

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

February 27, 2026

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

Land Board Members:

SUBJECT: Termination of Harbor Lease No. H-92-12 Issued to Moloka'i Ice House, Inc., situated at the Kaunakakai Small Boat Harbor, Kaunakakai, Island of Moloka'i, Hawaii, Tax Map Key: (2) 5-3-001:011 (por.)

REQUEST:

Termination of Harbor Lease H-92-12 to Moloka'i Ice House, Inc., situated at the Kaunakakai Small Boat Harbor.

LESSEE:

Moloka'i Ice House, Inc., a Hawaii corporation, whose mailing address is Post Office Box 789, Kaunakakai, Hawaii, 96748.

LEGAL REFERENCE:

HRS Sections 171-6 & 7, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kaunakakai Small Boat Harbor, Kaunakakai, Kona, Island of Moloka'i, Hawaii, Tax Map Key: (2) 5-3-001:011 (por.), hereinafter referred to as the "Premises" as shown on the maps labeled **Exhibit A-1 and A-2**.

AREA:

Lease parcel land area: 4,213 square feet, more or less
Utility easement: 1,877 square feet, more or less

ZONING:

State Land Use District: Urban
County of Maui: Interim

Item J-1

TRUST LAND STATUS:

Section 5(a) lands of the Hawai'i Admission Act
DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: No

CURRENT USE STATUS:

Encumbered by Harbor Lease H-92-12 to Moloka'i Ice House, Inc., see **Exhibit B-1**.

TERM OF LEASE:

Thirty-five years

CURRENT ANNUAL RENT:

\$1,422.00 payable in quarterly installments on January 1, April 1, July 1 and October 1

PERFORMANCE BOND:

\$355.50, equivalent to one-fourth of the annual rental amount

BACKGROUND:

On April 1, 1992, the State of Hawai'i, Department of Transportation issued Harbor Lease No. H-92-12, attached as **Exhibit B-1**, to Moloka'i Ice House, Inc. with a term of thirty-five (35) years, commencing on April 1, 1992 and ending on March 31, 2027, for support of the fishing industry, wherein the premises shall be used for the operation of an ice house for the manufacture, sale, and the storage of bulk or packaged ice and the storage of fish and catches of the sea, with rent payable in quarterly installments.

On May 13, 1993, Harbor Lease No. H-92-12 was amended to add a non-exclusive overhead easement for the purposes of providing utility service to the premises, see **Exhibit B-2**.

REMARKS:

On January 13, 2025, Staff contacted the tenant's representative by phone to notify him that an outstanding balance of \$483.94 existed on the account and that the account was accruing late fees. He stated that the Ice house had not been in operation for a while and that they were trying to get repairs done to the refrigeration, the water supply, and the septic system so that it could re-open.

On February 6, 2025, the tenant's representative called staff and said that he would be mailing a check for \$800.00, which was received on February 13, 2025.

On August 26, 2025, staff sent the tenant two Notices of Default via USPS certified mail, regular mail, and email, see **Exhibit C-1**; the first for failure to keep lease rental payments, and the second for failure to maintain the required liability insurance, and failure to submit

quarterly gross receipt reports. The tenant was given five (5) days to cure the monetary default and sixty (60) days for the non-monetary defaults.

On September 18, 2025, the tenant's representative called staff to let them know that they had received the letter and would be working to cure the defaults.

Staff referred potentially interested buyers to the tenant in an attempt to avoid cancelling the lease, but the tenant gave no indication of being interested in selling the business and assigning the lease.

On October 8, 2025, Staff sent a notice to the tenant addressing the discontinued use of the premises, see **Exhibit C-2**, giving the tenant until October 31, 2025, to resume operations or face termination of its lease.

Paragraph 44 of the lease, see **Exhibit B-1** states in relevant part, "In the event LESSEE discontinues using the premises for the uses specified and purposes enumerated herein, and activities related thereto, the LESSOR reserves the right to terminate this lease. The failure of the LESSEE to operate the facilities for the above-mentioned uses for a period of at least fifteen (15) consecutive days shall constitute discontinuance of use of the premises."

On December 3, 2025, on-site harbor staff confirmed the lessee has not resumed operations and Molokai Ice House has not contacted Staff.

On December 9, 2025, staff sent an email to Moloka'i Ice House stating the current balance due. The email was returned undeliverable and the report shows that the mailbox is disabled, see **Exhibit D**.

On February 1, 2026, the balance due and owing on the account is \$1,066.50, plus \$453.35 in late fees for a total of \$1,519.85.

Staff requests the Termination of Harbor Lease H-92-12, effective February 13, 2026.

RECOMMENDATIONS:

That the Board:

1. Authorize the retention of all sums heretofore paid or pledged under Moloka'i Ice House, Inc. Harbor Lease No. H-92-12 to be applied to any past due rent, late fees or interest that will have accrued through the cancellation date; and
2. Authorize the Department of the Attorney General, DLNR or their agents to collect all monies due the State of Hawai'i under Harbor Lease No. H-92-12 and pursue all other rights and remedies as appropriate; and
3. Approve the cancellation of Lease No. H-92-12 to Molokai Ice House, Inc. situated at the Kaunakakai Small Boat Harbor, under the terms and conditions cited above, which are by this reference, incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current cancellation lease document, as may be amended from time-to-time; and
- b. The effective date of cancellation shall be February 13, 2026.
- c. Review and approval by the Department of the Attorney General; and
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



RYAN K.P. KANAKA'OLE, Acting Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit A-1 Site Location
- Exhibit A-2 Site Location
- Exhibit B-1 Lease Amendment (Easement)
- Exhibit B-2 Lease Amendment (Easement)
- Exhibit C-1 Notice of Default (Rent, G/R, COI)
- Exhibit C-2 Notice of Default (Discontinued use of the premises)
- Exhibit D Report of Disabled Email

Exhibit A-1
Site Location
Kaunakakai Small Boat Harbor



Exhibit A-2
Site Location - Easement
Kaunakakai Small Boat Harbor



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
HARBOR LEASE NO. H-92-12
MOLOKA'I ICE HOUSE, INC.
ICE AND COLD STORAGE FACILITY
KAUNAKAKAI HARBOR
ISLAND OF MOLOKAI
COUNTY OF MAUI, HAWAII

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
HAWAIIAN ISLANDS
EXHIBIT B-1

STATE OF HAWAII
HARBOR LEASE NO. H-92-12

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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION

LEASE NO. H-92-12

THIS INDENTURE OF LEASE, made this 1st day of April, 19 92, by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter called the "LESSOR," and MOLOKA'I ICE HOUSE, INC., whose business address is P. O. Box 990, Kaunakakai, Hawaii 96748, hereinafter called the "LESSEE,"

WITNESSETH:

1. AREA LEASED. THAT THE LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed and performed, does hereby demise and lease unto the LESSEE and the LESSEE does hereby lease and hire from the LESSOR, that certain parcel of land containing an area of 4,213 square feet and a nonexclusive underground utility easement containing an area of 1,315 square feet, situated at Kaunakakai Harbor, Island of Molokai, County of Maui, Hawaii, and being portions of land set aside to the Harbors Division, Department of Transportation, by Governor's Executive Order No. 1673, Tax Map Key No. 5-3-01-11P, which parcel and easement are hereinafter called the "premises," and more particularly shown on the map designated Exhibit "A" and described in Exhibit "B," both of which are attached hereto and made parts hereof, together with right of ingress and egress at any time to and from the premises over and across the lands of the LESSOR adjacent thereto.

2. USE OF PREMISES. In support of the fishing industry, the premises shall be used for the operation of an ice house for the manufacture, sale and the storage of bulk or packaged ice and the storage of fish and catches of the sea. The following activities shall be allowed:

(a) Purchase and sale of fresh and frozen fish at both the wholesale and retail levels, subject to the following: (1) At least seventy percent (70%) of sales will be wholesale and (2) not more than thirty percent (30%) of the sales shall be retail.

(b) Sale of chips, soft drinks, cigarettes, candies, packaged food and sandwiches either by counter service or the installation of vending machines.

(c) Sale of fishing gear, lures, live and processed bait, batteries, spark plugs, fuel (tank truck), oil and lubricants, packaged soft drinks, packaged beer and wine for off-premise consumption and other fishing and commercial fishing boat equipment and supplies.

- (d) Office to conduct the above-mentioned activities.
- (e) Other marine-related activities as may be first approved in writing by the LESSOR.

3. PROHIBITED USES. The LESSEE shall not use the premises to conduct the following activities:

- (a) A restaurant or fast food operation.
- (b) Ship construction, storage, repair or overhaul facility.
- (c) The sale, rental or servicing of scuba diving equipment, except sales under subparagraph 2c.
- (d) To do any act which results or may result in the creation or commission or maintenance of a nuisance on said premises. The LESSEE shall not cause or produce or permit to be caused or produced upon the premises, or to emanate therefrom, any noxious or objectionable smokes, gases, vapors and/or odors.
- (e) For any illegal purpose.
- (f) For temporary or permanent lodging or sleeping purposes. However, rest area for employees for their comfort and convenience during working hours is allowed and a security watch of not more than one (1) person is permitted during nonworking hours.
- (g) The sale or serving of any intoxicating beverage except to the extent permitted under subparagraph 2b.
- (h) Any use or activity not specifically permitted under paragraph 2.

4. DEFINITIONS. As used herein, unless specifically indicated otherwise or clearly repugnant to the context:

- (a) "LESSOR" shall mean the State of Hawaii, by its Director of Transportation or the Director's designated representative;
- (b) "LESSEE" shall mean and include the LESSEE herein, its successors or permitted assigns, according to the context hereof;
- (c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the premises and who has filed with the Department of Transportation and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the parcel of land and easement hereby demised and all improvements now or hereinafter constructed and installed thereon;

5. GENDER AND NUMBER. The use of any gender shall include all genders, and if there be more than one LESSEE, then all words used in the singular shall extend to and include the plural;

6. HEADINGS NOT TO BE USED TO CONSTRUE DOCUMENT. The marginal headings throughout this lease are for the convenience of the LESSOR and the LESSEE and shall not be used to construe the intent or meaning of any of the provisions hereof.

7. LEASE TERM. The term of this lease shall be for a period of thirty-five (35) years commencing on April 1, 1992 and terminating on March 31, 2027 unless terminated as hereinafter provided.

8. ANNUAL RENTAL.

(a) During each of the first (1st) through the fifth (5th) years of this lease, the LESSEE shall pay an annual rental of:

- (1) ONE THOUSAND SIX HUNDRED THIRTY FIVE AND NO/100 DOLLARS (\$1,635.00), or
- (2) five percent (5%) of the annual gross receipts, whichever is greater;

(b) For each of the sixth (6th) through the tenth (10th) years, the LESSEE shall pay an annual rental of:

- (1) one hundred thirty percent (130%) of the annual rental the LESSEE paid to the LESSOR for the fifth (5th) year, or
- (2) five percent (5%) of the annual gross receipts, whichever is greater; and

(c) For each of the eleventh (11th) through the fifteenth (15th) years, the LESSEE shall pay an annual rental of:

- (1) one hundred thirty percent (130%) of the annual rental the LESSEE paid to the LESSOR for the tenth (10th) year, or
- (2) five percent (5%) of the annual gross receipts, whichever is greater.

The annual rental shall be waived during the first year of the lease or until the LESSEE commences operation, whichever occurs first.

The LESSEE shall give advance written notice to the LESSOR when LESSEE is ready and able to commence operations.

9. RENTAL REOPENING.

(a) Period. The annual rental consisting of either the fixed rental or the percentage rental (which is five percent (5%) of the annual gross receipts per year), whichever is greater, shall be reopened and redetermined at the expiration of the fifteenth (15th) and twenty-fifth (25th) years of said term. The appraiser(s) referred to below shall also determine an appreciation rate to be applied to the annual rental for the latter five (5)-year portion of each of the remaining ten (10)-year periods, which rate shall not be less than thirty percent (30%).

(b) Determination of rental upon reopening of the annual rental. The rental for each of the two (2) remaining ten (10) year periods shall be the fair market rental based upon all legal uses and not necessarily limited to the existing uses at the time of reopening. Except as provided herein, the provisions in Chapter 658, Hawaii Revised Statutes, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the LESSOR, and the LESSEE shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by LESSOR'S appraiser; provided, that should the LESSEE fail to notify LESSOR in writing within thirty (30) days after receipt thereof that LESSEE disagrees with the fair market rental as determined by LESSOR'S appraiser and that LESSEE has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by LESSOR'S appraiser shall be deemed to have been accepted by LESSEE and shall be the fair market rental as of the date of reopening. If LESSEE has notified LESSOR in writing and appointed its appraiser as stated hereinabove, LESSEE'S appraiser shall complete its appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of LESSEE'S appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20)

days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both LESSOR and LESSEE, subject to vacation, modification or correction in accordance with the provisions of Chapter 658, Hawaii Revised Statutes. The LESSEE shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the LESSOR and the LESSEE. All appraisal reports shall become part of the public record of the LESSOR.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the LESSEE shall pay the fair market rental as determined by LESSOR'S new appraised value until the new rent is determined and the rental paid by LESSEE shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. Any failure by LESSEE or LESSEE'S appraiser to comply with the procedures set forth above shall constitute a waiver of LESSEE'S right to contest the new rent, and the LESSEE shall pay the rent as determined by LESSOR'S appraiser without any retroactive adjustments. Alternatively, LESSOR may treat such failure as a breach of this lease and terminate the lease.

The value of LESSEE'S improvements constructed by LESSEE after the effective date of this lease shall not be considered in determining the said fair market rental, but enhancement of land value resulting from improvements shall be considered.

If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the LESSEE shall pay rent for the interim period at the rate determined by the LESSOR'S appraiser. After the new fair market rental has been determined, the LESSEE shall, within thirty (30) days make up the deficiency, if any, or the LESSOR shall credit the LESSEE for overpayments, if any, made during the interim period.

10. GROSS RECEIPTS EXPLANATION. As used herein, the term "gross receipts" means:

(a) Any and all monies paid or payable to the LESSEE for goods and services sold or rented as part of the operation of the facility and/or in connection with any of the LESSEE'S operations upon, or attributable or related to the premises. In the event the LESSEE subleases a portion of the premises with the approval of LESSOR pursuant to paragraph 33, the LESSEE shall include the gross receipts of the sublessee in determining the LESSEE'S percentage rental. However, the following shall be excluded from the computation of any such gross receipts:

- (1) Any and all retail sales taxes, excise taxes, or related direct taxes upon the consumer and collected by the LESSEE on such sales.
- (2) Any sum received as insurance proceeds or otherwise for damage to facility equipment or other property of the LESSEE, or for loss, conversion, or abandonment of such equipment; or any amounts paid by patrons of the LESSEE separately billed as additional charges for waiver by the LESSEE of its rights to recover damages to any rented equipment.
- (3) Receipts from the sale or trade-in value of any furniture, fixtures, or equipment used upon the premises and owned by the LESSEE.
- (4) The value of any merchandise, supplies, or equipment exchanged or transferred from or to other locations of business of the LESSEE where such exchanges or transfers are not made for the purpose of avoiding a sale by the LESSEE which otherwise would be made at or from the premises.
- (5) Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers.
- (6) Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by the LESSEE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.
- (7) The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.
- (8) The amounts of any gratuities paid or given by patrons or customers to employees of the LESSEE.
- (9) Receipts from the sales at cost of uniforms or clothing to LESSEE'S employees where such uniforms or clothing are required to be worn by such employees.

(b) The LESSEE shall not be credited with nor allowed to have any reduction in the amount of the gross receipts, as hereinabove defined, which results from any arrangements for a

rebate (including but without limitation, rebate or reimbursement allowed to customers for gasoline or oil purchased by said customers) or hidden credit given or allowed to any customer; provided, however, that the LESSEE may allow customary discounts on sales of commodities and services to its own employees.

11. LESSEE'S DUTIES AND RESPONSIBILITIES. In connection with the said rental obligations of the LESSEE, the LESSEE shall:

(a) Maintain and keep in accordance with accepted accounting practices and on the accrual basis, true and accurate accounts, books, data and records of its operations, which shall, among other things, show all sales made and services performed for cash, credit or otherwise and also, the gross receipts of all of the LESSEE'S operations upon, attributable or related to and/or connected with the premises.

(b) Permit at all reasonable times during the term of the lease the examination and audit by the officers, employees, agents and representatives of the LESSOR of such accounts, books, data, records, cash register tapes, sales slips and the like, and, if such examinations or audits reveal discrepancies, pay the LESSOR immediately for any underpayments made to it as a result of errors in quarterly or annual statements (and the LESSOR shall reimburse or credit the LESSEE for any overpayments received by it as a result of any such errors).

(c) At the time of sale and in the presence of the purchaser LESSEE shall record all sales and charges for services or other transactions whether for cash or credit in a cash register or other recording equipment having a nonresettable cumulative total, a tape and a readily visible indicator as to the amount rung, which can be serviced by an established agency. Upon written approval by LESSOR, LESSEE may use either a register containing serially numbered sales slips or a computerized sales recording system, which system shall first be approved in writing by LESSOR. LESSEE shall issue to each customer a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales, cash register tapes or computerized receipt. LESSOR shall have the right during business hours to examine the cash register or computer totals. No cash register shall be removed for repair or other purpose without immediately giving LESSOR prior written notice of such removal. Authorized repair agents will be requested to furnish LESSOR with a letter showing the date the register or computer terminal is removed from the premises, the date the equipment is returned and the reading on such equipment, if applicable, both before and after repair. Any repair agency employed by LESSEE to repair or replace any cash register or other equipment used by LESSEE is hereby authorized to and shall, upon written request by LESSOR or its auditors, disclose any information obtained by the agency in the course of

making such repairs or replacements pertaining to said cash registers or other equipment for the purposes of determining LESSEE'S statement of gross sales.

(d) Furnish the LESSOR within thirty (30) days after the close of each quarter and sixty (60) days after the close of each calendar year, a statement of all gross receipts on forms provided by LESSOR, which statement shall be certified by a qualified representative of the LESSEE or operator of the facility, and which certification shall include a statement of gross receipts and have evidence of the gross receipts for the period reported and that to the knowledge of such representative or operator the statement thereof is true and correct. Such statement shall also contain such reasonable detail and breakdowns and be in or upon such form as the LESSOR may require.

12. TIME AND METHOD OF PAYMENT. The LESSEE shall pay quarterly in advance one-fourth (1/4th) of the annual rental, without notice or demand to the LESSOR at the Maui District Office, Harbors Division, Department of Transportation, Kahului Harbor, Maui, Hawaii 96732, on the first day of January, April, July and October of each and every year during the term of this lease, in legal tender of the United States of America. The rental for the first and last quarters shall be prorated in relation to the days within the quarter. The initial payment shall be made on the date this lease is executed.

The LESSEE shall pay said rent to the LESSOR at the time, in the manner and form aforesaid and at the place specified above, or at such other place as the LESSOR may from time to time designate, in legal tender of the United States of America.

13. INTEREST, SERVICE CHARGE. Without prejudice to any other remedy available to the LESSOR, LESSEE agrees without further notice or demand as follows:

(a) To pay interest at the rate of one percent (1%) per month, compounded monthly, on all delinquent payments;

(b) To pay a service charge, currently set at \$25.00, of up to \$50.00 each month for all delinquent payments in accordance with the Hawaii Administrative Rules; and

(c) That the term "delinquent payments" as used herein means any payment of rent, fees, service charges or other charges payable by LESSEE to LESSOR, which are not paid when due.

14. MINERALS AND WATERS. The LESSOR reserves the right to all minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as

may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the LESSEE'S required or permitted activities on the premises and not for sale to others. The LESSOR also reserves the right to all surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises as may be required in the exercise of this right reserved; provided that, as a condition precedent to the exercise by the LESSOR of the rights reserved in this paragraph just compensation shall be paid to the LESSEE for any of the LESSEE'S improvements taken.

15. PREHISTORIC AND HISTORIC REMAINS. All prehistoric and historic remains found on the premises shall be and remain the property of the LESSOR and shall not be disturbed or removed by the LESSEE, its employees, agents or contractors, without the prior written approval of the LESSOR and the Department of Land and Natural Resources.

16. EASEMENTS. The LESSOR reserves the right to establish, or to sell or grant to others, easements required for maritime and/or utility purposes; provided that such easements shall not unreasonably interfere with the LESSEE'S use of the premises.

17. CONSTRUCTION OF IMPROVEMENTS; ENVIRONMENTAL ASSESSMENT. The LESSEE shall, prior to constructing any improvements on the premises and within thirty (30) days after the effective date hereof, submit an Environmental Assessment to the LESSOR. Based on said Assessment, the LESSOR shall determine whether an Environmental Impact Statement or Negative Declaration is required to comply with Chapter 343, Hawaii Revised Statutes, as amended, and the Regulations of State of Hawaii's Office of Environmental Quality Control. Within thirty (30) days after the approval of the Environmental Impact Statement or Negative Declaration, whichever is necessary, the LESSEE will submit the completed building plans to the LESSOR for approval.

Prior to construction, the LESSEE must obtain all required approvals for the construction of the LESSEE'S facilities from the County of Maui including, without limitation, a shoreline management permit, satisfying all shoreline setback requirements, if applicable, and a building

permit. The LESSOR does not warrant or guarantee that the County of Maui will permit the construction of any improvements that may be required hereunder. All costs associated with obtaining such approvals shall be borne by the LESSEE. All site improvement costs and any additional expenses necessary to bring utilities to the site shall be borne solely by the LESSEE. The responsibility of bringing utilities to the site, including the obtaining of easements therefor, shall be borne by the LESSEE. The LESSEE must also file and receive approval of a Conservation District Use Application with the Department of Land and Natural Resources, if applicable.

Within one (1) year after the approval of the Environmental Impact Statement or Negative Declaration, the LESSEE will at its own cost and expense complete the construction and installation of all of the LESSEE'S improvements and installation of all equipment and fixtures related to the LESSEE'S operations, in whichever order as may be convenient to the LESSEE, all of which shall represent a total cost of not less than ONE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$170,000.00). LESSEE shall submit a monthly progress report reflecting the status of its compliance with the requirements of this paragraph.

During the term of this lease, no improvements, alterations or additions will be constructed on or under the premises unless the LESSEE first submits its plans and specifications to the LESSOR for its approval and approval is granted by the LESSOR in writing. The plans and specifications must be in full compliance with all laws, statutes, ordinances, and rules and regulations applicable thereto. Except as otherwise provided in paragraphs 41 and 42 herein, the LESSEE shall retain title to any and all leasehold improvements, trade fixtures, furnishings, equipment and other personal property constructed, placed or installed by the LESSEE on the premises, at its own cost and expense, during the term of this lease.

18. IMPROVEMENT BOND. Upon receipt of the appropriate building permit, the LESSEE shall, within thirty (30) days after the date of this lease, procure and deposit with the LESSOR a payment and performance bond from a surety satisfying the qualifications described in paragraphs 39 and 51 herein, in the amount of FORTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$42,500.00), which bond shall:

- (a) Name the State of Hawaii as obligee,
- (b) Be conditioned upon the faithful observance and performance of the LESSEE'S obligation under paragraph 17 herein and the completion of construction in accordance with the plans and specifications approved by the LESSOR; and
- (c) Indemnify, defend and hold harmless the LESSOR from all liens, suits, actions or damages arising out of, caused by or attributable to the LESSEE'S work.

19. CONTRACTOR'S INSURANCE. Before commencing the construction or installation of any leasehold improvements, equipment or fixtures on the premises, the LESSEE shall require that all contractors and subcontractors employed on the premises by the LESSEE or the LESSEE'S contractor procure and maintain in full force and effect during the course of construction and installation the following insurance:

(a) Workers Compensation as required by law.

(b) Contractor's Comprehensive General Liability and Property Damage with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.

(c) Contractor's Automobile General Liability and Protective Property with a combined minimum single limit of \$300,000.00 for bodily injury and property damage per occurrence.

The aforesaid insurance policies shall name the State of Hawaii as additional insured and the LESSEE shall furnish the LESSOR with the Certificate of Insurance evidencing that said insurance policies are in effect.

20. SIGNS. All exterior signs, installed or painted, advertising the business or activity conducted on the premises, shall be restricted to the appurtenant equipment or the improvements constructed by the LESSEE. All signs installed or painted shall be done in good aesthetic taste and shall strictly conform to the sign ordinance of the County of Maui.

21. SANITATION; MAINTENANCE OF PREMISES. The LESSEE at all times during the term of this lease shall:

(a) Keep and maintain all portions of the premises and improvements thereon in good repair and in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and other refuse from the premises;

(b) Keep and maintain all fixtures, equipment and personal property of the LESSEE upon the premises in good condition and repair; and

(c) In general, take the same care that would be taken by a reasonably prudent owner who desires to keep and maintain the premises so that at the expiration or sooner termination of this lease, the premises will be in as good a condition as that which existed at the commencement thereof, ordinary wear and tear excepted.

22. UTILITIES. Water, electricity and telephone services are available at the harbor. As aforementioned, the LESSEE shall be responsible for providing utility services which

shall include power, sewer, telephone and water at the site at no cost to the LESSOR, subject to the prior approval of the County of Maui.

THE LESSOR COVENANTS AND AGREES WITH THE LESSEE that upon the payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold and enjoy the premises for the term hereby, without unreasonable or undue hindrance or interruption by the LESSOR or any other person or persons lawfully claiming by, through or under it.

THE LESSEE FURTHER COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

23. TAXES, ASSESSMENTS, ETC. The LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the premises or any part thereof, or any improvements thereon, or the LESSOR or LESSEE in respect thereof, are now or may hereafter be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the LESSEE shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

24. UTILITY SERVICES. The LESSEE shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises, or any part thereof, or any improvements thereon or the LESSOR or LESSEE in respect thereof may during said term become liable, whether assessed to or payable by the LESSOR or LESSEE.

25. COVENANT AGAINST DISCRIMINATION. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, sex, color, religion or ancestry.

26. WASTE, AND UNLAWFUL, IMPROPER OR OFFENSIVE USE OF PREMISES. The LESSEE shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises, or any part thereof.

27. COMPLIANCE WITH LAWS. The LESSEE shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal laws, pertaining to the premises, now in force or which may hereinafter be in force.

28. INSPECTION OF PREMISES. The LESSEE will permit the LESSOR and its agents, at all reasonable times during the

said term, to enter the premises and examine the state of repair and condition thereof.

29. IMPROVEMENTS. The LESSEE shall not at any time during said term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the LESSOR and upon such conditions as the LESSOR may impose, including any adjustment of rent, unless otherwise provided herein.

30. REPAIRS TO IMPROVEMENTS. The LESSEE shall, at its own expense, keep, repair and maintain all improvements and utility lines hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

31. LIENS. The LESSEE will not commit or suffer any act or neglect whereby the premises or any improvement thereon or the estate of the LESSEE in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify, defend and hold harmless the LESSOR from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

32. ASSIGNMENTS, ETC. The LESSEE shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the LESSOR, the assignment and transfer of this lease or any portion may be made pursuant to Section 171-36, Hawaii Revised Statutes, and more particularly if:

- (a) It contains the personal residence of the LESSEE;
- (b) In the case of commercial, industrial, and other business uses, the LESSEE was required to put in substantial building improvements;
- (c) The LESSEE becomes mentally or physically disabled;
- (d) Extreme economic hardship is demonstrated to the satisfaction of the LESSOR; or
- (e) It is to the corporate successor of the LESSEE;

provided, further, that prior to the approval of any assignment of lease, the LESSOR shall have the right to review and approve the consideration paid by the proposed assignee and may condition its consent to the assignment of the lease on payment by the LESSEE of a premium of fifty percent (50%) of the amount

by which the consideration for the assignment received and/or to be received by the LESSEE, whether by cash, credit or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the proposed assignee, as further explained in Exhibit "C" attached hereto. The premium on any subsequent assignments shall be based on the greater of (1) the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then assignor or (2) the difference between the selling price and the cost of the LESSEE'S investment in this lease appreciated at eight percent (8%) per year where there is a sale or transfer of any ownership interest in or stocks of the LESSOR of twenty percent (20%) or more.

If the LESSEE is a partnership, joint venture or corporation, the sale or transfer of twenty percent (20%) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to the LESSOR and shall be deemed an assignment for purposes of this paragraph and subject to the right of the LESSOR to impose the foregoing premium on the difference between the selling price and the cost of the LESSEE'S investment appreciated at eight percent (8%) per year, it being the intent that any substantial profit resulting from the sale or transfer of ownership interest shall be subject to the payment of a premium to the LESSOR.

The LESSEE shall furnish the LESSOR with the actual costs of all improvements and renovations within thirty (30) days after completion as well as the purchase and all other related costs of all machinery, equipment and trade fixtures acquired for the LESSEE'S operation of the facility on the premises within thirty (30) days of purchase. The LESSEE shall furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. The LESSEE shall also furnish the LESSOR with an inventory of all personal property placed on the premises.

33. SUBLETTING. The LESSEE shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Director and the Board of Land and Natural Resources, State of Hawaii, hereinafter called "Board," pursuant to Sections 171-11 and 171-36(a)(6), Hawaii Revised Statutes, as amended. The Director shall have the right to deny uses contrary to the required or permitted uses on the premises. The Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the proposed sublessee by the LESSEE; provided, further, that the rent may not be revised downward.

34. MORTGAGE. The LESSEE shall not mortgage, hypothecate or pledge the premises or any portion of this lease or any interest herein except in accordance with and subject to

the provisions of paragraph 43 hereof and any such mortgage, hypothecation or pledge without the prior written approval of the LESSOR shall be null and void.

35. INDEMNITY. The LESSEE will hold harmless, indemnify, defend and where appropriate insure the LESSOR:

(a) From and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of (1) the LESSEE'S use or occupancy of the premises, (2) any accident on the premises and sidewalks and roadways adjacent thereto, (3) any act or nuisance made or suffered on the premises, or any fire thereon, (4) the willful or negligent acts of the LESSEE or (5) the LESSEE'S failure to maintain the premises in a safe condition and the LESSEE will reimburse the LESSOR for all costs and expenses in connection with the defense of such claims; and

(b) From and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

36. COSTS OF LITIGATION. If the LESSOR shall, without any fault on its part, be made a party to any litigation commenced by or against the LESSEE (other than condemnation proceedings), the LESSEE shall and will pay all costs and expenses incurred by or imposed on the LESSOR, furthermore, the LESSEE shall and will pay all costs and expenses which may be incurred or paid by the LESSOR in enforcing the covenants and agreements of this lease, in recovering possession of the premises or in the collection of delinquent rental, taxes and any and all other charges.

37. LIABILITY INSURANCE. The LESSEE shall procure, at its own cost and expense, and keep in force during the entire term of this lease, with an insurance company or companies reasonably acceptable to the LESSOR, a policy or policies of comprehensive general liability insurance with combined minimum single limits as follows:

Property damage per occurrence:	\$ 500,000.00
Personal injury or death:	
Per person per occurrence	\$1,000,000.00
Per occurrence	\$5,000,000.00

Said policy or policies shall cover the premises, including all buildings, improvements and grounds and all roadways and sidewalks on or adjacent to the premises in the control of the LESSEE. The LESSEE shall furnish the LESSOR with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an

assurance of the insurer that the LESSOR shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in, said policy. The procuring of this policy or policies shall not release or relieve the LESSEE of its responsibility under this lease. The policy or policies required under this provision shall name the LESSOR as an additional insured.

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

38. FIRE AND EXTENDED COVERAGE INSURANCE. The LESSEE will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the premises in the joint names of LESSOR, LESSEE and Mortgagee, if any, as their interest may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in a company or companies approved by the LESSOR, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the LESSOR, LESSEE and Mortgagee, if any, as their interests may appear, and shall be deposited with the Mortgagee, if any, otherwise with the LESSOR; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the LESSEE for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the plans and specifications approved in writing by the LESSOR; provided, however, that with the approval of the LESSOR, the LESSEE may surrender this lease and pay the balance owing on any mortgage and the LESSEE shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the LESSOR to retain the balance of said proceeds.

The LESSEE shall furnish to the LESSOR and Mortgagee, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify the LESSOR and Mortgagee, if any, with thirty (30) days prior written notice of any intention to terminate, cancel or materially change any such policy or policies.

39. PERFORMANCE BOND. That the LESSEE shall, within thirty (30) days after the effective date of this lease, deposit and maintain with the LESSOR, in cash, certified check, certificate of deposit or other security, and amount equivalent to one-fourth (1/4) of the annual rental or at its own cost and expense, procure and deposit with the LESSOR and thereafter keep in full force and effect during the term of this lease a good

and sufficient surety bond (sufficiency of bond is explained in paragraph 51 herein), conditioned upon the full and faithful observance and performance by said LESSEE of all of the terms, conditions and covenants of this lease, the amount of said bond to equal the rental for one-fourth (1/4) of the annual rental payable. Said bond shall provide that in case of a breach of or default in any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the LESSOR as liquidated damages and not as a penalty with the LESSOR and the LESSEE agreeing that in the event of such breach or default by the LESSEE, the LESSOR will suffer damages which are difficult to ascertain.

40. LESSOR'S LIEN. The LESSOR shall have a lien on all the buildings and improvements placed on the premises by the LESSEE, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents from or attributable to all improvements and buildings situated on the premises for all such costs, attorney's fees, rent reserved, and all taxes and assessments paid by the LESSOR on behalf of the LESSEE and for the payment of all monies as provided in this lease to be paid by the LESSEE, and such lien shall continue until the amounts due are paid.

41. SURRENDER. The LESSEE shall and will at the expiration or sooner termination of this lease, peaceably and quietly surrender and deliver possession of the premises to the LESSOR, together with all improvements constructed thereon of whatever name or nature, in good order and condition, reasonable wear and tear excepted and in the condition required by paragraph 30 herein; provided, that trade fixtures, equipment and personal property may be removed by the LESSEE; and provided further, that within thirty (30) days after the termination or expiration of this lease, the LESSOR may, at its option and upon written notice to the LESSEE, require the LESSEE to remove all or any portion of any improvements constructed on the premises of whatever name or nature, and its equipment, trade or other fixtures and/or personal property, all at LESSEE'S sole expense and cost.

The LESSEE shall, in the removal of any of its improvements, equipment, trade fixtures and/or personal property from the premises, conduct such removal in such a manner as to cause no damage to the premises, and in the event of such damage, LESSEE shall, at its own cost and expense, repair or replace the same.

If the LESSEE fails or neglects, when so required by the LESSOR, to remove all or any portion of any improvements constructed on the premises of whatever name or nature, equipment, trade or other fixtures and/or personal property within thirty (30) days after receipt of written notice to so remove, the LESSOR may remove and dispose of the same and charge the

cost of such removal and disposal to the LESSEE, which costs the LESSEE hereby agrees to pay.

42. SURRENDER FOR PUBLIC PURPOSES. If at any time during the term of this lease, all or any portion of the premises is required for any public purposes, the LESSEE shall, upon written notice from the LESSOR given not less than three (3) months in advance, surrender all or such portion of the premises as may be required and remove therefrom all of its improvements, equipment, personal property and trade fixtures, at no cost to the LESSOR. The LESSEE shall not, by reason of its surrender, be entitled to any claim against the LESSOR for its leasehold interest, for any reduction in rent or for any of its costs of removal. If, however, an alternate location on State property is available, the LESSOR, at its option, may, without rental adjustment, provide to the LESSEE the alternate location by appropriate amendment to this lease, and permit the LESSEE to relocate its improvements, equipment, personal property and trade fixtures thereon, at no cost to the LESSOR. If, however, the surrender of a portion of any of the premises renders the remainder unsuitable for the purpose of the LESSEE, and the LESSOR provides no alternate location, the LESSEE may surrender the remainder of the premises and be relieved of any further obligation hereunder except its obligation to remove from the premises all of its improvements, equipment, personal property and trade fixtures, within such reasonable period as may be allowed by the LESSOR. Upon failure of the LESSEE to so remove, the LESSOR may proceed in accordance with the last proviso of paragraph 41.

43. SECURITY INTEREST, MORTGAGE, ETC. Upon due application by the LESSEE and with the written consent of the LESSOR, the LESSEE may mortgage this lease or any interest herein or create a security interest in the premises. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of LESSEE'S interest at such foreclosure to a qualified purchaser, including the mortgagee, to lease, own or otherwise acquire and hold the premises or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

44. BREACH. Time is of the essence in this lease and if the LESSEE shall fail to yield or pay such rent, at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the premises, or if this lease and the premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the LESSEE'S property for the benefit of creditors, or if the LESSEE shall fail to observe and perform any of the covenants, terms and conditions herein contained and in its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the LESSOR of a written notice of such breach or default by personal service, registered mail or certified mail to the LESSEE at its last known address and to each mortgagee or holder of record having a security interest in the premises, then the LESSOR may, subject to the provisions of Section 171-21, HRS, at once reenter the premises or any part thereof, administratively and without the need for a court order and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of lease; upon expiration or earlier termination of this lease other improvements constructed by the LESSEE shall become the property of the LESSOR, provided that the LESSOR may require the LESSEE to remove any equipment, signs or other structures.

Provided that where the breach involves failure to make timely rental or other payments, the LESSEE shall cure the breach within five (5) business days after receipt of notice, otherwise the LESSOR may reenter the premises and terminate this lease administratively without the need for a court order. In such event, the LESSEE shall be liable for subsequently accruing rent during the term of this lease when the premises are not relet and for any deficiency resulting from a reletting of such premises plus expenses incurred by the LESSOR in connection with such reletting.

In the event LESSEE discontinues using the premises for the uses specified and purposes enumerated herein and activities related thereto, without the consent of LESSOR from the date hereof, the LESSOR reserves the right to terminate this lease. The failure of the LESSEE to operate the facilities for the above-mentioned uses for a period of at least fifteen (15) consecutive days shall constitute discontinuance of use of the premises.

45. RIGHT OF HOLDER OF RECORD OF A SECURITY INTEREST. In the event the LESSOR seeks to terminate the privilege, interest or estate created by this lease for breach by or default of the LESSEE, each recorded holder of a security interest may, at its option, cure or remedy the default or breach for nonpayment of rent within five (5) business days or any other default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such

additional period as the LESSOR may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option to cure or remedy, the LESSOR may:

(a) Pay to the holder from any monies at its disposal, the amount of the mortgage debt, together with the interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such privilege, interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the LESSOR shall be entitled to the conveyance of said privilege, interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said privilege, interest or estate subsequent to such foreclosure; or

(b) If the property cannot be reasonably assigned without loss to the LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispense of the land affected thereby to a qualified and responsible person free and clear of the mortgage and debt thereby secured; provided, that a reasonable delay by the LESSOR in instituting or prosecuting any right or remedy it may have under Section 171-21, HRS, shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default involved. The proceeds of any redispense effected hereunder shall be applied, first, to reimburse the LESSOR for costs and expenses in connection with such redispense, second, to discharge in full any unpaid purchase price or other indebtedness owing the LESSOR in connection with such privilege, interest or estate terminated; third, to the mortgagee to the extent the value received by the LESSOR upon redispense exceeds the fair market lease value of the land as previously determined by the LESSOR'S appraiser; and fourth, to the owner of the privilege, interest or estate.

46. CONDEMNATION. In the event that at any time during said term the premises or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, including the LESSOR, then and in every such case the estate and interest of the LESSEE in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking of any land shall be payable to and be the sole property of the LESSOR, and the LESSEE shall not by reason of the taking be entitled to any claim against the LESSOR for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of any buildings or improvements erected or owned by the LESSEE upon

the land shall be divided between the LESSOR and LESSEE in the ratios that the expired and unexpired portions of the term of this lease, respectively, shall bear to the whole term hereby created, and that in case only a part of the buildings or improvements constructed or owned by the LESSEE are taken, the LESSEE may claim and receive from the condemning authority but not from the LESSOR, any expense incurred by the LESSEE in repairing any damage thereto; provided that, in case a part of the premises shall be required, taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced in the proportion that the area of land so taken shall bear to the premises; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the premises unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this lease and thereby be relieved of further obligation thereon.

47. RIGHT TO ENTER. The LESSOR and the agents and representatives of the county in which the premises are situated may enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the LESSEE to the use and enjoyment of the premises shall not be unreasonably interfered with.

48. INSPECTION BY PROSPECTIVE BIDDERS. The LESSOR shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of the premises preparatory to such proposed disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the LESSEE, and shall, if the LESSEE so requires, be made in the company of the LESSEE or designated agents of the LESSEE; provided, further, that no such authorization shall be given more than one (1) year before the expiration of the term of this lease.

49. ACCEPTANCE OF RENT NOT A WAIVER. The acceptance of rent by the LESSOR shall not be deemed a waiver of any breach by the LESSEE of any term, covenant or condition of this lease, nor of the LESSOR'S right of re-entry for breach of covenant, nor of the LESSOR'S right to declare and enforce a forfeiture for any breach, and the failure of the LESSOR to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such right for any subsequent breach of any term, covenant or condition.

50. EXTENSION OF TIME. Notwithstanding any provision contained herein to the contrary, wherever applicable, the

LESSOR may in writing for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply with, observe or perform any of the terms, conditions and covenants contained herein.

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

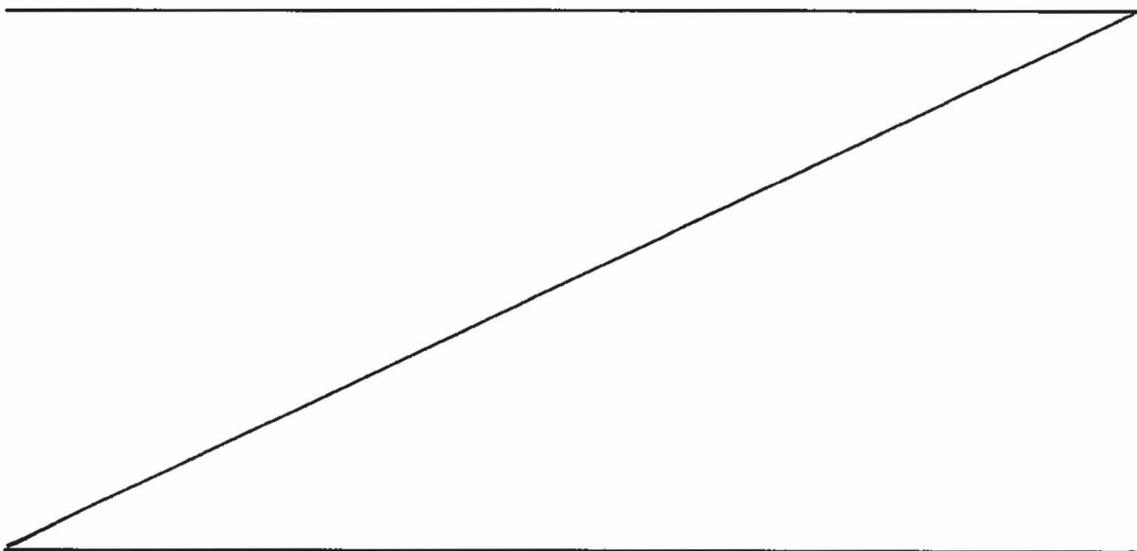
52. WAIVER, MODIFICATION, REIMPOSITION OF BOND PROVISION. Upon substantial compliance by the LESSEE of the terms, covenants, and conditions herein contained on its part to be observed and performed, the LESSOR at its discretion may waive or suspend the improvement bond requirement or modify the same by reducing the amount thereof; provided, however, that the LESSOR reserves the right to reactivate or reimpose said bond in and to their original tenor and form at any time throughout the term of this lease.

53. FORCE MAJEURE. THE LESSOR AND THE LESSEE COVENANT AND AGREE WITH EACH OTHER that neither party shall be deemed to be in default for the nonobservance or nonperformance of any covenant, obligation or undertaking required under this lease in the event that and as long as such observance or performance is prevented, delayed, or hindered by an act of God or public enemy, fire, earthquake, hurricane, floods, explosion, action of

the elements, war or national defense preemptions. In the event of any delay arising by reason of any of the foregoing events, the time for performance of such covenant, obligation, or undertaking as provided for in this lease shall be extended for a period equal to the number of days of such delay, and the respective parties shall commence such observance or performance of the covenant, obligation or undertaking so delayed immediately after removal of the delaying cause. The LESSEE must give the LESSOR notice of such event within five (5) days of the occurrence of the event or the LESSEE may not be excused from performance as provided hereunder. THE LESSOR FURTHER AGREES that notwithstanding anything in this lease to the contrary, in the event that and as long as the premises or any portion thereof shall be unusable for the LESSEE'S purpose as herein provided by reason of damage or destruction by an act of God or public enemy, earthquake, hurricane, action of the elements, or war or national defense preemptions, the rent payable hereunder by the LESSEE to the LESSOR during the period the LESSEE is unable to use the premises or any portion thereof shall be reduced in the proportion that the premises so rendered unusable shall bear to the premises; provided that, in case such damage or destruction shall by mutual agreement of the parties hereto be held to render more than half of the premises unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this lease and be relieved of any further obligations hereunder.

54. AMENDMENT. This lease shall not be amended except upon terms agreed to, which terms are reduced to writing and signed by the parties.

55. APPROVALS, NOTICES. Whenever in this lease there is a provision for approval or notice, such approvals and notices shall not be effective unless reduced to writing.



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the day and year first above written.

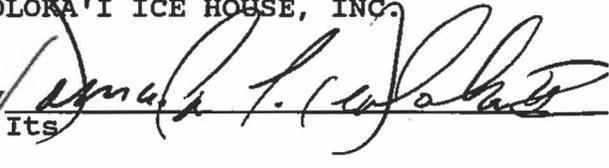
LESSOR:

STATE OF HAWAII

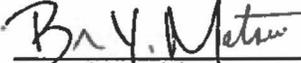
By 
for its Director of Transportation

LESSEE:

MOLOKA'I ICE HOUSE, INC.

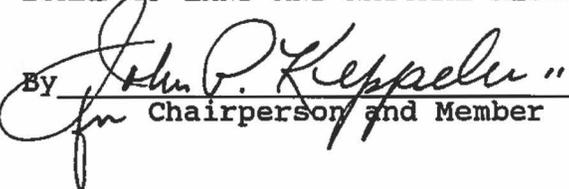
By 
Its
By _____
Its

APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:

BOARD OF LAND AND NATURAL RESOURCES

By 
for Chairperson and Member

Approved by the Board
at its meeting held on
10-25-91, J-10 

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

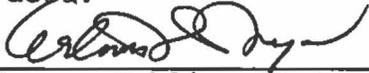
On this 26th day of February, 1999,
before me appeared Jane Kealoha
and Robert Kealoha to me personally
known, who, being by me duly sworn, did say that they are the
President and
respectively, of Molokai Sea House
and that the seal affixed to the foregoing instrument is the
corporate seal of said corporation; and that said instrument was
signed and sealed in behalf of said corporation by authority of
its Board of Directors and said Jane Kealoha and Robert Kealoha
acknowledged that they executed said
instrument as the free act and deed of said corporation.

Barbara M. Lyons
Notary Public, 2nd Judicial
Circuit, State of Hawaii

My Commission expires: April 4, 1994

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

On this 26 day of February, 1992, before me personally appeared Calvin M. Tzuda, Deputy Director for Harbors, Department of Transportation, to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.


Notary Public, State of Hawaii
My commission expires: 8/15/95

PARCEL 1
PROPOSED ICE SHED

All that parcel of land being a portion of Governor's Executive Order No. 1673, consisting of fast land, situated at Kaunakakai Harbor, Molokai, Hawaii, and more fully described as follows:

Beginning at the southwest corner of this parcel of land the coordinates of said point being south 17,530.26 feet and west 5,262.01 feet, referred to Government Survey Triangulation Station "PUU LUAHINE", and running by azimuths measured clockwise from true south:

1. 211° 45' 113.00 feet;
2. 201° 45' 30.00 feet;
3. 31° 45' 57.46 feet;
4. 315° 46' 15.55 feet;
5. 45° 46' 53.00 feet;
6. 315° 46' 6.00 feet;
7. 45° 46' 13.00 feet;
8. 135° 46' 36.00 feet to the point of beginning and containing an area of 4,213 square feet.

FIVE-FOOT WIDE ELECTRICAL EASEMENT
EASEMENT A

Beginning at the most southerly corner of this parcel of land, the coordinates of said point being south 17,437.91 feet and west 5,188.16 feet, referred to Government Survey Triangulation Station "PUU LUAHINE", and running by azimuths measured clockwise from true south:

1. 121° 45' 5.00 feet;
2. 211° 45' 172.33 feet;
3. 181° 45' 91.70 feet;
4. 315° 15' 6.89 feet;
5. 1° 45' 88.30 feet;
6. 31° 45' 173.67 feet to the point of beginning containing an area of 1,315 square feet.

EXHIBIT "B"

Covenant 30, Assignments, etc.

The Department of Transportation (DOT) has the right to receive from the lessee (assignor) a premium based on the amount by which the consideration paid for the assignment, whether by cash, credit or otherwise exceeds the adjusted depreciated cost of improvements, trade fixtures and personal property being transferred to the assignee. The appropriate cost index will be applied to determine the adjusted depreciated cost. The value of the inventory of merchandise shall also be deducted from the consideration paid. Intangibles such as goodwill, business name recognition, etc., are not deductible.

To encourage long-term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be 50%.

DOT may impose a surcharge equal to 10% of the annual rental if the assignor has not performed lease covenants to improve or use the property for its specific uses.

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

EXHIBIT "C"

renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture. (See Attachments 1, 2 and 3 for examples.)

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

Only in cases where the lessee has essentially constructed or directed the construction of its own improvements, may the lessee be given the option of paying for an appraiser, but to be selected by DOT, to determine the valuation of the improvements.

The evaluation for premium determination will only be applicable to leases from which DOT can receive a premium as determined by the Attorney General.

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations

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

2. Depreciation

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

3. Depreciated Cost of Improvements or Renovations

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

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

Example

1. Adjusted Cost of Improvements or Renovations

Actual cost	:	\$500,000
CCI (most recent):		121.1
CCI (base year):		102.3
Expired term:		57 mos.
Whole term:		408 mos.

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

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

2. Depreciation

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

3. Adjusted Depreciated Cost of Improvements or Renovations

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

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture

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

2. Depreciation

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

3. Depreciated Cost of Trade Fixtures

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

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

Example

Refrigerator

1. Adjusted Cost of Trade Fixture

Actual cost : \$1510
CPI (most recent): 118.1
CPI (base year) : 104.6
Expired term : 57 mos
Whole term : 96 mos
(Anticipated life)

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

$$\$1510 \times \frac{118.1}{104.6} = \$1705$$

2. Depreciation

$$\$1705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1705 - \$1012 = \$693$$

SCHEDULE C. Assignment of Lease Calculations

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

Example

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

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

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

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		<u>- 693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 500	<u>\$ 45,055</u>

WHEREAS, the LESSOR is agreeable to such an increase of the area for said purpose; and

WHEREAS, the Board of Land and Natural Resources at its meeting held on February 12, 1993, approved amending the nonexclusive easement area of Lease No. H-92-12 by adding a nonexclusive overhead utility easement containing an area of 1,877 square feet, and that the portion described in legs 6, 7 and 8 of the utility easement shall be placed underground for safety.

NOW, THEREFORE, the parties hereto hereby mutually covenant and agree that Lease No. H-92-12 dated April 1, 1992, shall be amended in the following respects:

1. The area covered under the said Lease is increased to add 1,877 square feet for the nonexclusive overhead utility easement as described in Exhibit "A".

2. That the portion of the utility easement described in legs 6, 7 and 8 shall be placed underground for safety.

3. Except for the increase of said 1,877 square feet, the terms of Harbor Lease No. H-92-12 shall remain unaltered and unaffected.

4. This amendment is effective upon execution by the Chairperson of the Department of Land and Natural Resources of the State of Hawaii.

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

STATE OF HAWAII

By Keith L. Alue
Chairperson and Member
Board of Land and
Natural Resources

APPROVED AS TO FORM

Dawn H.
Deputy Attorney General

Dated: 2/18/93

MOLOKA'I ICE HOUSE, INC.

By Laura V. [Signature]
Its
VICE PRESIDENT
-2- [Signature]
TRANSURAN

Note: our Notary made
An error by filling out
the wrong Section. Please
have your notary
Correct it.
Muhalo.

STATE OF HAWAII)
COUNTY OF Maui) SS.

On this 11th day of May, 1993,
before me personally appeared Edwin,
to me known to
be the person(s) described in and who executed the foregoing
instrument and acknowledged to me that _____ executed the same
as _____ free act and deed.

Notary Public, State of Hawaii

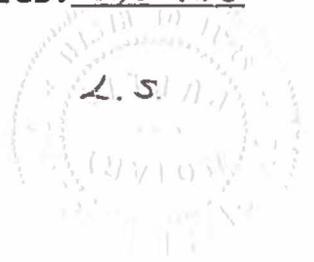
My commission expires: _____

STATE OF HAWAII)
COUNTY OF Maui) SS.

On this 11th day of May, 1993, before me
appeared Edwin V. MEDEIROS and
LAURENCE K. LASUA, to me personally
known, who, being by me duly sworn, did say that they are the
VICE PRESIDENT and TREASURER,
respectively of MOLOKA'I Ice House, Inc.,
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation and that
said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and the said
VICE PRESIDENT and Treasurer
acknowledged said instrument to be the free act and deed of said
corporation.

Charles M. Aquino
Notary Public, State of Hawaii

My commission expires: 8/21/93



PROPOSED ICE SHED, PLAN "C"

All that parcel of land being a portion of Governor's Executive Order No. 1673, consisting of fast land, situated at Kaunakakai Harbor, Molokai, Hawaii, and more fully described as follows:

Beginning at the north corner of this parcel of land, the coordinates of said point being south 17430.01 feet and west 5200.92 feet, referred to Government Survey Triangulation Station "PUU LUAHINE", and running by azimuths measured clockwise from true south:

1. 301° 45' 30.00 feet;
2. 31° 45' 57.46 feet;
3. 315° 46' 15.55 feet;
4. 45° 46' 53.00 feet;
5. 315° 46' 6.00 feet;
6. 45° 46' 13.00 feet;
7. 135° 46' 36.00 feet;
8. 211° 45' 118.00 feet to the point of beginning and containing an area of 4213 square feet.

FIVE-FOOT WIDE ELECTRICAL EASEMENT

Beginning at the southwest corner of this parcel of land, the coordinates of said point being south 17430.01 feet and west 5200.92 feet, referred to Government Survey Triangulation Station "PUU LUAHINE", and running by azimuths measured clockwise from true south:

1. 211° 45' 123.00 feet;
2. Thence along same on a curve to left with a radius of 143 feet, the chord azimuth and distance being 196° 45' 74.02 feet;
3. 181° 45' 76.00 feet;
4. Thence along same on a curve to right with a radius of 48.50 feet, the chord azimuth and distance 196° 45' 25.11 feet;
5. 211° 45' 17.00 feet;
6. 230° 00' 60.00 feet;
7. 313° 30' 5.03 feet;
8. 50° 00' 59.77 feet;
9. 31° 45' 16.20 feet;
10. Thence along same on a curve to left with radius of 43.50 feet, the chord azimuth and distance being 16° 45' 22.52 feet;
11. 1° 45' 76.00 feet;
12. Thence along same on a curve to the right with radius of 148 feet, the chord azimuth and distance being 16° 45' 76.61 feet;
13. 31° 45' 123.00 feet;
14. 121° 45' 5.00 feet to the point of beginning containing an area of 1877.22 square feet.

EXHIBIT "A"

Exhibit C-1

JOSH GREEN, M.D.
GOVERNOR | KE KIA'AINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
CIARA W.K. KAHANE
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 22, 2025

BOR-PM-0187-25

Certified Mail
70182290000002536340

Molokai Ice House, Inc.
Attn: Russell Phifer
P.O. Box 189
Kaunakakai, HI 96748

NOTICE OF DEFAULT OF LEASE NO. H-92-12
KAUNAKAKAI SBH, ISLAND OF MOLOKAI, HAWAII

Dear Mr. Phifer,

This letter is to inform you that Molokai Ice House, Inc. is in material breach of its obligations under Lease No. H-92-12, dated April 1, 1992, by and between the State of Hawaii, and Molokai Ice House, Inc.

Consequently, pursuant to the provisions of Lease No. H-92-12, Molokai Ice House, Inc. is hereby served this notification of default, dated August 21, 2025, delivered by certified mail, regular postal mail, and by email for:

- Failure to keep lease rental payments current (Balance is \$462.62)
- Failure to keep required security deposit
- Failure to submit gross receipt reports (last received 09/2022)
- Failure to post general liability insurance policy (expired 07/31/2025)

Failure to cure the defaults above may constitute grounds for the following:

1. Interruption or cancellation of Lease No. H-92-12, with Molokai Ice House, Inc. bearing all expenses or losses in full and Molokai Ice House, Inc. shall not take or allow to be taken any action for damages against DLNR, or the Division of Boating and Ocean Recreation (DOBOR).
2. Retention of all sums heretofore paid or pledged by Molokai Ice House, Inc. under the Agreement as liquidated damages.

3. Termination of Lease No. H-92-12; provided that obligations of Lease No. H-92-12 which have accrued up to the termination date or which are stated in Lease H-92-12 to survive termination shall endure past such termination date until duly fulfilled, and further provided that DLNR reserves all other rights and claims allowed by law.
4. Molokai Ice House, Inc. shall bear all expenses for conducting any environmental remediation of the property if warranted; and Molokai Ice House, Inc. shall be responsible for any civil and administrative fines for violations by the State of Hawaii, Department of Health.

Molokai Ice House, Inc. is hereby given Five (5) Business Days from the receipt of the certified receipt of the Notice of Delivery to cure the default of failure to keep Lease Rental Payments current and Sixty (60) Business Days from the receipt of the certified receipt of the Notice of Delivery to cure failure to post General Liability Insurance Policy and failure to submit Gross Receipt Reports for October 2022 to July 2025.

Should Molokai Ice House, Inc. fail to remedy the defaults above, DOBOR, may initiate action to terminate Lease No. H-92-12. Should you have any questions, please contact the Division of Boating and Ocean Recreation, Property Management Section at (808) 587-2683 or email at cami.r.miyakado@hawaii.gov.

Sincerely,



Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources

Exhibit C-2

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

MEGHAN L. STATTS
ADMINISTRATOR
BOATING AND OCEAN RECREATION

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
DIVISION OF BOATING AND OCEAN RECREATION

4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819

October 8, 2025

Certified Mail: 7018229000002536395

BOR-PM-0211-25

The Molokai Ice House, Incorporated
Attn: Russell Phifer
P.O. Box 189
Kaunakakai, HI 96748

LEASE NO. H-92-12 - MOLOKAI ICE HOUSE, INC.

Dear Mr. Phifer,

In our telephone conversation on September 18, 2025, you confirmed that The Molokai Ice House, Incorporated ("MIH") received the Notice of Default letter dated August 21, 2025, relating to MIH's failure to pay rent, provide a certificate of liability insurance, and submit gross sales reports. You also stated that MIH is attempting to cure these defaults.

In addition to the above-mentioned deficiencies, it has come to DOBOR's attention that MIH has discontinued its use of the premises. Paragraph 44 of lease number H-92-12 to MIH states in relevant part:

In the event LESSEE discontinues using the premises for the uses specified and purposes enumerated herein and activities related thereto, without the consent of LESSOR for the date hereof, the Lessor reserves the right to terminate this lease. The failure of the LESSEE to operate the facilities for the above-mentioned uses for a period of at least fifteen (15) consecutive days shall constitute discontinuance of use of the premises.

YOU ARE HEREBY NOTIFIED that if MIH does not resume use of the premises by **October 31, 2025**, DOBOR will take steps to cancel lease number H-92-12.

Please feel free to contact me at (808) 587-2683 or cami.r.miyakado@hawaii.gov if you would like to discuss this further.

Sincerely,

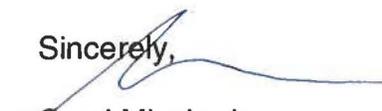

Cami Miyakado
Property Manager

Exhibit C-2

Exhibit D

Miyakado, Cami R

From: Microsoft Outlook
To: Molokai Ice House, Inc. BM-5051
Sent: Tuesday, December 9, 2025 8:26 AM
Subject: Undeliverable: Molokai Ice House - BM-5051

Your message to molokaiicehouse@yahoo.com couldn't be delivered.

When Office 365 tried to send your message, the receiving email server outside Office 365 reported an error.

cami.r.miyakado Sender	Office 365	molokaiicehouse Action Required
		Policy violation or system error

How to Fix It

Check the "Reported Error" from the "Error Details" section shown below for more information about the problem. The error might tell you what went wrong and how to fix it. For example, if the error states that the message was blocked due to a potential virus or because the message was too large, try sending the message again without attachments.

If you're not able to fix the problem, it's likely that only the recipient's email admin can fix it. Contact the recipient by some other means (by phone, for example) and ask them to tell their email admin about the problem. Give them the "Reported Error" from the "Error Details" section below.

Was this helpful? [Send feedback to Microsoft.](#)

More Info for Email Admins

Status code: 550 5.0.350

The error reported by the receiving server wasn't specific enough to determine the exact

nature of the problem. These errors often indicate the message violates a security or policy setting configured on the recipient's email servers.

If the sender is unable to fix the problem by modifying their message, then it's likely a problem that only the recipient's email admin can fix. Try the following:

Check the error for information about the problem - The "Reported Error" returned by the external email server can be found in the "Error Details" section below. This error might tell you what went wrong and provide clues for how to fix it. For example, if the error states the message was rejected due a Sender Policy Framework (SPF) issue, then you'll have to work with your domain registrar to correctly configure your domain's SPF records.

Check the error for information about where the problem is happening - For example, look for a domain name like contoso.com. A domain name in the error might suggest who is responsible for the error. It could be the recipient's email server, or it could be a third-party service that your organization or the recipient's organization is using to process or filter email messages.

If you can't fix the problem, contact the responsible party's email admin - Give them the error code and error message from this non-delivery report (NDR) to help them troubleshoot the issue. For security or policy violation issues, it might be sufficient for them to just add your sending IP addresses or domain to their allowed senders list.

It's likely that only the recipient's email admin can fix the problem. Unfortunately, it's unlikely Office 365 Support will be able to help with these kinds of externally reported errors.

Original Message Details

Created Date: 12/9/2025 6:26:14 PM
Sender Address: cami.r.miyakado@hawaii.gov
Recipient Address: molokaiicehouse@yahoo.com
Subject: Molokai Ice House - BM-5051

Error Details

Error: *550 5.0.350 Remote server returned an error -> 554 30 Sorry, your message to molokaiicehouse@yahoo.com cannot be delivered. This mailbox is disabled (554.30).*

Message rejected by: mtaproxy311.free.mail.ne1.yahoo.com

Notification Details

Sent by: SJ0PR09MB10705.namprd09.prod.outlook.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH
-----	------------	------	----	------

1	12/9/2025 6:26:14 PM	DS0PR09MB11361.namprd09.prod.outlook.com	DS0PR09MB11361.namprd09.prod.outlook.com	mapi
2	12/9/2025 6:26:14 PM	DS0PR09MB11361.namprd09.prod.outlook.com	SJ0PR09MB10705.namprd09.prod.outlook.com	Microsoft SMTP Ser cipher=TLS_ECDHE

Original Message Headers

ARC-Seal: i=1; a=rsa-sha256; s=arcselector10001; d=microsoft.com; cv=none;

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ARC-Message-Signature: i=1; a=rsa-sha256; c=relaxed/relaxed; d=microsoft.com; s=arcselector10001;

h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-AntiSpam-MessageData-ChunkCount:X-MS-Exchange-AntiSpam-MessageData-0:X-MS-Exchange-AntiSpam-MessageData-1;

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ARC-Authentication-Results: i=1; mx.microsoft.com 1; spf=pass

smtp.mailfrom=hawaii.gov; dmarc=pass action=none header.from=hawaii.gov;

dkim=pass header.d=hawaii.gov; arc=none

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=hawaii.gov;

s=selector2;

h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-SenderADCheck;

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Received: from DS0PR09MB11361.namprd09.prod.outlook.com (2603:10b6:8:16d::7)

by SJ0PR09MB10705.namprd09.prod.outlook.com (2603:10b6:a03:512::9) with

Microsoft SMTP Server (version=TLS1_2,

cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id 15.20.9388.14; Tue, 9 Dec

2025 18:26:14 +0000

Received: from DS0PR09MB11361.namprd09.prod.outlook.com

([fe80::fd2d:545f:3a3f:76cf]) by DS0PR09MB11361.namprd09.prod.outlook.com

([fe80::fd2d:545f:3a3f:76cf%4]) with mapi id 15.20.9388.013; Tue, 9 Dec 2025

18:26:14 +0000

From: "Miyakado, Cami R" <cami.r.miyakado@hawaii.gov>

To: "Molokai Ice House, Inc. BM-5051" <molokaiicehouse@yahoo.com>

Subject: Molokai Ice House - BM-5051

Thread-Topic: Molokai Ice House - BM-5051

Thread-Index: AdxpOTOnlneljCe9Qo078Cy7PsN9eg==

Date: Tue, 9 Dec 2025 18:26:14 +0000

Message-ID:

<DS0PR09MB113615614996C099E7E642D54DCA3A@DS0PR09MB11361.namprd09.prod.outlook.com>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

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authentication-results: dkim=none (message not signed)

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x-ms-publictraffictype: Email

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x-ms-office365-filtering-correlation-id: cbebe2e7-a489-4af6-24d1-08de37506fb8

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X-OriginatorOrg: hawaii.gov

X-MS-Exchange-CrossTenant-AuthAs: Internal

X-MS-Exchange-CrossTenant-AuthSource: DS0PR09MB11361.namprd09.prod.outlook.com

X-MS-Exchange-CrossTenant-Network-Message-Id: cbebe2e7-a489-4af6-24d1-08de37506fb8

X-MS-Exchange-CrossTenant-originalarrivaltime: 09 Dec 2025 18:26:14.4269

(UTC)

X-MS-Exchange-CrossTenant-fromentityheader: Hosted

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X-MS-Exchange-Transport-CrossTenantHeadersStamped: SJ0PR09MB10705