.

SECTION 17. MASTER LEASE.

17.1 This Sublease shall at all times be subject to and subordinate to the Master Lease. In the event of any conflict between the terms of this Sublease and any terms of the Master Lease which are applicable to the conduct or operation of the Sublessee's business under this Sublease, the terms of the Master Lease shall control.

17.2 In the event Sublessee is required to obtain any consent or approval hereunder from Sublessor, Sublessee shall also obtain such consent or approval from the Master Lessor. In the event that this Sublease does not require consent or approval for any action of Sublessee but consent of the Master Lessor is required under the Master Lease, Sublessee shall obtain the consent or approval of the Master Lessor.

17.3 Sublessee expressly agrees to commit no act or omission or allow any act or omission to be committed which, if committed by Sublessor, would be deemed a default under the Master Lease or cause Sublessor to be in default under the Master Lease.

17.4 This Sublease is subject to approval of the Master Lessor. In the event the Master Lessor requires that it be named an additional insured, loss payee, obligee, or indemnitee, with respect to any insurance policy, bond, or obligation of indemnity required of Sublessee hereunder, Sublessee shall be automatically deemed to have agreed to the addition of Master Lessor as an additional insured, loss payee, obligee, and all indemnities contained herein shall run in favor of Master Lessor.

SECTION 18. INTEREST AND LATE CHARGES.

18.1 Interest.

Sublessee shall pay Sublessor interest on all sums past due from Sublessee or extended or advanced by Sublessor on Sublessee's account from the due date or date of demand to and including the date of payment, at a floating rate two percentage points above the First Hawaiian Bank "Base Rate" of interest in effect from time to time (or if First Hawaiian Bank ceases to publish its "Base Rate," there shall be substituted for such "Base Rate" the highest prime rate of major money center banks, as published in the money rates section of the Wall Street Journal). For any period of time in which the foregoing rate may exceed the maximum rate then permitted by Hawaii law, interest during such period shall be computed at said maximum rate.

18.2 Late Charges.

It is agreed that the collection of amounts required to be paid by Sublessee under this Sublease, including without limitation any payment of Rent or real property taxes or assessments or excise and other taxes or rates or charges of any description results in a cost to Sublessor even though Sublessor does not engage a collection agent or attorney. Accordingly, Sublessee agrees to pay Sublessor not only their out-of-pocket collection costs with respect to any past due sum, including reasonable fees of collection agents and attorneys, but also a sum to reimburse Sublessor for its administrative and other costs in an amount equal to five percent (5%) for each billing rendered by Sublessor to Sublessee for a past due amount. Sublessee shall also be responsible for the payment of any penalty or interest charge to which the Premises or any part thereof, or Sublessor or Sublessee in respect thereof may during the term be assessed or become liable as the result of Sublessee's failure to make any of the foregoing required payments in a timely manner, and Sublessee shall reimburse Sublessor on demand in the event Sublessor pays the same.

SECTION 19. LOSS OR DAMAGE SUSTAINED BY SUBLESSEE.

Sublessee assumes all risk of loss to any of Sublessee's property on the Premises unless loss or damage is caused by the willful or wanton act or the gross negligence of Sublessor. Sublessor shall not be liable to Sublessee or to anyone claiming under or through Sublessee, for any loss or damage which may be occasioned by fire, water, gas, explosion, electricity, steam, sewerage, wiring, deluge, rain, wind, storm, overflow of ocean waters, earthquake, bursting or leaking of water, gas or any pipes, plumbing or apparatus, or by reason of any ceiling leak, or any existing or future condition, defect, material or thing in the Premises, or for the act, omission, or negligence of any other person or tenant in or about the Premises; and in the event of any such loss or damage none of the Rent or other amounts payable hereunder, or any portion thereof, shall be cancelled, postponed abated or reduced.

SECTION 20. PARKING.

Sublessee and/or its employees or contractors shall park only in the spaces described in Sections 1.2.3 of the specific Sublease Terms. In the event those spaces are occupied, Sublessee, its employees or contractors shall park outside the Center.

If available and in Sublessor's sole discretion, Sublessor may rent additional parking spaces to Sublessee if Sublessee requests, in writing, additional parking spaces.

SECTION 21. MISCELLANEOUS PROVISIONS.

21.1 Headings.

All headings used in this Sublease are for convenience only and are not to be construed as limiting in any manner the content of any paragraph or particular provision.

21.2 Inurement.

This Sublease shall be binding upon and shall inure to the benefit of Sublessor, its successors and assigns, and the lessee and its successors and permitted assigns as the case may be.

21.3 Sublessor's Agreement, Consent or Approval.

Except as expressly agreed herein by Sublessor, in any case in which Sublessor's agreement, consent or approval is required, necessary or provided for hereunder, such agreement, consent or approval shall be given solely with the discretion of Sublessor and may be withheld with or without reason or for any reason whatsoever.

In connection with the giving of any agreement, consent or approval which is necessary, required or requested under this Sublease, Sublessee shall reimburse Sublessor for all costs and expenses incurred by Sublessor including but not limited to the fees and costs of attorneys, accountants, or design professionals, which are incurred in reviewing and processing of the application for and preparation of any documents. All such charges shall be payable whether or not agreement, consent or approval is given or granted or the subject transaction completed.

21.4 No Liability for Sublessor's Review or Inspection.

Except as expressly provided in this Sublease, neither the right of Sublessor to approve, consent to, agree to, review or inspect any portion of the Premises or any item or document pursuant to this Sublease, nor the actual approval, consent, agreement, review or inspection by Sublessor of any portion of the Premises or any item or document (whether or not pursuant to request by Sublessee, to the right of lessor or otherwise), shall give rise to or result in any duty on the part of Sublessor to so approve, consent, agree, review or inspect or to so approve, consent, agree, review or inspect in accordance with any standard whatsoever.

21.5 Expenses of Sublessor.

Sublessee will pay to Sublessor on demand all costs and expenses, including reasonable attorneys' fees, incurred by Sublessor in enforcing any covenants or conditions contained in this Sublease, in remedying any breach by Sublessee, in collecting any delinquent rent, taxes or other charges hereunder payable by Sublessee, in recovering possession or in connection with any litigation (other than condemnation proceedings) commenced by or against Sublessee to which Sublessor shall without fault on their part be made a party.

21.6 No Partnership.

No partnership is intended or created hereby.

21.7 Amendments.

This Sublease may be amended only by written instrument executed and acknowledged by all the parties hereto.

21.8 Governing Law.

This Sublease shall be construed in accordance with the laws of the State of Hawaii. The parties agree that any suit related to or arising from this Sublease shall be brought in the courts of the First Circuit of the State of Hawaii or the Federal District Court for the District of Hawaii.

21.9 No Merger.

Ownership by or for the same person or different estates or interest in the Premises shall not result in merger without the prior written consent of all persons having an interest in the Premises.

21.10 Waiver.

Acceptance of Rent or any payment by Sublessor or its agent shall not be deemed a waiver by it of any breach by Sublessee of any covenant herein contained or of Sublessor's right of re-entry or breach of condition. Sublessor's waiver of any breach by Sublessee shall not operate to extinguish the term, covenant or condition the breach has been waived nor be deemed a waiver of Sublessor's right to declare a forfeiture for any other breach thereof.

21.11 Notices.

All notices required hereunder shall be given by personal delivery, facsimile, or registered or certified mail,

return receipt requested, to the facsimile or addresses set forth in the Specific Sublease Terms. If notice is given by facsimile, the sending party shall mail the original notice to the other party immediately upon sending the facsimile.