#16361

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soest
University of Hawai'i

UNIVERSITY OF HAWAI'I
BOARD OF REGENTS
14 DEC 33 P3:56

January 2, 2013

MEMORANDUM

TO: Randolph G. Moore
Chair, Board of Regents
University of Hawai'i

VIA: David Lassner
President, University of Hawai'i

VIA: Jan Gouveia
Vice President for Administration
University of Hawai'i

FROM: for Brian Taylor
Interim Vice Chancellor for Research
University of Hawai'i at Manoa

SUBJECT: Approval of Lease Agreement for University Research Pier (Piers 34-35), Honolulu Harbor

SPECIFIC ACTION REQUESTED:

It is requested that the Board of Regents (Board) approve a lease (Lease) of portions of Piers 34 and 35 in Honolulu Harbor from the State of Hawaii Department of Transportation (DOT) to the University of Hawaii for use as a University Research Pier to replace a portion of the functions currently carried out at Pier 45 (Snug Harbor), in substantially the form attached as Exhibit A, and authorize the officers of the University to finalize and execute the Lease and such other documents and instruments as may be necessary or appropriate in connection therewith.

RECOMMENDED EFFECTIVE DATE:

It is recommended that the Board's approval be effective immediately, with the understanding that the term of the lease shall commence on a date set upon full execution of the lease by the University and Department of Transportation.

ADDITIONAL COST:

The lease itself is gratis for thirty-five (35) years. Other costs associated with moving the University of Hawaii Marine Center (UHMC) from Pier 45 include $4 million for design and construction of facilities at Pier 35 and $2 million for design and construction of facilities on

Sand Island, both to be paid from revenue bonds (Act 122, Session Laws of Hawai'i 2014, Item G-84.01).

Costs to operate the new Marine Center at the University Research Pier will be recovered primarily from extramural grants and contracts, mostly from federal agencies, that support research using the two large research vessels operated by the University through its School of Ocean and Earth Science and Technology (SOEST).

PURPOSE:

To provide a replacement facility to moor oceanographic research vessels and provide related supporting services in Honolulu Harbor.

BACKGROUND INFORMATION:

Pursuant to Board of Regents Policy RP 10.201, the Board reviews and approves significant leases and other real property transactions. This Lease is submitted for the Board's approval based on the 35-year term and the programmatic and fiscal significance of the harbor facilities to the School of Ocean and Earth Sciences and Technology.

The University currently operates the UHMC at Snug Harbor under a 65-year, gratis lease from the Department of Land and Natural Resources that runs through February, 2038. Snug Harbor supports the operations of large research vessels and small boats. Facilities include piers with a hardened cement apron that can support on-and-off-loading with large cranes, a floating pier for small boats, and administration, warehouse, and storage facilities.

The DOT is in the process of developing the Kapalama Container Terminal project, which will include redevelopment of Snug Harbor for container cargo facilities. The University and DOT have been in discussions regarding relocation of the University's Snug Harbor facilities to facilitate harbor modernization for several years. In 2006, the Legislature adopted House Concurrent Resolution No. 266, which provides "that UH and DoT are requested to collaborate, on a priority basis, to effectuate the relocation of UH Marine Center; and . . . that prior to the relocation of the UH Marine Center, DoT and UH find a suitable location offering comparable dock space, storage and staging areas, services, size, and proximity to UH, which is beneficial to all parties involved and ensure that funding is available for its relocation."

A Memorandum of Agreement (MOA) was executed effective March 12, 2014, setting forth the general terms on which the University would vacate Snug Harbor and surrender its current lease in exchange for new leases at Pier 34-35 for large vessels and on Sand Island for small boats. A copy of the MOA is attached as Exhibit B.

The Lease will provide the University with pier and support facilities for large vessels at Pier 34-35 for a term of 35 years at gratis rent. DOT is also in the process of renovating a building for the University's use, at a cost of $17 million, using funds appropriated by the Legislature for that purpose. It is anticipated that the University will be required to spend an additional $6 million on facilities improvements ($4 million at pier 34-35 and $2 million at Sand Island – see below), which is currently projected to be funded using revenue bonds, and which is expected to come to the Board for approval at a later time. In the judgment of the University administration, this Lease reflects the best terms available to the University under the circumstances.

The University is concurrently engaged in lease discussions with the Department of Land and Natural Resources for the Sand Island site to which the University's small boat operations will relocate. Those discussions are going well, and the University has obtained a Right of Entry, but additional work, including environmental review, must be completed before a lease can be executed there.

ACTION RECOMMENDED:

It is recommended that the Board of Regents approve the Lease in substantially the form attached as Exhibit A, and authorize the officers of the University to finalize and execute the Lease and such other documents and instruments as may be necessary or appropriate in connection therewith.

Attachments

c: Cynthia Quinn, Exec Admin & Sec to the Board of Regents

NEIL ABERCROMBIE
GOVERNOR

GLENN M OKIMOTO
DIRECTOR

Deputy Directors
FORD N FUCHIGAMI
RANDY GRUNE
AUDREY H DANO
JADINE URASAKI

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

HAR-ESP
3106.13

MEMORANDUM OF AGREEMENT BETWEEN THE UNIVERSITY OF HAWAII AND DEPARTMENT OF TRANSPORTATION STATE OF HAWAII

This Memorandum of Agreement ("Agreement") is effective this 12th day of March 2014("Execution Date"), by and between the University of Hawaii ("University") and the Department of Transportation ("DOT") (collectively the "Parties"), regarding the proposed withdrawal of General Lease No. S-4488 ("Original Lease"), for the ~15.228 acre Snug Harbor property currently leased from the DOT by the University of Hawaii for its Marine Center ("UHMC") at Honolulu Harbor, Hawaii, Oahu, Tax Key: (1) 1-02-025:017 ("Existing Site"), subject to approval by the Board of Land and Natural Resources ("BLNR").

RECITALS

WHEREAS, the DOT Harbors Division ("Harbors") has jurisdiction over Honolulu Harbor as provided under Chapter 266, Hawaii Revised Statutes;

WHEREAS, the Hawaii economy is dependent on ocean transportation and its commercial harbor system as its lifeline;

WHEREAS, the State of Hawaii operates on a "Just-In-Time" supply chain management system. Each Island's harbor plays a critical role in the delivery of cargo. More than 80% of all consumer goods - food, clothing, autos, building supplies, machinery, paper and allied products, medical supplies and agricultural materials - are imported into Hawaii. Of that 80%, nearly all - some 98% - enter Hawaii through commercial harbors on six islands.

WHEREAS, the commercial harbor system is critical to Hawaii's economic health, whereby DOT can no longer afford to defer needed improvements to increase berthing and cargo handling capacity within Honolulu Harbor;

WHEREAS, the DOT is focused on expediting projects identified in the Honolulu Waterfront Master Plan (1989) and Hawaii Harbor Users Group Report on Port Facilities & Development Priorities (2005);

WHEREAS, the proposed Kapalama Container Terminal ("KCT") project, shall be located on a portion of the former Kapalama Military Reservation ("KMR") site and has been identified as DOT's highest priority Harbors project that is integral to the State of Hawaii's economic sustainability and viability;

WHEREAS, the University currently holds the Original Lease at the Snug Harbor, a site that is integral to the proposed development of the KCT project;

WHEREAS, the University of Hawaii has critical need for berthing and shore support services in Honolulu Harbor to support essential research in the Ocean Sciences, which was the original basis of designation of Snug Harbor as the University Marine Center and the use of 2.8 acres of land for that purpose to the State by the federal government until the restriction was released by the federal government in 2004;

WHEREAS, the University's Original Lease is for a lease rent of "gratis" and for a 65-year term, commencing on February 23, 1973 and ending on February 22, 2038;

WHEREAS, to develop the KCT project, the DOT shall seek withdrawal of the lands leased to the University under the Original Lease and relocation of the University's current facilities and operations at Snug Harbor to new facilities before April 2015 to allow for the commencement of construction for the KCT project;

WHEREAS, the University shall relocate the UHMC facilities and operations and accept the withdrawal of the Original Lease, provided substitute facilities are made available to meet the critical needs of the University programs and operations currently conducted at Snug Harbor, including moorage and operations of large and small vessels and associated support and storage facilities;

WHEREAS, the DOT has exerted a good faith effort to work collaboratively with the University, specifically demonstrated by DOT agreeing to expend SEVENTEEN MILLION and NO/100 DOLLARS ($17,000,000.00) to assist the University in the development/redevelopment of its new UHMC permanent site facilities to be located at Piers 34-35;

WHEREAS, the following major studies and deliverables were commissioned by the DOT at its sole expense to facilitate a relocation of the UHMC out from the Snug Harbor site:

i. February 2007, the JWD Group, a port development consultant contracted by DOT, presented a concept plans report for the development of the KCT facility. This report determined that the former KMR site is well suited for the development of a new container terminal that would adequately increase the capacity of Honolulu Harbor into the foreseeable future.
ii. May 2007, Belt Collins Hawaii, the DOT's consultant, delivered the University of Hawaii Marine Center Relocation Study that examined the existing UHMC

facilities, relocation requirements, and priorities. The report was instrumental in assisting the DOT and the University to evaluate relocation sites, redevelopment costs and funding.

iii. May 2008, Belt Collins Hawaii, the DOT's consultant, prepared a planning report (inclusive of conceptual layout alternatives, civil engineering studies, permit memos and surveys) for the relocation of the UHMC to a permanent consolidated site at Sand Island, Honolulu Harbor, inclusive of an area currently occupied by the Marine Education and Training Center ("METC").

iv. September 2008, Control Point Surveying, Inc. prepared preliminary boundary/premise maps for the proposed parcels for the relocation of the UHMC to the permanent consolidated site at Sand Island.

v. May 11, 2009, DMJM Harris/AECOM, the DOT's consultant, delivered a conceptual design, basis of design, and a conceptual construction estimate for interim facilities to house the UHMC at Piers 34-35. The estimated conceptual construction cost was established at $7.6 million.

vi. July 2011, Pacific Architects, the DOT's consultant, prepared a construction cost estimate for the building and sitework improvements at Piers 34-35. Their estimated construction cost of $16.5 million was more than double of the 5/11/09 DMJM Harris/AECOM estimate.

WHEREAS, in September 2007, the DOT and the University agreed in principle to move forward with the planning, design, construction and relocation of the UHMC's large vessel operations to facilities at Piers 34-35 (the "New Site – Large Vessels"), Honolulu Harbor;

WHEREAS, the DOT has completed the planning and designing; and shall construct building and yard improvements at the New Site – Large Vessels, associated with a metes and bounds description, to house an interim and permanent relocation of the UHMC large vessel operations for a total construction cost to the DOT not to exceed SEVENTEEN MILLION NO/100 DOLLARS ($17,000,000.00);

WHEREAS, the University has actively participated in the planning and design process, and has reviewed and agreed to all current plans and designs of the New Site – Large Vessels facilities at Piers 34-35;

WHEREAS, the DLNR is prepared to lease to the University a relocation area at Sand Island to enable consolidation of UHMC's small boat operations and certain other facilities with the existing METC facilities (the "New Site – Small Vessels");

WHEREAS, the University shall vacate the current UHMC site and surrender the Original Lease upon completion of site improvements at the New Site – Large Vessels and execution of leases for the New Site – Large Vessels and execution of a lease or reasonable progress toward a lease for the New Site – Small Vessels; and

WHEREAS, the parties acknowledge that it is the position of DOT that any future lease to the University for the New Site – Large Vessels after the expiration of the 35-year term of the lease described herein should require the payment of fair market rent; that it is the position of the University that the University is not in a position to commit to the payment of rent in the future due to the absence of an available funding source and for other reasons; and that therefore it will be necessary for DOT and the University to reach agreement on any rent to be charged under any future lease at the time of such lease and if no agreement is reached on such future lease, the UH shall vacate by expiration date of the 35 year term lease described herein;

NOW THEREFORE, in consideration of the mutual promises and representations contained herein, the Parties agree as follows:

1. Land Tenure.

DOT will provide a new building and land lease to the University for the New Site - Large Vessels at Piers 34-35 and support the New Site – Small Vessels lease from DLNR at Sand Island. The parties will cooperate to negotiate and finalize mutually acceptable lease documents containing the terms and conditions described in this Agreement and other terms and conditions appropriate for long-term leases between State agencies. The areas to be included in the New Site – Large Vessels are depicted in Exhibit A and the areas to be included by DLNR in the New Site – Small Vessels are depicted in Exhibit B.

2. New Site – Large Vessels Lease

The lease for the New Site – Large Vessels shall be for a duration of THIRTY-FIVE YEARS (35 YEARS). The 35-year lease shall require the University to perform and pay for all necessary and appropriate maintenance and upkeep on the leased premises including all improvements and the pier and to perform or permit such inspections as DOT may reasonably request from time to time. The 35-year lease shall further require the University to be responsible for complying with all applicable Federal and State environmental laws during the term of the leases and for remediation of any environmental contamination arising from its occupancy in accordance with applicable law.

Further, the University shall be required to submit to DOT Harbors an annual inspection and/or annual survey that is completed by a State of Hawaii Certified Structural Engineer, or such other inspection and/or survey documentation as the parties may mutually agree from time to time, at the University's expense, on each and every one year anniversary of the New Permanent Site Lease execution date, for the duration of the New Permanent Site Lease and any Subsequent Lease(s) thereafter. Additionally, all regular and preventative maintenance identified with the annual inspection and/or annual survey shall be completed by the University within EIGHTEEN MONTHS (18 MONTHS) from the date that each annual inspection and/or annual survey is conducted.

3. Site Facilities for the UHMC.

The DOT has conducted and funded the planning ($0.77 million), lease buy-out of existing tenants ($0.50 million) and design ($1.21million); and will be responsible for the construction ($17.00 million (maximum)) of a 6.03 acre New Permanent Site – Large Vessels facility at Piers 34-35 for the UHMC.

The DOT and University, with the assistance and guidance from DOT's consultants, have worked diligently, cooperatively and collaboratively together in developing building and site work drawings, which both parties agree shall serve as the basis for the development of final construction documents.

The University agrees to continue this cooperative effort and to provide in a timely manner so as not to adversely impact the DOT's design and construction schedule, all information that the DOT's consultants require and request for the completion of the design services.

Both the DOT and University agree that the maximum budget for the construction of all improvements for the New Site – Large Vessels Lease facilities at Piers 34-35 is SEVENTEEN MILLION AND 00/100 DOLLARS ($17,000,000.00). The DOT's design consultants shall deliver final construction documents for a total scope of improvements which are not to exceed that maximum budget.

The University shall be responsible for any and all development and other construction costs for the New Site – Large Vessels and the New Site – Small Vessels.

4. Non-exclusive Berthing at Piers 34-35.

The DOT has consistently and fully represented to the University that due to the lack of berthing space in Honolulu Harbor, Piers 34-35 must remain non-exclusive to the University. However, the DOT also agrees that priority berthing shall be granted to the University along its New Site – Large Vessels wharf frontage at Piers 34-35.

The University acknowledges the shortage of berthing space as represented by the DOT in Honolulu Harbor and understands that Pier 34 will periodically be needed as a layberth. During those times, a non-University vessel may extend into the wharf frontage and mooring lines will need to be tied to bollards within the University's New Site – Large Vessel wharf frontage. The University agrees to fully cooperate with and amicably and timely establish procedures with DOT for providing access to its site for the purposes of periodic layberthing of non-University vessel(s), which procedures shall be consistent with the operational and security requirements of the DOT, and the University under applicable laws, regulations, and grant conditions.

5. Moving Expenses.

The DOT agrees to fund reasonable moving expenses not to exceed TEN THOUSAND AND NO/100 DOLLARS ($10,000.00) for the University's relocation to the New Permanent Site facilities at Piers 34-35. Conversely, the DOT shall not fund costs deemed a result of funding shortfalls, increased operating costs and temporary and/or long term loss of funding support. The University shall be responsible for all other moving and transition expenses.

6. Timing of Move.

The UH and DOT agree that the termination date of the University's Original Lease shall be 60 calendar days from the date of final inspection of the improvements at the New Site – Large Vessels facility at Pier 34-35. Further, DOT will provide written notice to UH for the New Site – Large Vessels to proceed to relocate into the facility. DOT will provide as-built drawings and such other information and documents as UH may reasonably request in connection with UH's further improvements of the New Site – Large Vessels. Regardless of the New Site - Small Vessels situation, the University shall peaceably and quietly, without any recourse, incident and delay, remove all of its property, equipment, vehicles, furniture, personnel and belongings, and any other items belonging to the University from the Original Lease site within the 60 calendar days provided. DOT shall accept the site in "as-is" condition and shall be responsible for demolition of existing buildings and structures. The University shall continue to be responsible for such obligations under the Original Lease as survive termination in accordance with the terms of the Original Lease, except as the parties may otherwise agree in writing.

7. Non-Performance Remedies.

Should either party materially breach this Agreement and fail to cure such breach within 30 days of written notice thereof, the non-breaching party may terminate this Agreement by written notice to the breaching party and may exercise any and all rights and remedies available by law.

8. DOT Support.

DOT agrees to provide $17 million for site facilities at Piers 34-35 and moving expenses only as stated. UH is responsible for any additional costs, whether for their interim or permanent facilities; provided, however, that UH shall not assume any responsibility or liability under any contract entered into by DOT to which UH is not a party, and DOT shall be solely responsible for any such contracts. UH shall not exercise any direction or control over DOT's prime or sub contractors or materials suppliers or contract with any

of DOT's prime or sub contractors or materials suppliers for work on the site during the term of DOT's contracts.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Execution Date.

APPROVED AS TO FORM

DEPUTY ATTORNEY GENERAL

DEPARTMENT OF TRANSPORTATION

GLENN M. OKIMOTO, Ph.D.
Director

APPROVED AS TO FORM

Office of University General Counsel:

By _____
Its Vice President for Legal Affairs
and University General Counsel

UNIVERSITY OF HAWAII

DAVID LASSNER
Interim President

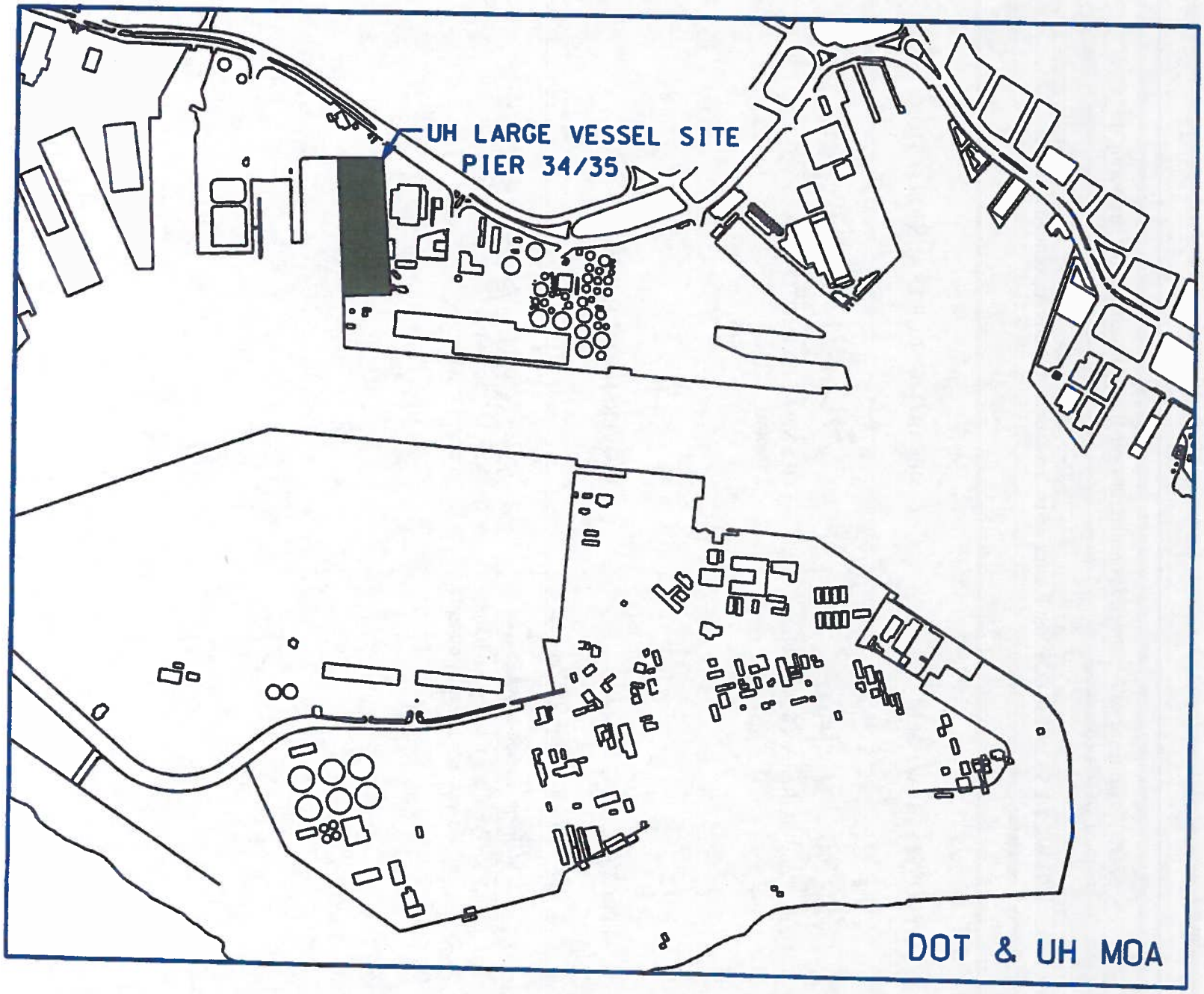


EXHIBIT A

Therefore, staff recommends the Board approve in principle the issuance of a 65 year lease over the METC site and the Additional Area as shown on Exhibit A3, subject to compliance with the environmental assessment process and submission of the legal description and map of the leased premises by UH within 24 months from the Board approval. Staff will return to the Board for final approval of the lease at a later date, after UH has complied with all Applicant Requirements.

Furthermore, staff recommends the Board issue a right-of-entry permit to UH for the existing METC site and the Additional Area for maintenance, management, pre-construction activities, storage of containers, temporary tent structures, and related security fencing. The permit shall state clearly that no construction activities shall be conducted on the Additional Area and such permit shall expire upon the issuance of the requested lease.

RECOMMENDATION: That the Board:

1. Approve of and recommend to the Governor issuance of an executive order withdrawing the METC area as shown on Exhibit A3 from the Governor's Executive Order No. 2704 and subject to the following:

   A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

   B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

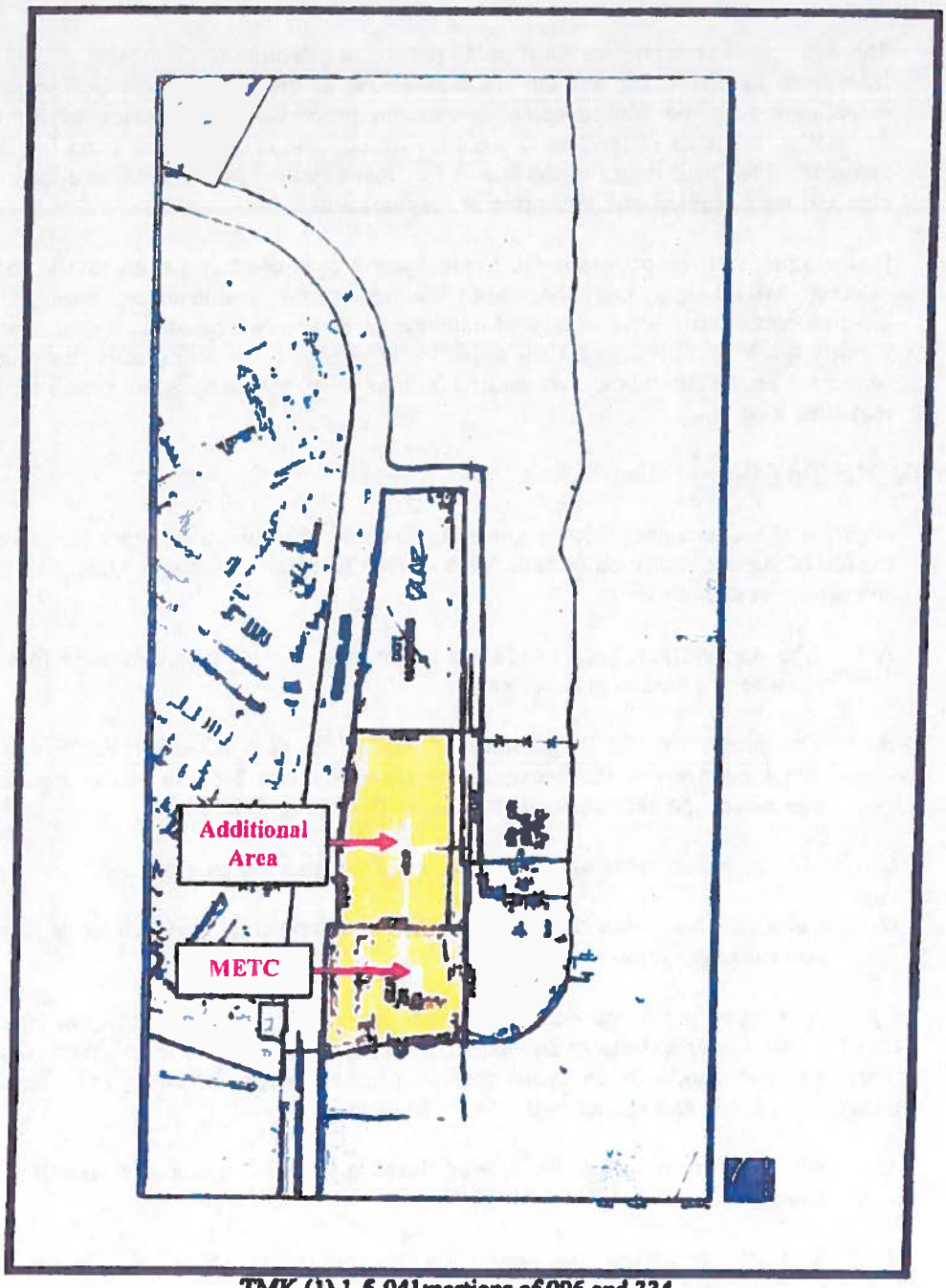
   C. Review and approval by the Department of the Attorney General; and

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

2. Approve in principle the issuance of a 65-year direct lease to the University of Hawaii over the METC site and the Additional Area shown on Exhibit A3 for educational and research purposes under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

   A. Within 24 months from the date of Board approval, University of Hawaii shall comply with Chapter 343, HRS;

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



TMK (1) 1-5-041:portions of 006 and 334
Source: University of Hawaii Proposal

EXHIBIT ~~A3~~

EXHIBIT B2

HARBOR FACILITIES LEASE
UNIVERSITY RESEARCH PIER (Piers 34-35)
HONOLULU HARBOR

STATE OF HAWAI'I
By its

DIRECTOR OF TRANSPORTATION

As Lessor

And

THE UNIVERSITY OF HAWAI'I

As Lessee

For the benefit of its

University of Hawai'i at Manoa
School of Ocean & Earth Science & Technology

Covering Pier 35 and portion of Pier 34, Honolulu Harbor

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HARBOR FACILITIES LEASE

PIERS 34-35, HONOLULU HARBOR

THIS INDENTURE OF LEASE (hereafter the "Lease"), made and entered into this _____ day of _____, by and between the STATE OF HAWAII, by its Director of Transportation (hereafter called the "LESSOR"), and the UNIVERSITY OF HAWAI'I , whose business address is 2444 Dole Street, Bachman Hall, Honolulu, Hawai'i 96822 (hereafter called the "LESSEE"), for the benefit of the University of Hawai'i at Mānoa, School of Ocean & Earth Science & Technology, whose business and postal address is 1680 East-West Road, POST 800, Honolulu, Hawaii 96822 (hereafter called "SOEST").

WITNESSETH:

WHEREAS, the Department of Transportation, pursuant to Chapters 171 and 266, of the Hawaii Revised Statutes, is vested with certain control and jurisdiction over the operation of harbors within the State of Hawaii, and more particularly that harbor located in the City and County of Honolulu, Island of Oahu, State of Hawaii, known as Honolulu Harbor, and which is hereafter called the "Harbor"; and

WHEREAS, the LESSEE is a publicly supported institution of higher education in the State of Hawaii authorized and accredited to offer baccalaureate, masters, and doctorate degrees in ocean and earth science related areas, hereafter called the "Program;" and

WHEREAS, the LESSEE is engaged in providing education, training, and research in the ocean, earth, and planets and to enhance the quality of life in the state and nation by providing world class education, contributing to a high tech economy and promoting sustainable use of the environment; and

WHEREAS, the LESSOR's commercial harbor system is critical to Hawaii's economic health, whereby the LESSOR can no longer afford to defer needed improvements to increase berthing and cargo handling capacity within the Harbor; and

WHEREAS, the LESSOR is focused on expediting projects identified in the Honolulu Waterfront Master Plan (1989) and Hawaii Harbor Users Group Report on Port Facilities & Development Priorities (2005); and

WHEREAS, the proposed Kapalama Container Terminal ("KCT") project, shall be located on a portion of the former Kapalama Military Reservation ("KMR") site and has been identified as the LESSOR's highest priority Harbors project and determined to be integral to the State of Hawaii's economic sustainability and viability; and

WHEREAS, the LESSEE holds a gratis lease for the Pier 45 area within the KMR area of the Harbor ("Snug Harbor") for the operation of the University of Hawai'i Marine Center

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("UH Marine Center") which Snug Harbor lease is scheduled to expire on February 22, 2038 ("Original Lease"); and

WHEREAS, the LESSEE has critical need for berthing, and shore support services within the Harbor to support essential research in the Ocean Sciences, which was the original basis for designating Snug Harbor as the initial site for the operation of the UH Marine Center and the transfer of 2.8 acres of land for that purpose to the State by the federal government until the restriction was released by the federal government in 2004; and

WHEREAS, the Snug Harbor site is integral to the proposed development of the KCT Project; and

WHEREAS, the LESSEE has agreed to vacate the Snug Harbor site and terminate the Original Lease early provided that the LESSOR provide replacement facilities located at Piers 34-35 in the Harbor at which the LESSEE could continue its UH Marine Center operations (collectively the "University Research Pier"); and

WHEREAS, the LESSOR and the LESSEE entered into a Memorandum of Agreement ("MOA") dated March 12, 2014, under which the Original Lease will be terminated and a new lease issued to the LESSEE for the operation of the UH Marine Center at the University Research Pier; and

WHEREAS, the LESSOR has completed renovations and repairs to the University Research Pier within the Harbor, and the buildings located thereon which were intended to enable the LESSEE to continue its UH Marine Center operations from the Premises; and

WHEREAS, the LESSOR and the LESSEE agree that the Premises, with some further renovation and repair to be completed by the LESSEE at its own cost, would be suitable for the LESSEE to conduct its UH Marine Center operations at and from the Premises; and

WHEREAS, the LESSOR, pursuant to Sections 171-59(b), Hawaii Revised Statutes, may lease Harbor property to the LESSEE by negotiation; and

WHEREAS, the LESSOR will lease the Premises to the LESSEE rent-free for the LESSEE's lease, use, and occupancy of the Premises under this Lease;

WHEREAS, area to be leased hereunder to the LESSEE, including the University Research Pier, is encumbered under Governor's Executive Order Nos. 1345 and 2903,

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and other valuable consideration, the LESSOR and

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the LESSEE agree to terminate the Original Lease as of the Commencement Date of this Lease (as defined herein) and the LESSOR does hereby lease to the LESSEE, and the LESSEE does hereby lease from the LESSOR, the Premises (as defined herein), consisting of that certain parcel of land and the improvements situated thereon, all as more particularly depicted on Exhibit "A" and described in Exhibit "B," both of which are attached hereto and incorporated herein by reference.

ARTICLE I. DEFINITIONS

A. "Administrator" means the Harbors Administrator, Harbors Division, Department of Transportation, State of Hawaii or his/her designated representative.

B. "City" means the City and County of Honolulu.

C. "Department" means the Harbors Division, Department of Transportation, State of Hawaii.

D. "Development Standards" refers to the requirements that the LESSEE must meet in designing and constructing any Leasehold Improvements and are described in Exhibit "C," which is attached hereto and incorporated herein by reference.

E. "Director" means the Director of Transportation, Department of Transportation, State of Hawaii, or the Director's designated representative.

F. "DOH" means the State of Hawai'i Department of Health.

G. [Reserved].

H. "EPA" means the U.S. Environmental Protection Agency.

I. "Fair Market Rental" means the value that a property would most probably command in the open market indicated by the current rents asked and paid for comparable properties for uses similar to the current use of the Premises as of a given appraisal date. The appraisal shall consider: (1) all legal uses and/or activities permitted on the subject property within the context of relevant County zoning restrictions; (2) the operation of the commercial harbors system as it applies to the allowable uses on the Premises; and (3) how such factors influence the value of the Premises when compared with similar properties on and off the Harbor.

J. "Guests" means and includes licensees, permittees, contractors, subcontractors, sub-subcontractors, vendors, visitors, providers of utility services and other

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services, customers, passengers, patrons, and invitees of the LESSEE, including, without limitation, employees of The Research Corporation of the University of Hawai'i (hereafter "RCUH"), other universities, and/or other research related groups or organizations that are involved with the research and research related activities of the UH Marine Center.

K. "Harbor" means and includes Honolulu Harbor, located in the City and County of Honolulu, Island of Oahu, State of Hawaii,

L. "HRS" means Hawaii Revised Statutes.

M. "Land Board" means the Board of Land and Natural Resources of the State of Hawai'i, which shall have the right to approve this Lease and any amendment to this Lease that adds space to the Premises.

N. "Leasehold Improvements" for the purposes hereof, the term "existing leasehold improvements" includes all improvements, buildings building improvements, and other structures and fixed improvements affixed, attached, constructed, erected, installed, or placed in a permanent fashion to, at, in, on, over, or under the Premises by the LESSEE during the Lease term or constructed or completed by Lessor for the benefit and ownership of the LESSEE prior to and/or during the Lease term, and includes walls, floors, roofing, interior finishing, doors, windows, ceilings, built-in cabinets and shelving, flooring material and carpeting glued, nailed or tacked down, all utility lines, conduits, piping, service panels, connections and receptacles, all lighting fixtures (bulbs excluded) attached to walls and ceilings, all sprinkler systems, landscaping, paved areas and curbing, concrete or rock walls and boxes, sewer and drain piping and culverts, central, split or package heating, ventilation and air conditioning systems, compressed air systems (except for the air compressor pump and air tank), fences and gates, and all other similar attachments, fixtures and articles permanently affixed, or firmly embedded or fastened to the Premises immediately prior to the commencement of this Lease. The term "New Leasehold Improvements" includes all additions similar to or like the existing Leasehold Improvements, which are installed or placed on or in the Premises by the LESSEE and/or the LESSOR on or after the commencement of this Lease.

O. "LESSEE" means the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawai'i, and any governmental department, agency, commission, or other subdivision thereof, as may succeed to the rights, duties, and powers of said University of Hawai'i;

P. "LESSOR" means the State of Hawai'i, acting by and through its Department of Transportation, and any governmental department, agency, commission, or other subdivision thereof, as may succeed to the rights, duties, and powers of said Department.

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Q. "Personal Property" means and consists of any kind of property that is temporary or movable property and not real property and/or not part of the Leasehold Improvements.

R. "Premises" means and includes the "Land" and the "Buildings" as defined in Article II of this Lease.

S. "STATE" means the State of Hawai'i, by its Department of Transportation.

T. [Reserved].

U. "TSA" means the U.S. Department of Homeland Security Transportation Security Administration.

V. "USCG" means the United States Coast Guard.

ARTICLE II. PREMISES

The LESSOR, for the term, and for and in consideration of the agreements, covenants, promises, provisions, requirements, restrictions, terms, and conditions as are hereinafter more particularly set forth, all on the part of LESSEE to be kept, observed, and performed, does hereby grant, demise and let unto LESSEE, and LESSEE does hereby lease and hire from LESSOR:

1. Land. The right (subject to Article II.B (Use of Premises)) to lease, occupy, and use the University Research Pier and the land area (but not any submerged land) adjacent to the University Research Pier, containing a total surface area of about 6.156 acres more or less, all as shown on the map attached hereto as Exhibit A and noted in the property description attached hereto as Exhibit B, both of which are incorporated herein by reference (collectively the "Land"), which consists of: (a) the fast land and pier facility comprising Pier 35 of the Harbor (hereafter the "Pier 35 Area") and (b) the fast land and pier facility comprising a portion of Pier 34 of the Harbor (hereafter the "Pier 34 Area").

2. Buildings. The exclusive right to lease, occupy, and use all of the buildings, structures, and facilities situated upon the Land (collectively the "Buildings"). The Land and the Buildings are hereafter collectively the "Premises."

ARTICLE III. ZONING AND USE OF PREMISES

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The Premises are zoned I-3 "Waterfront Industrial."

The LESSOR will permit the LESSEE to use the Premises for any of the following purposes, all of which is allowed under the present zoning designation:

A. Permissible Uses.

1. Research purposes. LESSEE may conduct research activities consistent with the LESSEE's status as the primary research university within the University of Hawai'i system.

2. Operation of University of Hawai'i Marine Center. LESSEE may continue operating the UH Marine Center, which has been partially relocated to the Premises from the Pier 45 area of the Harbor, formerly known as Snug Harbor. The UH Marine Center is responsible for coordinating vessel research operations, including operating and maintaining two large vessels (i.e., the 186' SWATH (Small Waterplane Area Twin Hull) R/V *Kilo Moana (KM)* and the 223' R/V *Ka'imikai-O-Kanaloa (KOK)).* The UH Marine Center facilities include (1) pier space for the *KM, KOK,* visiting research vessels, and several other vessels, (2) a machine shop, (3) cranes, (4) storage facilities and (5) on-site research facilities and laboratories. Services provided by the UH Marine Center include ship scheduling; provision of shipboard crew and technicians, engineering support; coordination of shared equipment such as underwater vehicles, submersibles, small boats; and vessel chartering, and short term and long term use of on-site research facilities and laboratories.

3. Classroom and Field Instruction. Conduct classroom and field site instruction, research, testing, training, and shop work, in all marine, maritime, and research related fields.

4. Repair of Vessels and Equipment. The right to repair, maintain, condition, service, modify, manufacture, and assemble vessels and equipment, accessories and component parts, and mobile vessel repair and service equipment; this shall include, but not be limited to, electrical, hydraulic, pneumatic, structural, mechanical, and safety systems.

5. Vessel Petroleum Products. The right to store and service with vessel fuel propellants, vessel lubricants, and other vessel petroleum products for the LESSEE's operation of the UH Marine Center and the LESSEE's research, education, training, and support services activities and to maintain and operate for such purpose mobile or stationary dispensing equipment therefor as is approved by the LESSOR; provided, however, that any and all such fuel propellants, vessel lubricants, and any and all petroleum products shall at all times be maintained by the LESSEE in conformity with applicable governmental standards and all governmental rules relating to the safe storage, service, and use of said materials; and provided,

that any and all such dispensing equipment shall at all times be operated by the LESSEE in conformity with applicable governmental standards and all governmental rules relating to the safe storage, service, construction and operation of said equipment, and that such equipment be maintained by the LESSEE in good operating condition.

6. Vehicle Parking. The right to park, or permit the parking of automobiles operated by the LESSEE, its officers, employees, guests, students, instructors, customers and invitees.

7. Non-Exclusive Vessel Berthing and Storage. The right to berth vessels and store vessel related equipment (such as underwater vehicles and submersibles), and exchange (or otherwise dispose of) or transfer vessel components, parts, and vessel related equipment.

8. Testing of Vessel Components. The right to test certain vessel and vessel related equipment component parts and other equipment owned, serviced by, contracted through, and/or operated by the LESSEE. The LESSOR, however, may terminate the LESSEE's right to test certain equipment if testing of such equipment is detrimental to the operations of occupants of neighboring Harbor properties. Detrimental effects shall be deemed to include, but shall not be limited to, excessive interference with electrical or electronic equipment, fumes from noxious gas and liquids, and noise levels in excess of applicable governmental standards.

9. Business and Operations Offices. The right to establish and maintain business and operations offices in connection with the LESSEE's operation of the UH Marine Center and the LESSEE's research, educational, training, and support services activities.

10. Continuing Education Programs. The right to train and educate other persons in the research and maritime/marine industry through continuing education programs, seminars, or classes in phases of research and vessel operations, provided, however, that the LESSEE's research, education and training activities shall be subject to the rules and regulations of the appropriate governmental agencies having jurisdiction thereof.

11. Incidental and Supplemental Operations. The right to conduct any other operation or activity which is reasonable, necessary, incidental, or supplemental to the LESSEE's operation of the UH Marine Center and/or the LESSEE's research, educational, training, and support services activities, provided that the conduct of such operations and activities are permitted under the Hawaii Administrative Rules for Commercial Harbors and Tariff of the Harbors Division, Department of Transportation, State of Hawai'i (hereafter the "LESSOR's Rules").

B. Use of Premises.

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1. Pier 35 Area. The LESSEE acknowledges that that due to the lack of berthing space in Harbor, the LESSEE will not be entitled to exclusive use of Pier 35, provided, however, that: (a) the LESSEE's lease, use, and occupancy of the Pier 35 Area shall be given the highest priority and (b) the LESSOR agrees not to authorize the mooring or berthing of any vessel at Pier 35 unless:

a. No other appropriate Harbor space available. No other Harbor pier space is available and appropriate for the vessel that the Lessor is seeking to place.

b. Emergency/short term use. Use of pier space at the Harbor's Pier 35 by the vessel shall be for emergency or short term purposes.

c. No LESSEE vessels dislocation. No LESSEE owned or operated vessels will need to relocate or move in order to accommodate the vessel that the LESSOR seeks to place.

d. Prior LESSEE notice. The LESSOR notifies the LESSEE in writing as soon as reasonably practicable that the LESSOR desires to place a vessel at the Harbor's Pier 35.

e. Comply with security and access requirements. The LESSOR shall require all persons aboard and servicing the vessel to comply with the LESSEE's security and access requirements.

f. No dangerous or toxic cargo. The vessel to be berthed at the Harbor's Pier 35 by LESSOR shall not carry dangerous or toxic cargo, including any Hazardous Substances, that may pose a threat to the health and safety of the LESSEE's employees and/or Guests.

g. Vessel does not require undue security measures. The vessel to be berthed at the Harbor's Pier 35 by the LESSOR does not require the implementation of security measures by the LESSEE that unduly or unreasonably interfere with the LESSEE's use of the Pier 35 Area and/or the UH Marine Center operations. Any costs associated with security for the vessel that the LESSOR places at Pier 35 are not the responsibility of the LESSEE.

h. No liability for damage. The LESSEE shall not be responsible for any damage to the pier space or pier facilities at the Harbor's Pier 35 that has been found to be caused by or attributable, in whole or in part, to use by any vessel berthed at the Harbor's Pier 35 by the LESSOR.

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2. Pier 34 Area. The LESSOR and the LESSEE acknowledge and agree that the LESSEE's lease, use, and occupancy of the Pier 34 Area shall be given high priority and LESSOR agrees not to authorize the mooring or berthing of any vessel at the pier space that is part of the Pier 34 Area unless:

a. Prior LESSEE notice. The LESSOR: (1) notifies the LESSEE as soon as reasonably practicable that the LESSOR intends to berth a vessel at Pier 34 and (2) requires persons aboard and servicing the vessel at the Pier 34 Area to comply with all LESSEE's security and access requirements.

b. Securing mooring line. The LESSOR shall comply with all conditions contained in this Article III, section B2 (Pier 34 Area) even if the vessel permitted by the LESSOR to berth at the Harbor's Pier 34 only needs to secure a mooring line to a bollard located at Pier 34.

c. No dangerous or toxic cargo. The vessel to be berthed at the Harbor's Pier 34 by the LESSOR shall not carry dangerous or toxic cargo, including any Hazardous Substances, that may pose a threat to the health and safety of the LESSEE's employees and/or Guests.

d. Vessel does not require undue security measures. The vessel to be berthed by the LESSOR at the Harbor's Pier 34 does not require the implementation of security measures by the LESSEE that unduly or unreasonably interfere with the LESSEE's use of the Pier 34 Portion and/or the UH Marine Center operations. Any costs associated with security for the vessel that the LESSOR places at Pier 34 are not the responsibility of the LESSEE.

e. No liability for damage. The LESSEE shall not be responsible for any damage to the pier space or pier facilities at the Harbor's Pier 34 or the Pier 34 Area that may be caused by or attributable, in whole or in part, to use by any vessel berthed at the Harbor's Pier 34 by the LESSOR.

ARTICLE IV. TERM

A. Term. The LESSEE shall have the right to occupy and use the Premises for the purposes prescribed and set forth in Article III (Use of Premises) and Article VIII (General Rights and Responsibilities of LESSEE) of this Lease, for a period of thirty-five (35) years, commencing on the date that is the date that the LESSEE, after final inspection, has accepted all of the DOT Preparatory Work (as defined herein) as being fully and finally complete

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(hereafter the "Commencement Date"), unless sooner terminated or extended as provided herein (hereafter the "Term").

B. Original Lease termination. The LESSEE shall have the right to lease, occupy, and use the Snug Harbor area under the Original Lease until the date that is sixty (60) days from the date that the LESSSEE, after final inspection, has accepted all of the DOT Preparatory Work (as defined herein) as being fully and finally complete.

ARTICLE V. RENT

A. Lease Rent. Beginning on the Commencement Date and continuing for the duration of the entire Term, the lease rent payable by the LESSEE to the LESSOR shall be gratis.

B. Wharfage and Other Fees. [Reserved]

ARTICLE VI. REOPENING OF RENT [RESERVED]

ARTICLE VII. IMPROVEMENTS

A. Acceptance of Premises. The LESSEE has examined and knows of the condition of the Premises and takes the Premises in its existing form, content, and state of condition without any representation by or on behalf of the LESSOR, and the LESSEE further agrees that except for the DOT Preparatory Work (as defined herein) the LESSOR shall not be liable for any latent, patent, or other defects in, on, over, or under the Premises, including easements and appurtenances thereto. By taking possession of the Premises and all that may be part of the Premises, the LESSEE is agreeing to release and discharge any claims, rights, and actions the LESSEE may have with respect to the condition of the Premises, except for conditions and defects relating to or arising from the work performed by or on behalf of the LESSOR in preparing the Premises for the LESSEE's use and occupancy, including the work completed as part of that certain construction project known as "Rehabilitation of Building & yard Areas at Piers 34/35, Honolulu Harbor, Oahu Job H.C. 10368 and Building Improvements at Pier 35, Honolulu Harbor – Job HMP 20905____" (collectively the "DOT Preparatory Work"). The LESSOR shall obtain from the LESSOR's consultants a representation and warranty that: (1) the DOT Preparatory Work has been completed in compliance with all City and County of Honolulu (the "CITY") building codes and requirements that the LESSOR would have had to satisfy in order to obtain a CITY building permit for the DOT Preparatory Work and (2) the LESSOR shall, and shall require the LESSOR's contractor(s) to, transfer and make

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available to the LESSEE (and to take all actions necessary to transfer and make available to the LESSEE) all warranties and rights to enforce or require correction of conditions and/or defects relating to or arising from the DOT Preparatory Work

B. In General. The LESSEE, subject to obtaining prior review and approval from the LESSOR, may, at its own cost and expense: (1) improve and upgrade the Premises, (2) add to, remodel, renovate, reconstruct, and improve the Premises, including any existing improvements, and (3) construct, erect, install new facilities, buildings, structures, utility lines, and other improvements thereupon, all for the purposes denoted in Article III (Use of Premises), subject to all applicable easements and restrictions as shown on Exhibit A attached hereto and made a part hereof, and any and all other covenants, terms, and/or conditions that may be reasonably required or imposed by the LESSOR.

C. Environmental Report. For purposes of this Lease, the LESSOR and the LESSEE acknowledge and agree that any applicable environmental impact reporting, disclosure, or assessment requirement has been satisfied by the LESSOR's completion of the Final Environmental Assessment ("FEA") and issuance of a Finding of No Significant Impact ("FONSI") for the UH Marine Center Relocation to Piers 34 and 35, Honolulu Harbor, O'ahu, Hawai'i, which FEA and FONSI were submitted to the Office of Environmental Quality Control by letter from the LESSOR dated January 28, 2013, and notice of which was published in the OEQC's February 8, 2013 Environmental Notice. The LESSOR represents that no challenges to or actions against the FEA or the FONSI were submitted or filed and that there are no actions pending in court or otherwise challenging the FEA or the FONSI. The LESSOR and the LESSEE agree that the LESSEE is not required to take any further action with respect to complying with any obligations under this Article VII.C.

D. Improvement Plans.

1. LESSEE's Plans. All designs, plans, drawings, specifications, cost estimates, schedules, and timetables, together with a detailed plot plan and layout, for and relating to the construction and installation of the LESSEE's Leasehold Improvements at, in, on, over, or under the Premises, shall hereafter collectively be the "LESSEE's Plans."

2. Properly licensed. The LESSEE must retain architects, engineers, and consultants that are properly licensed in the State of Hawai'i to prepare the LESSEE's Plans. The LESSEE must retain contractors that are properly licensed in the State of Hawai'i to construct, erect, and install the LESSEE's Leasehold Improvements.

3. [Reserved].

4. Compliance with Development Standards. The LESSEE shall obtain the LESSOR's prior written approval for the LESSEE's Plans and Leasehold

Improvements, including all initial and subsequent construction, repair, refurbishment, or installation of improvements at, in, on, over, or under the Premises. All such improvements, except as otherwise stated herein or hereafter, must: (a) be of high quality; (b) incorporate quality materials; (c) be completed with first-class workmanship; and (d) if feasible, meet applicable CITY building codes, standards, and specifications. All such improvements, except as otherwise stated herein or hereafter must also meet the developments standards described in Exhibit __ attached hereto and incorporated herein by reference (hereafter collectively the "Development Standards"). The LESSEE will apply for and seek applicable CITY permits and approvals for the LESSEE's Plans and the Leasehold Improvements, provided, however, that if any of the following events occur, the LESSEE will not be required to obtain any applicable CITY permits and approvals: (a) the CITY requires substantial revisions to the LESSEE's Plans and the Leasehold Improvements, (b) the CITY's mandated changes require the LESSEE to incur significant additional cost, expense, liability, or obligation, (c) the CITY does not grant any such CITY permits and/or approvals, (d) the CITY requires the LESSEE to make any type of representation or warranty with respect to the DOT Preparatory Work (or will not accept the representation and warranty made by the LESSOR's consultant with respect to the DOT Preparatory Work), and/or (e) such other event beyond the reasonable control of the LESSEE occurs that prevents the LESSEE from satisfying any preconditions for obtaining the applicable CITY permits or approvals.

5. LESSOR's Approval. The LESSOR shall not unreasonably withhold, delay, or condition its approval of the LESSEE's Plans. The LESSOR may reasonably withhold such approval, including, without limitation, if, in the sole discretion of the LESSOR, such construction, erection, or installation will be:

a. Structurally unsafe. Structurally unsound or unsafe or hazardous for human use or occupancy; or,

b. Violation of lease. Not in compliance with any requirement of this Lease; or,

c. Building, electrical, plumbing, health, and/or fire code violations. Not in compliance with the building, electric, plumbing, health, and fire codes, regulations, standards, or specifications of the County or the State; or,

d. Development Standards violation. Not in compliance with the Development Standards.

e. Violation of federal requirements. Not in compliance with any federal law, code, statute, rule, regulation, or order of a federal government agency with jurisdiction over all or a part of the Harbor, including the USCG or the TSA.

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6. LESSOR's Disapproval. If the LESSOR disapproves of the LESSEE's Plans, the LESSOR shall promptly give the LESSEE written notice of the LESSOR's disapproval, which notice shall state the reason or reasons for the LESSOR's objections to the LESSEE's Plans. The LESSEE shall thereupon prepare and submit to the LESSOR new or revised LESSEE's Plans as shall reasonably satisfy the LESSOR's prior objections. In making its determination as to whether to approve or disapprove the LESSEE's Plans, the LESSOR agrees to be reasonable and to act without delay. The LESSOR agrees to approve or disapprove the LESSEE's Plans within sixty (60) days after receiving the LESSEE's Plans. If the LESSOR fails to respond within such 60 day time period, the LESSEE may proceed as if the LESSEE's Plans have been approved by the LESSOR. If the LESSOR disapproves any portion of the LESSEE's Plans, the LESSEE will revise that portion of the LESSEE's Plans and resubmit such portion for the LESSOR's review. The LESSOR agrees to approve or disapprove such portion of the LESSEE's Plans within thirty (30) days after receiving the resubmitted portion of the LESSEE's Plans. If the LESSOR fails to respond regarding the resubmitted portion of the LESSEE's Plans within such 10 day time period, the LESSEE may proceed as if the resubmitted portion of the LESSEE's Plans has been approved by the LESSOR. The LESSOR and the LESSEE agree that the time period within which the LESSEE is required to complete the construction and installation of the portion of the Leasehold Improvements which is the subject of and a part of the LESSEE's Plans shall not commence or start running unless and until the LESSOR formally and fully approves all of the LESSEE's Plans for such Leasehold Improvements.

7. Compliance with Design Standards. Prior to submitting the LESSEE's Plans to the LESSOR for the purpose of obtaining the LESSOR's written approval, such plans, drawings, and specifications must comply with, meet, or completely satisfy all of the following design standards:

a. Structurally safe. All repairs, restoration, construction, erection, and installation shall be structurally safe, sound, and non-hazardous.

b. Use of new materials. All repairs, restoration, construction, erection, and installation shall be of new materials and first-class workmanship.

c. Buildings to be metal or concrete block. Buildings shall be constructed of prefabricated metal or concrete block or any similar fireproof material approved, in writing, by the LESSOR, with concrete floors, especially if used for the storage or handling of flammable fluids, chemicals, or lubricants and vessel servicing and maintenance.

d. Buildings set back. Building(s) shall be set back a minimum of ten (10) feet from property lines, unless otherwise approved, in writing, by the LESSOR.

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e. Utility lines. Utility lines shall be located underground or under the pier.

f. Traps and separators. Grease traps, oil-water separators or other such devices shall be provided to collect all spills from petroleum products.

g. Surface discharge. Surface drainage from wash areas shall not be discharged outside the Premises.

h. Security fencing. In the event the LESSEE is required to install additional security fencing mandated by federal or state laws, rules, or regulations, the LESSEE and the LESSOR will mutually agree upon the location of such additional fencing and the LESSEE shall complete the installation of said fencing with the required chain-link fence, and where necessary for harbor security purposes, with three (3) strands of barbed wire or with other security walls, barricades, and fencing that meet harbor standards, all as approved, in writing, by the LESSOR. Fences between the Premises and adjacent property shall be constructed, erected, or installed directly on the property lines, with all costs and expenses for such construction, erection, or installation shared equally by the LESSEE and the lessee of the adjacent property or as otherwise mutually agreed upon by the LESSOR and the LESSEE.

i. Height limitations. All Leasehold Improvements shall not exceed the Harbor height limitation prescribed by the LESSOR or the Federal Aviation Administration or cause a hazard to air safety, as prescribed and set forth in Article XXXVIII (Approach Protection) hereof or pursuant to any federal, state, or county law, statute, ordinance, rule, or regulation.

j. Signs. Signs bearing the LESSEE's name or business name shall not exceed the allowable overall size set by County building codes and shall not be located higher than the top of the Leasehold Improvements. Illuminated, neon, or other similar exterior signs are prohibited. Prior to the erection, installation, or placement of any exterior sign by the LESSEE, the LESSEE must first obtain the LESSOR's written approval of each sign's design, graphics, color, layout, and method of mounting.

k. No-build zones. The Leasehold Improvements shall not be built, constructed, erected, installed, or placed over any pipeline or other utility conduit easement or within any aircraft approach/takeoff clear zone or other setback area.

l. Landscaping. For the enhancement and beautification of the Premises, the LESSEE shall landscape all open and unpaved areas of the Premises, if any, with grass, ground cover, bushes, shrubbery, trees, and other types of foliage.

E. Construction Program.

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1. LESSOR Approval of Leasehold Improvements. Prior to the commencement of any work being done, the LESSEE shall obtain the LESSOR's written approval of the LESSEE's Plans covering the portion of the Premises upon which such work is to be done, and shall obtain all governmental or other approvals required by law.

2. Plans and Specifications. The LESSEE shall, at its sole cost and expense, employ competent architects, engineers, and interior designers licensed in the State of Hawai'i who will prepare the LESSEE's Plans, including, without limitation, architectural, interior, exterior and engineering designs, detailed plans, specifications, and cost estimates of all Leasehold Improvements to be installed at, in, on, over, or under the Premises. The LESSEE shall, at its sole cost and expense prior to the start of construction, obtain all necessary permits and governmental approvals. The LESSEE shall submit two (2) sets of the LESSEE's Plans for review and approval by the LESSOR in accordance with a time schedule furnished by the LESSOR.

All of the LESSEE's Plans shall be first submitted to the LESSOR for written approval before the LESSEE awards, issues, or lets any and all contracts for the construction of its Leasehold Improvements.

3. Adherence to LESSEE's Plans. No substantial change, addition, or alteration shall be made in the LESSEE's Plans so approved without first obtaining the LESSOR's approval in writing. No Leasehold Improvements or improvements other than as contemplated herein shall be constructed, erected, installed, or placed at, in, on, over, or under the Premises without the prior written consent of the LESSOR and any and all terms and conditions relating thereto imposed by the LESSOR shall become terms and conditions hereof, as if they had been originally stated in this Lease.

4. Future Work. After construction or installation and completion of its Leasehold Improvements, as approved by the LESSOR, the LESSEE shall not, without first obtaining the LESSOR's written consent, make any structural alterations (including, without limitation, building exterior, pier area, and site work areas) to any portion of the Premises. The LESSEE may make nonstructural interior alterations to the Buildings and the Leasehold Improvements without first obtaining the LESSOR's prior approval, provided that all such nonstructural interior alterations comply with applicable fire codes and requirements.

5. Governmental Approvals. The LESSEE, at its sole cost and expense, shall also procure all governmental approvals and permits necessary for the construction, erection, installation, or placement of its Leasehold Improvements at, in, on, over, or under the Premises.

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6. Submittals Required Upon Completion. Upon completion of the construction, erection, installation, or placement of its Leasehold Improvements, the LESSEE shall, within thirty (30) calendar days thereafter, at no cost or expense to the LESSOR, furnish the LESSOR:

a. Certificate. A certificate certifying that its Leasehold Improvements have been constructed, erected, installed, or placed in accordance with the approved LESSEE's Plans and in strict compliance with all laws, statutes, and ordinances, and governmental rules, regulations, codes, directives, and orders;

b. As-builts. Two complete sets of as-built construction drawings, specifications, and plans (including, but not limited to, architectural, mechanical, plumbing, and electrical drawings, plans, and specifications) containing a separate stamp from the LESSEE's licensed architect or engineer after the date construction (including subsequent additions or alterations thereto) has been completed, or accompanied by an attestation from both the LESSEE and either the LESSEE's architect or engineer that such submitted drawings constitute true and accurate representations of the as-built condition of the Leasehold Improvements, and one complete set in Computer Aided Design (CAD) format which complies with the LESSOR's current CAD standards. The as-built construction drawings must include any and all applicable governmental approval or permit numbers and the Leasehold Improvements constructed, erected, installed, or placed by the LESSEE at, in, on, over, or under the Premises, and the location and details of construction or installation of all equipment, utility lines, and heating, ventilating, and air-conditioning ducts and related appliances. The LESSEE shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the Premises; and,

Failure by the LESSEE to submit the LESSEE's Plans and/or complete its Leasehold Improvements, and/or tender such as-built drawings, plans, and specifications (if any) and improvement costs within the prescribed times shall constitute a breach of this Lease, provided that prior to LESSOR taking any action to enforce its rights hereunder, the LESSOR and the LESSEE shall seek to resolve any such disputes relating to the LESSEE's compliance using the dispute resolution process outlined in Article XLV (Dispute Resolution) herein.. The LESSOR shall not unreasonably withhold, delay, or condition its consent to such plans, drawings, and specifications and shall either consent to or disapprove of the same within a reasonable time.

c. Field changes, updates and revisions. As construction, erection, installation, or placement of the Leasehold Improvements is later completed, a record of the in-place costs, and if requested by the LESSOR, duplicate receipted invoices for all materials and construction and installation costs incurred which the LESSEE records as capital expenditures as part of its Leasehold Improvements at, in, on, over, or under the Premises.

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7. Minimum Investment in Improvements. LESSEE shall, within twelve (12) months of the date of commencement of this Lease, invest the sum of not less than $4 million for planning, designing, upgrading and improving the Premises and constructing its Leasehold Improvements, and shall, within such time, submit to LESSOR an itemized statement of the "in-place" costs of the upgrades, improvements, and construction so completed. This requirement to report said costs shall also apply to any and all subsequent renovations, additions, or alterations made thereto, and the LESSEE's itemized cost statement shall be due and delivered to LESSOR no later than thirty (30) days after completion of such subsequent renovations, additions, or alterations.

F. Title. The LESSOR and the LESSEE acknowledge and agree that the Buildings that are situated within the Premises as of the Commencement Date are owned by the LESSOR and that the Leasehold Improvements constructed or incorporated into or situated within the Buildings will be owned by the LESSEE for the remainder of the Term (starting with the completion of each portion of the Leasehold Improvements).

1. LESSOR has no rights to the Leasehold Improvements until Term expires or terminated early. The LESSOR and the LESSEE agree that the LESSOR shall not be entitled to assume ownership of any portion of the Leasehold Improvements until and unless the Term hereunder expires or is terminated early.

2. Upon termination LESSOR may have rights to the Leasehold Improvements. Subject to the provisions of Article XIV (Surrender of Premises) hereof, upon the expiration or sooner termination of this Lease, the LESSOR shall have the option of assuming ownership of the Leasehold Improvements; or directing the LESSEE to remove the Leasehold Improvements. If the LESSOR elects to assume title to or ownership of the Leasehold Improvements, such title to and ownership of the Leasehold Improvements is to vest in the LESSOR, free and clear of any and all encumbrances.

G. LESSEE's Regular Maintenance Obligations. The LESSEE shall, at all times and at its sole cost and expense, properly upkeep and maintain in good repair and in a clean and orderly condition and appearance all portions of the Premises, including, without limitation: (a) all Leasehold Improvements; (b) all Personal Property; (c) all mechanical room equipment such as, but not limited to, heat exchanges, fans, controls and electric panels; (d) obstruction lights and similar devices, fire protection and safety equipment, and all other like equipment required by any law, statute, rule, regulation, order, or ordinance; (e) any of the following located in or on the Premises: fences, exterior and interior walls, windows, operating mechanisms of and attachments to windows and skylights, screens, roofs, foundations, steel work, columns, doors, partitions, floors, ceilings, fixtures, paved and unpaved areas, light poles and fixtures, landscaping, glass of every kind, and utility, mechanical, electrical, and other systems; including but not limited to drainage, water and sewer systems; all structures, buildings, roofs, and piers and, (f) all areas within the Premises, particularly those adjacent to the entrances

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and exits, including keeping them free of obstructions and such maintenance obligation shall include the interior and exterior cleaning of all windows, entrances, and exits of the Premises (including the extended surface areas adjacent and surrounding such entrances and exits), doors (exterior and interior), the painting of the Leasehold Improvements, and the cleaning and repair of all floors, interior walls, ceilings, lighting, decor, and Personal Property (collectively the "Regular Maintenance"). The LESSEE shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or sooner termination of this Lease, the Premises will be in a condition similar to that which existed at the commencement of this Lease (or in the case of Leasehold Improvements made during the Lease term, in as good condition as at the time of the construction or installation thereof), ordinary wear and tear excepted.

1. Preventative Maintenance. To accomplish this requirement, the LESSEE shall establish an adequate preventative maintenance program, and the provisions of the LESSEE's program shall be subject to periodic review and approval by the LESSOR. All such preventative maintenance shall be considered as and included within the definition of "Regular Maintenance" described above..

2. Performing Regular Maintenance. Regular Maintenance done or performed by the LESSEE shall be in quality and class not inferior to the original material and workmanship and the LESSEE shall pay promptly the cost and expense of such Regular Maintenance.

3. [Reserved]

4. Damage Repair. The LESSEE shall suffer no strip or waste of the Premises, and shall repair, replace, rebuild, restore, and/or paint all or any part or portion of the Premises that may be damaged or destroyed by the acts or omissions of the LESSEE or the LESSEE's officers and employees. Any and all structural repairs, alterations, and additions to be made by the LESSEE to correct or repair damage to the Premises caused by the LESSEE at, in, or on the Premises (and any and all other such work which is non-structural and costs $100,000.00 or more) shall be subject to the requirements of this Article VII (Improvements) herein, and all such work must receive the prior written consent of the LESSOR.

5. Removal of Leasehold Improvements. The LESSEE shall, upon notice from the LESSOR, promptly remove any and all Leasehold Improvements not authorized by this Lease, or repair, replace, or restore any and all Leasehold Improvements which may, by reason of use or negligence of the LESSEE, become, in the opinion of the LESSOR, unsound, unsafe, or hazardous, and in case of the LESSEE's failure to remove or repair, replace, or restore the same, the LESSOR may remove or repair, replace, or restore such Leasehold Improvements and other structures and facilities without liability to the LESSEE or others for damages, and the

LESSEE shall pay the cost of such removal or repair, replacement, or restoration as additional rent.

6. Safety Equipment. The LESSEE shall, at its sole cost and expense, provide and maintain all obstruction lights and similar devices, all fire protection and safety equipment, and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution, or regulation.

7. LESSOR's Security Fence. Prior to the LESSOR erecting any security fence that separates the LESSEE's Premises from any other Harbor areas, the LESSOR and the LESSEE shall agree upon the location and alignment of such security fence and the extent of the LESSOR's responsibility to maintain such security fencing and keep it in good repair and condition. The LESSEE shall also maintain security in such a manner that unauthorized persons shall not have access to any secured or restricted areas of the Harbor, including all harbor operations areas through the Premises, and the LESSEE's officers, employees, agents and Guests, and any other party acting on behalf of or with the permission of the LESSEE shall be under the control, supervision, or guidance of the LESSEE when entering any such secured or restricted areas of the Harbor, including all harbor operations areas. The LESSEE shall, to the extent permitted by law, enter into any separate supplemental agreement required by the LESSOR or the USCG or TSA covering Harbor security requirements. The LESSEE's failure to observe any Harbor security requirement shall constitute a violation, provided that prior to LESSOR taking any action to enforce its rights hereunder, the LESSOR and the LESSEE shall seek to resolve any such disputes relating to the LESSEE's compliance using the dispute resolution process outlined in Article XLV (Dispute Resolution) herein.

8. Grease Traps. The LESSEE shall keep clean at all times, and maintain, repair, and/or replace any and all grease traps in all drainage and sewage pipes and other utility lines at, in, on, over, or under the Premises.

9. Sidewalks. The LESSEE shall clean and maintain, and repair, if damaged by the LESSEE, and/or the LESSEE's officers and employees, any and all sidewalks or road setback fronting the Premises.

10. Landscaping. The LESSEE shall maintain and properly care for any and all landscaping at the Premises and shall periodically (at least monthly) remove weeds and other noxious vegetation that may appear on the Premises and along the perimeter of the Premises. The LESSEE shall also remove from the Premises, at the same time, any junk, litter, abandoned or damaged motor vehicles, trade fixtures, furnishings, furniture, equipment, and other personal property, excess material, leaking containers or other similar items and/or equipment, vehicle parts, and machinery that are unsightly, dangerous, in disrepair, unclean, and/or inoperative. If the LESSEE fails to remove any such items as may be directed by the

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LESSOR, the LESSOR may remove and dispose of such items and the LESSEE shall be solely responsible for all costs and expenses incurred for such removal and disposal and shall immediately pay the same to the LESSOR upon demand.

11. Pier Structures - Structural Work/Regular Maintenance.

a. LESSOR to furnish pier structure assessments. The LESSOR shall promptly furnish to the LESSEE all documentation relating to any investigations, inspections, evaluations, or assessments involving the piers, including the pier structures and foundations (collectively the "Pier Structures") located within the Premises (e.g., the University Research Pier) (collectively the "Pier Structure Documents"). The LESSOR and the LESSEE acknowledge that the LESSEE has provided the following to the LESSEE as part of the Pier Structure Documents as of the Commencement Date: (1) Pier condition report entitled "Draft University of Hawai'i Marine Center (UHMC) Geotechnical and Structural Engineering Studies at Pier 35, Honolulu Harbor, Hawai'i" prepared by TEC, Inc. dated April 2011 and (2) the "as-built' drawings showing the pier repairs completed as part of the project entitled "Substructure and Waterline Repairs at Pier 35, Honolulu Harbor, Hawai'i," Job H.C. 10473.

b. Baseline Pier Report. The LESSEE may establish a baseline when performing its first annual inspection and preparing the accompanying Pier Report (as defined herein) (hereafter collectively the "Baseline Pier Report"). The LESSEE shall retain a structural engineer licensed in the State of Hawai'i to complete the Baseline Pier Report which will include a load analysis of the Pier Structures that are within the Premises. The load analysis will help determine whether and to what extent vehicles and heavy equipment, such as mobile cranes, can safely operate on the pile-supported piers. The load analysis will be based on information obtained from the Pier Structure Documents made available by the LESSOR to the LESSEE (including pier drawings provided by the LESSOR). The Baseline Pier Report shall be provided to the LESSOR. The LESSOR and the LESSEE agree that the LESSEE's obligation under this Lease to perform any Structural Work relating to the piers and Pier Structures shall not include any work to repair, restore, or correct any deficiencies in the piers and the Pier Structures noted or covered in the Baseline Pier Report.

c. Pier Report. The LESSEE shall complete annual inspections or at intervals as may be agreed upon by the LESSOR and the LESSEE, at the LESSEE's cost and by a certified structural engineer licensed in the State of Hawai'i, an inspection or survey report on the condition of the Pier Structures that are part of the Premises, including the Pier 35 Area and the Pier 34 Area (hereafter the "Pier Report"). The LESSEE's Pier Report covering the Premises shall: (1) identify areas of the Pier Structures that may need Regular Maintenance, (2) identify areas of the Pier Structures that may need major repair, renovation, or reconstruction work (collectively the "Structural Work"), (3) identify the time frame within which the Regular Maintenance and the Structural Work can reasonably be completed, and (4) estimate the cost of separately completing the Regular Maintenance and the

Structural Work. The areas of the Pier Structures shall include but are not limited to: slabs, beams, girders, piles, bulkhead, bollards, fenders, pad eyes, chains, etc.

d. Pier Structures - Responsibility. The LESSEE shall be responsible, at the LESSEE's cost, for performing and completing any Regular Maintenance and the Structural Work that may be required in connection with the findings of the periodic Pier Reports. The LESSEE will retain a contractor experienced with under pier concrete repair to perform the Regular Maintenance and the Structural Work that is recommended in the Pier Report. The Regular Maintenance and the Structural Work shall be performed and completed before the later of the next Pier Report or 18 months after discovery of the damage to the Pier Structures within the Premises.

ARTICLE VIII. GENERAL RIGHTS AND RESPONSIBILITIES OF LESSEE

The LESSEE shall have the right with respect to the demised Premises herein to do or perform any of the following things upon the covenants, terms, and conditions hereinafter set forth below:

A. Conduct Program. Unless otherwise stated herein, the LESSEE shall have the right to perform and conduct the operations of the UH Marine Center, in accordance with the LESSEE's rules and regulations.

B. Communications, Equipment, and Rights-of-Way. The LESSEE shall have the right to install, maintain, and operate such vessel or ship radio, communications, and meteorological and aerial navigation equipment and facilities, as the LESSEE may deem necessary or convenient for the LESSEE's operation, subject to the prior written consent of the LESSOR as to the location, manner of installation, and type thereof, which consent shall not be unreasonably withheld, delayed, or conditioned.

1. Location of equipment and facilities. Such equipment and facilities may be located without additional charge or fee in or on any portion of the Premises, or, upon payment of the applicable rent for such additional area(s), at such other location(s) at, in, or on the Harbor, if any, as may be requested by the LESSEE and consented to in writing by the LESSOR.

2. Use of LESSOR conduits and ducts. In the event that the LESSOR constructs or installs, or hereafter voluntarily and not at the request of the LESSEE constructs or installs upon the Premises or elsewhere at the Harbor, conduits, ducts, or other facilities and appurtenances and equipment for use in common by vessel operators (including the LESSEE) the LESSEE may use such conduits, ducts, or other facilities, appurtenances, and equipment for

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the purpose for which they are provided, if and to the extent that space therein is available, and upon payment of any rental, charge, or fee for the use of such conduits, ducts, facilities, appurtenances, and equipment, as the LESSOR may prescribe; and provided that the LESSEE shall pay the cost of pulling or installing its wires, cables, pneumatic tubes, or similar communication connections through such conduits, ducts, facilities, appurtenances, and equipment, and the cost of installing brackets or any incidental equipment or facilities not provided by the LESSOR, and any other cost in connection with the aforesaid installations; and provided, further, that the LESSEE shall be solely responsible for any damage to the ducts, conduits, facilities, appurtenances and equipment, and to any other facilities installed therein, caused by the LESSEE's acts or omissions, or those of the LESSEE's officers or employees.

3. Use of rights of way and easements. The LESSEE may also have the right to use rights-of-way and easements at no charge and at locations hereafter designated, in writing, by the LESSOR, and with the prior written consent of the LESSOR, either for the exclusive use of the LESSEE or for use in common with others. The LESSEE shall have the right to use conduits, ducts, pipes, wires, cables, or similar installations and facilities (including, but not limited to, equipment and facilities related to or incidental to communications, controls, data or electronic transmissions, teletypes, telephones, interphone, and pneumatic tubes) between the places where such equipment and facilities have been installed in the Premises and the place where such equipment and facilities have been installed in space leased to the LESSEE for its exclusive or non-exclusive use elsewhere at the Harbor.

4. Lessor approval required for antennas, wires, and equipment. The LESSEE shall not install any antenna or aerial wires, or radio or television equipment, or any other type of telecommunication or other equipment, inside or outside of its Leasehold Improvements or anywhere else on the Harbor without the prior written approval of the LESSOR, and upon such terms and conditions that may be prescribed by the LESSOR in each and every instance.

C. Architects, Contractors, and Builders. The LESSEE shall have the right to employ such architects, contractors, or builders as the LESSEE shall deem necessary or desirable in connection with the authorized construction, installation, alteration, modification, repair, or maintenance of any and all Leasehold Improvements at, in, on, over, or under the Premises; provided, however, that any such architects, contractors, or builders shall be properly licensed in the State of Hawaii and otherwise competent in their respective professions or trades.

D. Vending Machines. The LESSEE shall comply with and abide by that certain Settlement Agreement dated July 28, 1993, by and between the Hawaii State Committee on Blind Vendors, the Hawaii Blind Vendors Association, Clyde Ota, Alice Scharr, Warren Toyama, Filo Tu, and Jeanette Tu, the Department of Human Services, State of Hawaii, and the Department of Transportation, State of Hawaii, affecting the installation and operation of any

vending machines, applicable under said Settlement Agreement, which the LESSEE may desire to have and use on the Premises.

E. Other Activities. The LESSEE shall also have the right to do and perform any of the things described in and/or authorized pursuant to Article III (Use of Premises) and this Article VIII (General Rights and Responsibilities of LESSEE) hereof, utilizing any and all personnel, vessels, and vessel parts, supplies, and services of the LESSEE, for or with respect to any other person or business at the Harbor, whether said person or business is engaged in trans ocean transportation or not.

ARTICLE IX. TAXES

A. Taxes and Assessments. The LESSEE shall pay in full any and all taxes and assessments levied or assessed upon the LESSEE or the Premises, including, but not limited to, State income and general excise taxes, and County real property taxes, before the delinquent date thereof. The LESSEE shall have the right to contest the amount or validity of any such tax, charge, and/or assessment by appropriate legal proceedings in the LESSEE's own name.

B. Tax Clearances. [Reserved].

ARTICLE X. PROHIBITED ACTS

A. No nuisance. The LESSEE shall commit no actionable nuisance or do any act that results or may result in the creation or commission or maintenance of a nuisance upon the Premises, and shall not permit to be done anything which may result in the creation or commission or maintenance of any such nuisance upon the Premises. Further, the LESSEE shall also not cause, produce, or permit to be caused or produced upon the Premises, or to emanate therefrom, any offensive sounds, or any noxious or objectionable smoke, gases, vapors, or odors.

B. No illegal acts. The LESSEE shall not use the Premises, or any part or portion thereof, or permit the same to be used by any of the LESSEE's sublessees, tenants, officers, employees, agents, or guests for any illegal act or purpose.

C. No discrimination. The LESSEE shall not use the Premises in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex, or a physical disability.

D. Equal treatment. The LESSEE shall furnish services on a fair, equal, and nondiscriminatory basis to all parties, and shall charge fair, reasonable, and nondiscriminatory prices for each unit or service; provided, however, that the LESSEE may be allowed to make

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reasonable and nondiscriminatory discounts, rebates, or other similar types of price reduction to volume purchasers.

E. Security. The LESSEE shall not allow entry to the harbor operations area (AOA) of the Harbor or any other secured or restricted areas of the Harbor through the Premises by any unauthorized persons and ground vehicles.

F. No lodging. Lodging on or use of the Premises or any of the existing or new improvements thereon as a temporary, permanent or legal residence is prohibited.

G. No alcoholic beverages. The consumption of alcoholic beverages by anyone on the Premises is prohibited at all times.

H. No interference. The LESSEE shall not interfere with the effectiveness of, or access to utilities, air conditioning, elevators, or escalators (including facilities, structures, lines, equipment, conduits, and appurtenances, connected or appurtenant thereto) in or adjacent to the Premises, the free access and passage around the Premises (but the LESSEE can restrict access in and to the Premises) or public areas adjacent thereto, or in the streets or sidewalks adjoining the Premises.

I. No overload. The LESSEE shall not overload any floor, or place loads upon any floor, wall, or ceiling of any building , the pier structure or other structure situated at, upon, or within the Premises that may endanger such building pier structure or other structure.

J. No obstruction. The LESSEE shall not obstruct any sidewalk, walkway, or passageway adjacent to the Premises.

K. No effect on insurance. The LESSEE shall not act or permit the doing of any act or thing upon the Premises that will either increase the premium rate of, be contrary to, or invalidate any fire, casualty, and/or liability insurance policies either required herein or carried by the LESSOR, if any, covering the Premises, together with any and all buildings and other structures and improvements situated thereon. The LESSEE shall, in connection herewith, obey, observe, and adhere to: (1) any and all present and future laws, statutes, orders, decisions, rules, and regulations of the State of Hawai'i; (2) any and all present and future rules and regulations of the LESSOR and the Harbor; (3) any other governmental authority; and (4) any and all present and future requirements and directions of fire and other underwriters on applicable insurance policies of the LESSOR and the LESSEE, which may pertain or apply to the Premises and the LESSEE's use of and operation upon the Premises and the Harbor. LESSOR shall provide to the LESSEE current information on the LESSOR's insurance coverage, including scope, extent, type of coverages, and coverage limits for all of the insurance policies obtained by the LESSOR and/or the STATE covering the Premises and/or the Harbor.

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L. Promotional medium restriction. The LESSEE shall not use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers, or loudspeakers).

M. No distribution of handbills. The LESSEE shall not distribute handbills or promotional circulars to patrons of the Harbor, or engage in any other advertising at, upon, or within the Harbor (except as may be specifically permitted under this Lease).

ARTICLE XI. SIGNS

A. LESSOR's Approval. The LESSEE shall not erect, construct, install, or place any exterior signs or displays upon any part or portion of the Harbor, except at, in, or upon the Premises, unless otherwise first approved in writing by the LESSOR.

1. LESSEE's cost. The LESSEE shall have the right to erect, construct, install, place, maintain, and operate at, in, or upon the Premises, at the LESSEE's sole cost and expense, exterior signs containing the LESSEE's name and its business.

2. Conformity. Exterior signs shall be substantially uniform in size, type, and location with those of other businesses and tenants at the Harbor. The number, general type, size, design, and location of such exterior signs shall be subject to the prior written approval of the LESSOR. The location and placement of approved exterior signs by the LESSEE are subject to change as deemed necessary by the LESSOR. The LESSEE shall, at its sole cost and expense, promptly remove, move, or relocate an exterior sign upon receipt of a notice to do so by the LESSOR.

3. Submit drawings. Prior to the erection, construction, or placing of any such exterior signs or displays, the LESSEE shall submit to the LESSOR, for the LESSOR's review and approval in writing, drawings, sketches, design dimensions, type, and character of the proposed exterior sign(s) or display(s). Any conditions (including a requirement that such exterior sign(s) or display(s) be multilingual), restrictions, or limitations imposed by the LESSOR, as part of the LESSOR's written approval, shall become conditions on the use of such exterior sign(s) and display(s) as if specifically set forth at length herein.

B. Removal of signs. Upon the expiration or the sooner termination of this Lease, the LESSEE, if requested by the LESSOR, shall: (1) remove, obliterate, or paint out any and all signs, posters, and similar devices, and any and all displays installed, placed, or affixed by the LESSEE at, in, or upon the Premises; and (2) restore any and all wall or surface areas to which signs, posters, and similar devices, and any and all displays which may have been attached or affixed, all to the satisfaction of the LESSOR. If the LESSEE fails to so remove, obliterate, or paint out each and every sign, poster, piece of advertising, display, or similar device in a manner

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satisfactory to LESSOR after being so requested by the LESSOR, the LESSOR may perform such removal work, and the LESSEE shall immediately pay to or reimburse the LESSOR for any and all costs and expenses so incurred by the LESSOR, upon demand from the LESSOR.

Nothing contained in this Article XI (Signs), shall limit nor is construed to limit, the effect of the covenants and provisions of Article XIV (Surrender of Premises) hereof.

ARTICLE XII. INGRESS AND EGRESS

A. Reasonable access. The LESSEE and the LESSEE's officers, employees, agents, and Guests, including suppliers of fuel or fuel products or materials, in common with others, shall have the nonexclusive right of ingress to and egress from the Premises and such other parts or portions of the Harbor area to or from which such persons shall reasonably require ingress or egress, in such manner, upon such terms, and at such locations as the LESSOR may from time to time designate.

B. Subject to rules. The privilege of ingress and egress at the Harbor shall be subject to the rules and regulations of the LESSOR, now in effect or which may hereafter be adopted or amended, for the safe and efficient operation of the Harbor.

C. Right to alter access. The LESSOR may, at any time, temporarily or permanently, close, consent to close, or request the closing of any roadway and any other area at the Harbor, presently or hereafter used as such, so long as a reasonable alternative means of ingress and egress remains available to the LESSEE.

D. LESSEE's release. The LESSEE hereby releases and discharges the LESSOR and the LESSOR's successors and assigns, of and from any and all claims, demands, causes of action, liabilities, losses, damages, costs, and expenses, including attorneys' fees and other legal and/or court costs, and demands therefor, which the LESSEE may now, or at any time hereafter, have against the LESSOR and the LESSOR's successors and assigns, arising or alleged to have arisen out of the closing of any street, roadway, sidewalk, walkway, or access area or other area, whether within or outside the Harbor.

E. LESSOR right to adjust pedestrian/vehicular traffic patterns. The LESSEE in entering into this Lease recognizes the LESSOR's right and responsibility to provide convenient and efficient public access and thoroughfare and, therefore, acknowledges the LESSOR's right to adjust, amend, alter, or otherwise revise pedestrian and vehicular traffic patterns in the best interest of the operation of the Harbor as determined by the LESSOR.

F. Harbor user access. The LESSEE agrees to allow Matson Navigation or other Harbor user (at Pier 31) reasonable access through the Premises upon the internal roadway

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within the Premises, up to three days a year for the movement of oversized cargo/vehicles out to Nimitz Highway at the Alakawa Street intersection (Exhibit "D"). The LESSOR will require Matson Navigation and/or other Harbor user to coordinate such use of the internal roadway within the Premises with the LESSEE in advance.

ARTICLE XIII. LESSEE LIMITATIONS

A. Lessee's Responsibility. The LESSEE shall be responsible for damage or injury caused by the LESSEE's officers and employees in the course of their employment to the extent that the LESSEE's liability for such damage or injury has been determined by a court or otherwise agreed to by the LESSEE. The LESSEE shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this Lease (including, without limitation, any applicable rules and regulations adopted or implemented by the LESSOR) where the LESSEE is obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Article XIII, Section A (Lessee's Responsibility). The LESSOR acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the LESSEE. The LESSEE's obligations under this Section A shall survive the expiration or earlier termination of this Lease.

B. Lessee not authorized to indemnify. The LESSOR and the LESSEE acknowledge and agree that the LESSEE, as an agency of the State of Hawai'i, is not authorized to indemnify the LESSOR in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons. Notwithstanding anything to the contrary contained in this Lease, the LESSEE shall have no contractual duty to indemnify, defend, or hold harmless the LESSOR or any other persons under any circumstances arising out of or related to this Lease and the LESSEE's occupancy of the Premises under the terms of this Lease. In each instance in this Lease (including, without limitation, any applicable rules and regulations adopted or implemented by the LESSOR) where the LESSEE is or may be obligated to indemnify, defend, or hold harmless the LESSOR or any other persons, such obligations shall be deemed null and void and such contrary indemnity or defense obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

C. Lessee not responsible for others. Notwithstanding anything to the contrary contained in this Lease, the LESSOR acknowledges that the LESSEE can only be held responsible for the actions of the LESSEE's officers and employees, and the LESSOR shall not hold the LESSEE responsible for any actions or omissions of any other person or entity, including, without limitation, any person or entity who (except for the LESSEE's officers and employees) could be deemed to be the LESSEE's representatives, students, invitees, or

customers. In each instance in this Lease where the LESSEE is obligated to assume responsibility for the actions or omissions of any persons or entities other than the LESSEE's officers or employees, such obligations shall be deemed null and void and such contrary LESSEE responsibility obligations or provisions shall be deemed to be superseded by this provision, and of no force or effect. The LESSOR acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the LESSEE.

D. Subject to Funding. To the extent that the LESSEE is: (1) obligated to perform under this Lease, (2) obligated to make any payments under this Lease, or (3) deemed liable under this Lease, the LESSEE's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. The LESSEE shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

1. Applies to all of Lessee's obligations. Notwithstanding anything to the contrary contained in this Lease, this provision shall apply to and qualify each and every LESSEE's obligation to perform under this Lease, including, without limitation, any obligation of the LESSEE to pay or reimburse the LESSOR for any work performed by the LESSOR due to the LESSEE's failure or refusal to perform under this Lease and any obligation of the LESSEE to perform under the rules and regulations adopted or implemented by the LESSOR.

2. Lessor's right to advance notice. As an inducement to the LESSOR to agree to the Lessee Limitations (as defined herein), the LESSEE hereby agrees that for any obligations or liabilities of the LESSEE which are subject to the LESSEE obtaining funding or satisfying other conditions prior to the LESSEE being able to fulfill such obligations or liabilities, as specified in the Lessee Limitations (as defined herein), if the LESSEE knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the LESSEE shall provide the LESSOR with written notice thereof within thirty (30) days of the LESSEE obtaining such knowledge. The LESSOR shall not have the right to terminate this Lease for such failure to obtain such funding or failure to fulfill such an obligation unless and until the LESSOR and the LESSEE fully complete the dispute resolution process described in Article XLV (Dispute Resolution) herein.

E. Subject to Lessee Limitations. The LESSOR and the LESSEE acknowledge and agree that Sections A (Lessee Responsibility), B (Lessee not authorized to indemnify), C (Lessee not responsible for others), and D (Subject to funding) are hereafter collectively the "Lessee Limitations." Notwithstanding and superseding anything to the contrary contained in this Lease (and any exhibits attached to this Lease), any and all obligations, duties, responsibilities, and liabilities of the LESSEE under this Lease (including, without limitation, the LESSEE's obligations to comply with any of the Lessor's Rules) are expressly subject to and limited by the Lessee Limitations set forth and defined in this Article XIII (Lessee Limitations) of this Lease

F. LESSEE's release. The LESSEE does hereby release, without limitation, the LESSOR and the LESSOR's officers, employees, agents, and guests from any and all actions, causes of action, claims, damages, demands, judgments, liabilities, losses, lawsuits, costs, and expenses, including attorneys' fees and other legal and/or court costs, and demands therefor, that may arise during the term of this Lease from damage to or destruction of the LESSEE's property that is not the result of, or caused by the negligence of the LESSOR.

G. LESSOR not responsible. Notwithstanding anything to the contrary, the LESSOR shall not be responsible for any damage or injury caused by any person, including but not limited to, the LESSEE's officers and employees, except that the LESSOR will be responsible for any damage or injury caused by the negligence of the LESSOR.

ARTICLE XIV. SURRENDER OF PREMISES

A. In General. The LESSEE shall yield and deliver peaceably to the LESSOR possession of the Premises on the date of the expiration or sooner termination of this Lease, promptly and in the same condition as at the commencement of this Lease, or in the case of any and Leasehold Improvements, as at the time of the installation or construction of such Leasehold Improvements, excepting reasonable wear arising from the use of the Premises to the extent permitted elsewhere in this Lease. The Premises shall be clean and clear of any and all trash, debris, abandoned items, junk, and other similar items. All gates, doors, and locks shall be secured, and the keys turned in to the LESSOR.

1. Lessee's right to remove. The LESSEE shall have the right at any time during this Lease to remove, and if so directed by the LESSOR shall remove from the Premises, on or before the expiration or sooner termination of this Lease, all of the LESSEE's Personal Property and any improvements deemed by the LESSOR to be non-conforming or unauthorized, such removal to be completed in such a manner as to cause no damage to the Premises or to the Harbor, and in the event of any such damage, the LESSEE agrees, at its sole cost and expense, to repair the same.

2. Removal of Lessee's Personal Property. The LESSEE shall remove all its Personal Property, including but not limited to, facilities for waste oil or other substances, and hazardous and toxic materials, on and below ground, within thirty (30) days after the expiration or sooner termination of the Term of this Lease and as further described in Article VII.F (Title) hereof. If the LESSEE fails or neglects to so properly remove the LESSEE's Personal Property, the LESSOR may either: (a) remove and dispose of the same and charge the cost of such removal and disposal to the LESSEE, which cost the LESSEE hereby agrees to pay, (2) consider the same to be abandoned and take title thereto; or (3) give the LESSEE additional time as may be needed under the circumstances, not to exceed thirty (30) days.

B. Hold Over. In the event the LESSEE, with the consent of the LESSOR and the Land Board, if required, holds over and remains in possession of the Premises after the expiration or sooner termination of this Lease, such holding over shall not be deemed a renewal or extension of this Lease, but shall only create a tenancy from month to month on the same terms, conditions, and covenants in effect immediately prior to the commencement of such holding over or such terms as may be mutually agreed upon by the LESSOR and the LESSEE.

C. Environmental Compliance Prior to LESSEE's Surrender. The LESSEE shall observe, comply with, and completely satisfy all of the environmental/hazardous substances requirements prescribed and set forth in Article XV.C (Environmental Compliance – LESSEE's Duties) hereof, prior to returning the Premises to the control and jurisdiction of the LESSOR.

D. Transition. In the event the LESSEE is not awarded the Lease for the subsequent period or term immediately beyond the term of this Lease, the LESSEE covenants with the LESSOR that the LESSEE shall assist in the peaceful transition and occupancy of the Premises by the replacement lessee. In order to assist in and accomplish a peaceful transition to the replacement lessee, the LESSEE, at a minimum shall, upon receipt of written notice from the LESSOR, allow entry into and upon the Premises by the replacement lessee during all reasonable hours and times prescribed by the LESSOR. Any dispute or disagreement regarding this transition to the replacement lessee shall be resolved pursuant to the dispute resolution described in Article XLV (Disputes). The LESSEE shall not remove, damage, destroy, or otherwise render unusable, any item, article, fixture, fixed improvement, equipment, or portion of the Premises which, by the covenants, terms, and conditions of this Lease, is, becomes, or could become the LESSOR's property, including all Leasehold Improvements. If the LESSEE fails to properly perform its obligations as prescribed and set forth in this Article XIV.D (Transition), the LESSEE shall pay to the LESSOR, upon demand from the LESSOR, all monies deemed necessary by the LESSOR to correct, remedy, and cure the LESSEE's failure, including, without limitation, repairing or replacing any and all items, equipment, articles, fixtures, Leasehold Improvements, or portion of the Premises damaged, destroyed, removed, or rendered unusable by the LESSEE.

ARTICLE XV. COMPLIANCE WITH LAWS

A. In General. The LESSEE and the LESSEE's officers and employees shall, and the LESSEE shall require that the LESSEE's agents and Guests, at all times during and throughout the term of this Lease, and with respect to all phases of its performance under this Lease, fully and completely observe, comply with, and satisfy all applicable laws, statutes, codes, ordinances, orders, rules, and regulations of all governmental authorities, including, without limitation, the United States of America, the State, and the County, and any political subdivision, or agency, authority, or commission thereof, which may have jurisdiction to pass laws, statutes, codes, or ordinances, or make and enforce orders, rules, and regulations with respect to: (1) the Premises and the Harbor; (2) all phases of the LESSEE's conduct of its operations; (3) the LESSEE's maintenance, repair, renovation, or reconstruction of the Premises; and (4) the LESSEE's performance under this Lease (collectively the "Applicable Laws").

The LESSEE shall also: (1) obtain and keep current all licenses and permits required by any governmental authority (whether federal, state, municipal, or county) for the conduct of the LESSEE's operations on the Premises and at the Harbor; and (2) promptly pay when due, any and all required rentals and other fees and charges.

Notwithstanding the foregoing covenants, provisions, and requirements, the LESSEE shall have the right, in its own name, to contest, in good faith, the validity or applicability of any Applicable Laws. The fact that the LESSEE may, in connection with such contest, refrain from complying with such Applicable Laws shall not affect in any way the LESSEE's obligation to refrain from subjecting any part or portion of the Premises to forfeiture or loss.

B. Compliance with Americans with Disabilities Act.

1. LESSEE's commitment. The LESSEE agrees that it shall conduct its operations, and occupy or use the Premises in accordance with: (a) the Americans With Disabilities Act, 42 U.S.C.S. Section 12101 et seq. (hereafter referred to collectively as the "ADA"), including, without limitation, modifying the LESSEE's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons; and (b) United States Access Board's ADA Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles (hereinafter referred to as the "ADAAG").

2. Accessible services. The LESSEE acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. The LESSEE shall provide the services or conduct its operations as specified in this Lease in a manner that complies with the

ADA, and any and all other applicable Federal, State, and local disability rights legislation. The LESSEE agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Lease, and the LESSEE further agrees that any violation of this prohibition on the part of the LESSEE, and the LESSEE's officers, employees, agents, guests, successors, and/or assigns shall constitute a material breach of this Lease.

3. [Reserved].

4. LESSEE's alterations. With respect to all work required to be performed by the LESSEE in preparing the Premises for the LESSEE's occupancy and use, including, without limitation, the construction, installation, renovation and/or refurbishment of any and all Leasehold Improvements at, in, on, over, or under the Premises, the LESSEE agrees to complete such work in full compliance with the ADA and ADAAG. Upon the LESSOR's request, the LESSEE shall provide the LESSOR with evidence reasonably satisfactory to the LESSOR that all such work by the LESSEE was completed in compliance with the ADA and ADAAG. The LESSEE further agrees that any and all such future alterations, renovations, and/or improvements made by the LESSEE to the Premises shall comply with the ADA and ADAAG.

5. Notice. The LESSOR and the LESSEE agree to promptly give written notice to the other (not to exceed three (3) consecutive calendar days), of any and all notices which the LESSOR or the LESSEE receive alleging ADA violations.

C. Environmental Compliance – LESSEE's Duties

1. Definitions. For purposes of this Lease, the LESSEE agrees and understands that the following terms shall have the following meanings:

a. "Environmental Laws" shall mean all federal, state, and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency, or official, judicial decisions, judicial and administrative orders, rulings, or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption, or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health, or safety. These environmental laws include, but are not limited to, regulations and orders of the EPA and of the DOH.

b. "Hazardous Substance" shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be, or has been

determined by state or federal authority under any Environmental Laws to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCBs), methane, fuels of any kind, and other materials or materials or substances that are, or may in the future be, regulated by state or federal authorities.

2. LESSEE's Activities and Duties.

a. Compliance with Environmental Laws. The LESSEE agrees, at its sole cost and expense, to comply with all Environmental Laws applicable to its occupancy, activities, operations, and use of the Premises. This duty shall survive the expiration or termination of this Lease, which means that the LESSEE's duty to comply with Environmental Laws shall include complying with all Environmental Laws that may apply, or be determined to apply, to the occupancy and activities of the LESSEE on the Premises after the expiration or termination of this Lease. Failure of the LESSEE to comply with any and all Environmental Laws shall constitute a breach of this Lease for which the LESSOR may, in its sole discretion, terminate this Lease, exercise its remedies under this Lease, including remediating any condition on behalf of the LESSEE, at the LESSEE's sole cost and expense, under Article XV.C.2.e (Environmental Investigations and Assessments) and Article XV.C.2.g (Restoration and Surrender of Premises), and take any other action at law or in equity it deems appropriate.

b. Hazardous Substances. The LESSEE and its officers and employees shall not, and shall require that any of the LESSEE's Guests or any third persons shall not, use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances on the Premises without first obtaining the prior written consent of the LESSOR, which consent may be withheld by the LESSOR in its absolute discretion, and complying with all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities, and complying with all provisions of this Lease.

c. Notice to LESSOR. The LESSEE shall keep the LESSOR fully informed at all times regarding all matters related to any Environmental Laws affecting the LESSEE or the Premises. This duty shall include keeping and maintaining a current listing of all Hazrdous Substances used by the LESSEE on or within the Premises, together with evidence that the LESSEE has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority under any authority or Environmental Laws. The LESSEE shall make available to the LESSOR for inspection, upon request from the LESSOR, such current listing of all Hazardous Substances and such evidence of the appropriate governmental permits and approvals. The LESSEE shall provide immediate written notice of any investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do

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so, communicated in anyway to the LESSEE by any federal, state or county authority or individual that relates in any way to any Environmental Laws or any Hazardous Substances. This written notice to the LESSOR shall include copies of all written communications from any federal, state or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the LESSEE. At least thirty (30) days prior to termination of this Lease, or termination of the possession of the Premises by the LESSEE, whichever occurs first, the LESSEE shall provide the LESSOR with written evidence satisfactory to the LESSOR that the LESSEE has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the LESSOR pursuant to Article XV.C.2.e (Environmental Investigations and Assessments), or by any governmental agency responsible for enforcement of the Environmental Laws.

d. Disposal/Removal. Except the possession and handling of Hazardous Substances for which the LESSEE is exempt, and those Hazardous Substances for which the LESSEE has obtained all currently required permits to store or use certain Hazardous Substances on or about the Premises, including written permission from the LESSOR, the LESSEE shall cause any Hazardous Substances to be removed and transported from the Premises for disposal solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal, as required by all applicable Environmental Laws. The LESSEE shall provide the LESSOR with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws.

e. Environmental Investigations and Assessments. The LESSEE, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substances at, in, on, under, or about the Premises as may be directed from time to time by the LESSOR, in its sole discretion, or by any federal, state, or county agency or authority. The extent and number of any environmental investigations and assessments, including testing and analyses incident thereto, shall be determined by the LESSOR or the federal, state, or county agency or authority directing said investigations and assessments to be conducted. The LESSEE shall retain a competent, certified, and qualified person or entity that is satisfactory to the LESSOR, to conduct said investigations, assessments, testing, and analyses incident thereto. The LESSEE shall cause said person or entity conducting those assessments, investigations, tests, and analyses to provide the LESSOR and the governmental authority with the written results of all assessments, investigations, tests, and analyses. Pursuant to this Lease, the LESSEE may be required to have environmental assessments conducted as aforesaid prior to, or at the time of, the LESSEE taking possession of the Premises and prior to, or at the time of, the termination of this Lease in order to determine the condition of the Premises.

f. Remediation. In the event that any Hazardous Substances are used, stored, treated, or disposed on the Premises, or handled, discharged, released, or determined to be present on or about the Premises, the LESSEE shall, subject to the terms of this Article XV.C.2f (Remediation) and at its sole expense and cost, remediate the Premises of any Hazardous Substances, and dispose/remove said Hazardous Substances in accordance with Article XV.C.2.d (Disposal/Removal). This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the LESSOR to the LESSEE to remediate Hazardous Substances. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is satisfactory to the LESSOR and the governmental authority, as the case may be.

(1) DOT Hazmat Report. The LESSOR has furnished to the LESSEE a series of reports assessing whether and to what extent Hazardous Substances are present on, within, under, and/or affecting the Pier 35 Area, the Pier 34 Portion, and the Premises, with all of said reports completed as of the Commencement Date listed on Exhibit C attached hereto and incorporated herein by reference (hereafter collectively the "DOT Hazmat Report"). The LESSOR represents that the LESSOR has turned over and submitted to the LESSEE all Hazardous Substances assessment and other reports relating to the Pier 35 Area, the Pier 34 Portion and the Premises, provided that to the extent that such other assessments and reports are not furnished by the LESSOR to the LESSEE as of the Commencement Date, the LESSEE shall have the right to adjust, revise, and/or modify the baseline that had been previously established based on such other assessments and reports.

(2) Baseline established by DOT Hazmat Report. The LESSOR and the LESSEE acknowledge and agree that the DOT Hazmat Report will be the baseline from which the LESSEE's contribution (if any) to said Hazardous Substances levels will be measured and evaluated. The LESSOR shall furnish to the LESSEE all updates or new reports relating to assessing the extent to which certain Hazardous Substances levels may have increased or decreased in comparison to the baseline established in the DOT Hazmat Report and (hereafter collectively the "DOT Update Hazmat Reports"). The LESSEE may, but is not obligated to, during the term of this Lease, perform or complete updates to the DOT Hazmat Report or any new reports relating to assessing the extent to which certain Hazardous Substances levels may have increased or decreased in comparison to the baseline established in the DOT Hazmat Report (hereafter collectively the "LESSEE Update Hazmat Reports").

(3) Baseline may be adjusted by updates. If the DOT Update Hazmat Reports and/or the LESSEE Update Hazmat Reports indicates that the Hazardous Substances levels that are part of the baseline established in the DOT Hazmat Report need or should be adjusted, the LESSOR and the LESSEE agree that the Hazardous Substances levels that are part of the baseline established by the DOT Hazmat Report shall be adjusted accordingly.

(4) Extent of LESSEE's obligation to remediate. At the expiration or sooner termination of this Lease, the LESSEE shall be responsible for remediating and cleaning up any levels of Hazardous Substances that are over and above the Hazardous Substances levels that are part of the baseline established in the DOT Hazmat Report, provided that if and to the extent that the LESSEE can provide information indicating that increased Hazardous Substances levels can be attributed to factors other than LESSEE's use of the Premises, the LESSEE will not be responsible for remediating and cleaning up such levels of Hazardous Substances that are so attributable to other factors. .

g. Restoration and Surrender of Premises. The LESSEE hereby agrees to timely surrender the Premises upon termination of this Lease and, prior thereto, shall restore the Premises, subject to and in accordance with the terms contained in Article XV.C.2.f (Remediation), including the soil, water, ground water, and structures at, in, on, under, or about the Premises, to the same condition as the Premises existed at the commencement of this Lease, as determined by the LESSOR, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of the LESSEE. This restoration and surrender obligation also includes, but is not limited to, the removal of all pipes, pipelines, tanks, and containers of any kind that the LESSEE has installed or erected on the Premises. In the event the LESSEE does not timely restore the Premises to a satisfactory condition, as determined by the LESSOR, the LESSEE understands and agrees that the LESSOR may exercise its rights under Article XV.C.2.i (LESSOR's Right to Act) and until such time as the restoration is complete to the satisfaction of the LESSOR, the LESSEE shall be liable for lease rent in the same manner and amount as if this Lease had continued in effect during the period of restoration, as well as any other damages and costs that the LESSOR may have incurred, including penalties, fines, and assessments related to the Premises which may be imposed on the LESSOR or the LESSEE by any governmental authority.

h. Tanks, Pipelines; Inspections and Repairs. Unless the LESSOR specifically agrees in writing prior to their installation, all pipes, pipelines, tanks, containers, or conduits of any kind that may at any time have contained, or may have been intended to contain Hazardous Substances of any type (hereafter referred to as a "Facility"), that the LESSEE intends to install on the Premises must be installed above ground level in such manner that allows for periodic inspection and maintenance of the Facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the Facility. The LESSEE shall provide the LESSOR with prior notice of the LESSEE's intent to install a Facility to allow the LESSOR ample time, as determined by the LESSOR, to inspect the plans for installation of such a Facility. Said Facility shall not be installed unless and until the Facility, and its manner of installation, is approved by the LESSOR. Within ninety (90) calendar days of the commencement of this Lease, or commencement of possession of the Premises by the LESSEE, whichever first occurs, the LESSEE shall submit a contingency plan to control and remedy any spill, discharge, or leak from any Facility on the Premises during the term of this Lease, which plan shall include the cleanup of all Hazardous

Substances that may be spilled, discharged, or leaked, to the satisfaction of the LESSOR. The LESSEE shall also submit to the LESSOR a plan for the LESSEE to conduct, or have conducted, regular inspections of all Facilities on or about the Premises for the purpose of prevention of any leak, discharge, or spill from said Facilities. Said contingency plan and inspection plan are subject to the approval of the LESSOR. The LESSEE shall timely obtain and maintain in effect all required permits, licenses, and approvals for such Facilities from any governmental authority. Failure to submit said plans, to comply with said plans, or obtain and maintain any required permits, licenses, or approvals constitutes a breach of this Lease. Before the LESSOR takes action against the LESSOR to terminate the Lease for such breach, the parties will use the dispute resolution process outlined in Article XLV (Dispute Resolution) herein to resolve any disputes relating to the LESSEE's breach hereof.

i. LESSOR's Right to Act. In the event the LESSEE fails for any reason to comply with any of its duties under this Lease or under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the LESSOR, the LESSOR shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. The LESSEE hereby grants access to the Premises at all reasonable hours to the LESSOR, its agents, and anyone designated by the LESSOR, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the LESSOR in performing said acts or duties shall be the sole responsibility of the LESSEE, and the LESSEE hereby agrees to pay for those costs and expenses. The LESSOR shall have the right to inspect the Premises, with reasonable notice to LESSEE, for compliance with Environmental Laws, including LESSOR'S Storm Water pollution prevention programs.

j. Release and Indemnity. [Reserved].

k. Surety/Performance Bond for Cleanup/ Restoration. [Reserved].

l. [Reserved]m. Protection of waters. The LESSEE shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the activities or operations of the LESSEE at, in, on, over, under, across, through, or connected with the Premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the Premises and affected areas and surrounding waters of such pollutant or contaminant and restore to the LESSOR's reasonable satisfaction the areas affected by such pollution or contamination, all at the LESSEE's sole cost and expense.

3. Storm Water Program and Storm Water Awareness Program. The LESSEE is required to attend "Tenant Storm Water Pollution Prevention Awareness Training"

provided by the LESSOR. Annually, the LESSOR will mail to the LESSEE a questionnaire to assess the LESSEE'S knowledge regarding storm water awareness and pollution prevention. The LESSEE is required to answer the questionnaire and return said questionnaire to the LESSOR by its due date. Failure to attend the training or complete the questionnaire shall be considered a breach of the terms and conditions of this agreement which may result in the revocation of this permit and termination of the LESSEE's occupancy, provided that prior to LESSOR taking any action to enforce its rights hereunder, the LESSOR and the LESSEE shall seek to resolve any such disputes relating to the LESSEE's compliance using the dispute resolution process outlined in Article XLV (Dispute Resolution) herein

At least twice per calendar year, the LESSOR will send mailings to the LESSEE which will include: (1) educational materials describing the responsibilities of harbor tenants and users regarding storm water pollution prevention; (2) fact sheets and/or brochures describing LESSOR endorsed pollution prevention and good housekeeping Best Management Practices; (3) all lease or use agreement obligations relating to storm water management; (4) the purpose, scope, and potential ramifications of LESSOR recurring inspections and the availability of the Inspection and Enforcement Plan for LESSEE review; (5) a concise and readily understandable definition of illicit discharges as well as procedures for reporting illicit discharges via the LESSOR storm water hotline; and (6) resources for obtaining additional information regarding storm water pollution prevention. The LESSEE shall review these documents to be aware of the storm water requirements in the Permit, apply appropriate Best Management Practices based on activities at the Premises and understand how to identify and report illicit discharges.

The LESSEE will be receiving or will have received a new tenant information package to ensure that the LESSEE is aware of the storm water requirements in the Permit, applies appropriate Best Management Practices based on activities at the Premises and understands how to identify and report illicit discharges. The new tenant information package will include educational materials describing the responsibilities of the LESSEE and resources for obtaining additional information regarding storm water pollution, including the storm water awareness message and information on pollution prevention and housekeeping.

The LESSOR shall conduct an inspection of the Premises within three months of the LESSEE occupying an existing facility, or completion, construction, and occupancy of a newly constructed facility. During inspections, the LESSOR shall provide outreach activities that include, but are not limited to, providing Best Management Plan fliers and other materials for posting in common areas and a schedule of upcoming training and other outreach activities. New tenant inspections shall be consistent with the procedures established by the tenant inspection program. The LESSOR shall inspect and conduct outreach at the Premises at a minimum of twice per year for high-risk tenants and users and once per year for medium- and low-risk tenants and users and shall prepare a written inspection report for each inspection, and conduct any needed enforcement which may include criminal or civil penalties as provided by law.

The LESSOR shall inspect the Premises with authorized non-storm water discharges to verify that controls are in place. If the LESSOR finds that an authorized non-storm water discharge lacks the proper controls, the LESSOR shall conduct follow-up enforcement which may include criminal or civil penalties as provided by law.

If the LESSEE engages in development and/or construction activities on the Premises, the LESSEE shall comply with all construction related BMP requirements set forth by the State of Hawaii Department of Transportation Harbors Division ("Harbors Division"), and shall install Post-Construction BMPs, as required by Harbors division. If such Post Construction BMPs are required and installed, the LESSEE shall be responsible for and implement an operation and maintenance plan for said BMPs, conduct an annual inspection thereof, and submit annual reports to Harbors Division demonstrating proper operation and maintenance.

The LESSEE shall implement and maintain the Best Management Practices (BMP) that are described in the Harbors Division Storm Water website (http://hidot.hawaii.gov/harbors/library/storm-water-management/) as applicable to its business activities.

D. Spill Prevention, Control and Countermeasure (SPCC). Pursuant to: (1) the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. Section 1251, et seq.; and (2) 40 CFR, Part 112 often referred to as the Spill Prevention Control and Countermeasure rules (hereinafter referred to as the "SPCC rules"), the LESSEE shall:

1. LESSEE's Compliance with SPCC Rules. Throughout the entire term of this Lease, comply with and completely satisfy EPA's SPCC rules now or hereafter adopted, amended, published, and/or promulgated pursuant thereto.

2. LESSEE's Responsibility to Prepare and Implement SPCC Plan. Prior the commencement date of this Lease and throughout the entire term of this Lease, prepare and implement, and amend, if necessary, the LESSEE's Spill Prevention Control and Countermeasure Plan (hereinafter referred to as the "SPCC Plan").

3. Storage of Oil and Other Petroleum Products. Notwithstanding the applicability of the SPCC rules, if the LESSEE stores oil and/or other petroleum products and/or by-products in any quantity of less than 1,320 gallons, but has in or on the Premises, at least one (1) or more storage container(s) and/or tank(s) equal to or larger than 55-gallon capacity, then the LESSEE is required under this Lease to prepare and implement a written plan which conforms to the SPCC Plan requirements under the SPCC rules and to comply with and completely satisfy at least the portion of the SPCC rules, dealing with periodic testing of oil storage containers, providing secondary containment, training of oil handling personnel to prevent the discharge of oil, providing security around oil storage facilities, and all record keeping pertaining thereto.

E. National Pollutant Discharge Elimination System (NPDES). Pursuant to: (1) the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. Section 1251, et seq.; and (2) the requirements contained in the National Pollutant Discharge Elimination System (hereinafter referred to as "NPDES") regulations found in HAR §11-55 and the Appendices thereto, as amended and enforced by the EPA and the DOH, the LESSEE shall, throughout the entire term of this Lease, comply with and completely satisfy all of the NPDES regulations governing general permits and consolidated permits, if applicable, now or hereafter adopted, amended, published, and/or promulgated pursuant thereto.

The LESSEE shall be responsible for maintaining all storm drains located within the Premises in accordance with HAR 11-55, Appendix K, for Small Municipal Separate Storm Sewer Systems (MS4), for the duration of this Lease. Where applicable, the LESSEE shall be required to apply for a permit to discharge/connect to the LESSOR'S Small MS4; and where applicable, the LESSOR shall be required to apply for a permit to discharge/connect to the LESSEE'S Small MS4.

F. Harbor Security. In addition to the Harbor security requirements prescribed in Article VII.D.7.h (Security fencing), Article VII.G.7 (LESSOR's Security Fence), and Article X.E (Security), the LESSEE shall observe, comply with, and completely satisfy all of the security requirements for the Harbor, and any and all applicable security access procedures, rules, and/or regulations prescribed by the LESSOR, TSA, and/or the USCG. The LESSEE accepts liability and responsibility for prohibiting unauthorized persons and vehicles from entering any restricted operations area of the Harbor through the Premises.

1. Security agreements. The LESSEE shall enter into security agreements with the LESSOR that may be required by the TSA, the USCG, or other Federal agency for Harbor security purposes, and said agreements shall, although executed separately, become a part of this Lease, including the covenants, promises, provisions, requirements, terms, and conditions contained in such security agreements.

2. LESSEE to maintain security. The LESSEE shall also maintain security in such a manner that unauthorized persons shall not have access to any secure or restricted harbor operations area through any part(s) or portion(s) of the Premises. The LESSEE's Guests or any other party acting with the permission or consent of the LESSEE, shall be under the control, supervision, or guidance of the LESSEE when entering any secure or restricted harbor operations area. The LESSEE shall enter into any separate supplemental agreement required by the LESSOR, the TSA, or the USCG that covers Harbor security requirements to ensure the protection of the Harbor.

3. Failure to prevent violations. The LESSEE accepts liability and responsibility for: (a) the LESSEE's failure to observe, comply with, and/or completely satisfy

any and all Harbor security requirements and applicable security access procedures, rules, or regulations prescribed by the LESSOR, the TSA, and/or the USCG; (b) the LESSEE's failure to prohibit unauthorized persons and vehicles from entering the Harbor's restricted operations area through any part(s) or portion(s) of the Premises; and (c) any and all reimbursements to the LESSOR wherein the LESSOR has made direct payments to any citing authority of any fines or penalties for any and all Harbor security violations by the LESSEE and the LESSEE's officers or employees. Failure on the part of the LESSEE to observe, comply with, and completely satisfy this security requirement shall give the LESSOR cause to assess a penalty pursuant to Article V.D (Additional Charges) hereof.

ARTICLE XVI. RULES AND REGULATIONS. [RESERVED].

ARTICLE XVII. RIGHTS-OF-ENTRY RESERVED

A. LESSOR's Right to Enter Premises. The LESSOR may: (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part(s) or portion(s) of the Premises and/or adjoining areas, to install equipment for adjoining areas, to conduct a financial audit, and for any other lawful purpose; and (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency.

Upon the LESSOR's entry to the Premises, the LESSOR shall use reasonable efforts to minimize disruption to the conduct of the LESSEE's operations. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of the LESSEE from the Premises. The LESSOR reserves the exclusive right to use all areas of the Harbor not comprising the Premises. The LESSOR reserves the exclusive right to use all areas of the Harbor, together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, equipment, appurtenances, and structural elements serving other parts of the Harbor, in and through the Premises. This reservation in no way affects the LESSEE's maintenance obligations contained in this Lease.

B. No Obligation to Construct or Repair. Nothing in this Article XVII (Rights-of-Entry Reserved) herein, shall impose or shall be construed to impose upon the LESSOR any obligation to construct or maintain, or to make repairs, replacements, additions, or alterations to the Premises, nor shall the LESSOR's entry upon the Premises, or any part(s) or portion(s) thereof, create any liability for any failure to do so. The LESSEE is and shall be in possession of the Premises, subject to allowing LESSOR to berth vessels at the Harbor's Piers 34-35 pier space that are part of the Pier 35 Area, the Pier 34 Portion, and the Premises under certain conditions described in Article III.B (Use of Premises). The LESSOR and the LESSOR's

officers, employees, agents, and/or guests shall not, in any event, be liable for: (1) any damage to the Premises and to the property of the LESSEE located thereupon; and (2) any injury or death to any person at, in, or on the Premises, except for damage, injury, or death that results from or is caused by the negligence of the LESSOR or the LESSOR's officers, employees, agents, and/or guests.

C. LESSOR Entry at Reasonable Times. Other than for emergency purposes, nothing contained in this Article XVII (Rights-of-Entry Reserved) shall permit or be construed to permit the LESSOR to exercise any right of access or entry for any of the purposes denoted in this Article XVII (Rights-of-Entry Reserved), except at reasonable times and in such a manner as to not unreasonably interfere with, or hinder the LESSEE's occupancy, use, and/or enjoyment of the Premises.

ARTICLE XVIII. UTILITY SERVICES

A. Utility Services to Premises. The LESSOR will provide to the Premises for the benefit of the LESSEE, stub outs for the utility services by the LESSEE, some or all of which will be installed as part of the DOT Preparatory Work (hereafter collectively the "Stub Outs." The LESSEE shall be responsible for installing all of the mains, pipes, conduits, cables, wiring, and other equipment necessary to connect the utility services from the Stub Outs to areas within the Premises.

B. Utility Costs. During and throughout the term of this Lease, the LESSEE shall be solely responsible for the payment of all costs related to providing electricity, potable water, sanitary sewage disposal, telephone services, and other public or nonpublic utility services to the Premises, which utility service costs shall include, but not be limited to: meter and utility service deposits, installation fees, and any and all utility service fees and charges, regardless of whether or not such utility services are provided by the LESSOR or by utility service corporations. The LESSEE, where applicable, shall pay directly to the utility company or companies or other supplier(s), all charges for such utility service or services.

C. No Liability for Interruption of Utility Services.

1. LESSEE not relieved. No failure, delay, or interruption in any utility service or services, whether or not such services are supplied by the LESSOR or others, shall relieve or be construed to relieve the LESSEE of any of its obligations hereunder, or shall be construed to be an eviction of the LESSEE, or shall constitute grounds for any claim by the LESSEE against the LESSOR for damages (consequential or otherwise), unless first approved, in writing, by the LESSOR.

2. Waiver of damages. The LESSEE hereby expressly waives any and all claims against the LESSOR for damages arising or resulting from any failure, delay, or interruption in any utility service or services (including, without limitation, electric, gas, potable and non-potable water, plumbing, sanitary sewage disposal, telephone, telecommunications, heat, ventilation, air conditioning, etc.), or for the failure or interruption of any public or passenger conveniences. The LESSEE's waiver of the LESSOR's liability for uninterrupted utility services shall extend to any failure, delay, or interruption to electric service caused by power spikes or surges, severe climatic, or weather conditions, including, but not limited to, high winds, rainstorms, hurricanes, and other climatic or weather phenomena, and/or other acts of nature, such as earthquakes and seismic waves (tsunami) affecting the Premises and equipment operated and/or maintained by the LESSEE.

3. Damage repair. If any damage to any electricity, water, sewer, telephone, or telecommunication service line or facility, or any other utility service line or utility service connection is caused by the LESSEE or the LESSEE's officers or employees, the LESSEE shall, at its sole cost and expense, be responsible for the repair, restoration, and/or replacement of such utility service line or utility service connection.

ARTICLE XIX. INSURANCE

A. Liability Insurance.

1. Liability Insurance The LESSEE will obtain and maintain throughout the term of this Lease herein, a policy of commercial general liability insurance or similar coverage acceptable to LESSOR, with minimum limits of Five Million and No/100 Dollars ($5,000,000.00), PER OCCURANCE and naming the State of Hawai'i as an additional insured, that insures the LESSOR as an additional insured, against the areas of risk covered by the insurance coverage specified herein, including, without limitation, protection against any and all claims, demands, lawsuits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses, including costs of suits and attorneys' fees, resulting from any personal injury, bodily injury and/or death to any person, and/or property damage, arising out of or related to any acts or omissions of the LESSEE and the LESSEE's officers and employees, agents, and guests/invitees the occupancy and/or use of the Harbor, including the Premises and the roadways of the Harbor used by the LESSEE and the LESSEE's officers and employees, and the LESSEE's operation, maintenance, and repair of its Leasehold Improvements at, in, on, over, or under the Premises, and the LESSEE's conduct of its operations, including related functions performed by or on behalf of the LESSEE, at the Harbor.

2. Environmental Pollution Policy. The LESSEE will also obtain and maintain throughout the term of this Lease herein, an environmental Pollution policy of commercial general liability insurance or similar coverage acceptable to LESSOR, with

minimum limits of Four Million and No/100 Dollars ($4,000,000.00), and naming the State of Hawai'i as an additional insured.

B. Form of Policies.

1. Form and substance. All insurance required to be furnished by the LESSEE hereunder shall be pursuant to policies in form and substance satisfactory to the LESSOR, and issued by companies of sound and adequate financial responsibility, who are licensed and authorized to do or conduct business in the State, all to the satisfaction of the LESSOR. The LESSOR may, upon reasonable notice and reasonable grounds, increase or change the insurance required hereunder, in which event the LESSEE shall obtain such required insurance.

2. Required provision. All insurance shall:

a. Additional Insured. Name the LESSOR as an additional insured.

b. Severability of interest. Contain a severability of interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or lawsuit is brought, except with respect to the limits of the company's liability ..."

c. Waiver of subrogation. Contain a waiver of subrogation endorsement in favor of the LESSOR.

3. All insurance. All insurance shall:

a. Primary. Be primary, not in excess of or pro rata, and non-contributing as to and with any other insurance held or maintained by the LESSOR.

b. No premiums. Not require the LESSOR to pay any premiums for any insurance coverage required of the LESSEE under this Lease.

c. No partnership. The inclusion of the LESSOR and the LESSOR's officers and employees, as insured or additional insured, is not intended to, and shall not make them or any of them, a partner or joint venture with the LESSEE in the operation of the LESSEE's facilities on the Premises and the LESSEE's conduct of its operations, including related functions performed by or on behalf of the LESSEE at the Harbor.

d. Deductibles. The insurance policies required hereunder may provide for reasonable deductibles or retention, acceptable to the LESSOR, based upon the

nature of the LESSEE's operations, including related functions performed by or on behalf of LESSEE, at the Harbor and the type of insurance involved.

4. Proof of insurance. The LESSEE shall provide proof of all specified insurance and related requirements to the LESSOR either by production of the actual insurance policies, by use of the LESSOR's own endorsement forms, by broker's letter acceptable to the LESSOR in both form and content, or by other written evidence of insurance acceptable to the LESSOR, together with appropriate written evidence, satisfactory to the LESSOR, that the insurance premiums thereon have been paid. The documents evidencing all specified coverage shall be submitted to the LESSOR upon request by the LESSOR. Each policy shall contain the applicable policy number, the inclusive dates of policy coverage, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or non-renewal except after written notice by certified mail, return receipt requested, to the LESSOR at least sixty (60) calendar days prior to the effective date thereof. The LESSOR reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

5. Annual review. The LESSEE agrees that the insurance limits specified by the LESSOR herein shall be reviewed for adequacy annually throughout the term of this Lease by the LESSOR who may, thereafter, require the LESSEE to adjust the amounts of insurance coverage to whatever amounts the LESSOR deems to be reasonably adequate.

ARTICLE XX. TERMINATION BY LESSOR

A. Events of Breach or Violation. The LESSEE shall be in breach or violation of this Lease and the LESSOR shall have the right to terminate this Lease if any one or more of the following events shall occur:

1. Transfer of Interest. When, without the prior written approval or consent of the LESSOR, any interest of the LESSEE under this Lease shall be transferred or assigned, whether voluntarily or involuntarily, by reason of assignment, sublease or otherwise, stock transfer, operation of law, or death, to any other individual, limited or general partnership, joint venture, firm, company, corporation, limited liability company, or any other entity; or,

2. Ownership Change. [Reserved].

3. Partnership Dissolution. [Reserved].

4. Receivership. [Reserved].

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5. Abandonment. When the LESSEE: (a) voluntarily abandons, deserts, or vacates the Premises; or (b) discontinues conduct of its operations at the Premises; or,

6. Prevented from Use. After exhausting or abandoning any right of further appeal, the LESSEE shall be prevented for a period of at least ninety (90) consecutive days by the action of any governmental agency from using the Premises, regardless of the fault of the LESSEE; or,

7. Suspension. The happening of any act which results in the suspension or revocation of the rights, powers, licenses, permits, or authorities necessary for the LESSEE's conduct of its operations at the Premises authorized herein for a period exceeding thirty (30) consecutive days; or,

8. Successor Corporation. [Reserved].

9. Attachment. [Reserved].

10. Failure to Pay Rent. [Reserved].

11. Failure to Pay Taxes. When the LESSEE fails to duly and punctually make payments due to any agency of the State or any political subdivision or county of the State, including, but not limited to, payments for any permit, license or lease, general excise taxes, workers' compensation payments, unemployment taxes, real property taxes, etc., and such payments are not made within thirty (30) calendar days after their due dates; or,

12. Failure to Perform. When the LESSEE fails to keep, perform, and/or observe each and every other agreement, promise, covenant, term, or condition set forth in this Lease, on the LESSEE's part to be kept, performed, and/or observed, and such failure shall continue for a period of more than thirty (30) consecutive days after the LESSEE's receipt of a written notice from the LESSOR of such breach or violation by personal service or registered mail or certified mail to the LESSEE, except where fulfillment of the LESSEE's obligation requires activity over a period of time, and the LESSEE begins to perform whatever may be required for fulfillment within ten (10) calendar days after receipt of said written notice and continues such performance, showing improvement or correction, without interruption except for causes beyond the LESSEE's control; or,

13. General Assignment. [Reserved].

14. Lien. [Reserved].

B. Default and Termination. In the event of any breach or violation due to the occurrence of any of the events enumerated in Article XX.A (Events of Breach or Violation)

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herein, LESSOR may, after the giving of a written Notice of Default in accordance with Section 171-20, HRS, pursue any available remedy, legal or equitable, it may have against the LESSEE.

If the LESSEE fails to correct the violation(s) contained in the Notice of Default to the satisfaction of the LESSOR, the LESSOR may, without prejudice to any other remedy, elect subject to Section 171-21, HRS, to proceed to terminate this Lease by providing a written Letter of Termination and Notice to Vacate to the LESSEE.

The LESSOR and the LESSEE acknowledge and agree that notwithstanding any other provision contained in this Lease, including, without limitation, any provision under which the LESSOR would have the right to terminate or seek termination of this Lease, the LESSOR and the LESSEE will engage in and utilize the dispute resolution process described in Article XLV (Dispute Resolution) and unless and until said dispute resolution process is concluded, the LESSOR shall not be entitled to exercise any of its rights to terminate this Lease as set forth in this Lease.

C. Right of Re-entry. The LESSOR shall have, as an additional remedy upon the giving of a written Notice of Termination and Notice to Vacate as provided in Article XX.B (Default and Termination) herein, the right to re-enter the Premises and every part or portion thereof, respectively, demised under this Lease upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of the LESSEE under this Lease, and shall in no event constitute an acceptance of surrender. The LESSOR and the LESSEE acknowledge and agree that the LESSOR shall not exercise its right of re-entry hereunder unless and until the dispute resolution process described in Article XLV (Dispute Resolution) herein shall have been fully concluded.

D. LESSEE's Rights Cease. Upon such termination by the LESSOR (exercised only after the dispute resolution process described in Article XLV (Dispute Resolution) herein shall have been fully concluded), all rights, powers, and privileges of the LESSEE granted hereunder shall cease. Unless otherwise stated herein, the LESSEE shall immediately vacate the Premises occupied and/or used by it under this Lease, and the LESSEE shall have no claim of any kind whatsoever against the LESSOR, by reason of such termination, or by reason of any act by the LESSOR incidental or related thereto. In the event of the exercise by the LESSOR of such option to terminate, the LESSEE shall have no right to or claim upon the portion of the Leasehold Improvements that were constructed or completed by the LESSOR prior to the Commencement Date or the value thereof. The LESSOR may also remove or store any of the LESSEE's Personal Property located thereon or therein, at the LESSEE's sole cost and expense, without the LESSOR being liable to the LESSEE for damage or loss thereby sustained by the LESSEE.

E. Waiver of Redemption and Damage. The LESSEE waives, releases, and discharges any and all claims it may now or hereafter have relating to the LESSOR's exercise of its rights under this Lease to re-enter and regain and resume possession of the Premises, and to remove the LESSEE, the Leasehold Improvements, and the LESSEE's Personal Property from the Premises, and store or dispose of any of the LESSEE's property, including the LESSEE's Personal Property.

LESSEE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event the LESSOR obtains or retains possession of the Premises in any lawful manner. LESSEE further agrees that in the event the manner or method employed by the LESSOR in re-entering or regaining possession of the Premises gives rise to a cause of action in the LESSEE in forcible entry and detainer under the laws of the State of Hawai'i, the total amount of damages to which the LESSEE shall be entitled in any such action shall be the sum of One Dollar ($1.00), and the LESSEE agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

F. Survival of LESSEE's Obligations. In the event this Lease is terminated by the LESSOR, or in the event the LESSOR re-enters, regains, or resumes possession of the Premises (all of which shall be exercised only after the dispute resolution process described in Article XLV (Dispute Resolution) herein shall have been fully concluded, LESSEE's obligations under Article XIV.A (In General), Article XIV.C (Environmental Compliance Prior to Surrender), and Article XIV.D (Transition) and Article XV.C.2.f (Remediation), Article XV.C.2.g (Restoration and Surrender of Premises), Article XV.C.2.h (Tanks, Pipelines, Inspections and Repairs), and Article XV.C.2.i (LESSOR's Right to Act), and all other LESSEE's obligations that are specifically identified in this Lease as surviving the expiration or termination of this Lease (such as Article XIII (LESSEE Limitations), Article XXVI (Condemnation), Article XXIX (Liens), and Article XLVI (Brokers)), shall survive the expiration or sooner termination of this Lease, provided that such obligations arise from or relate back to a period of time during which the Lease term was in effect with respect to the LESSEE. (hereafter collectively the "LESSEE's Surviving Obligations").

G. Termination Before Commencement. If any of the events enumerated in Article XX.A (Events of Breach or Violation) herein shall occur prior to the commencement of the Lease term, the LESSEE shall not be entitled to enter into possession of the Premises, or any part(s) or portion(s) thereof, respectively, and the LESSOR, upon the occurrence of any such event, by twenty-four (24) hours' notice, may cancel or terminate the interest of the LESSEE under this Lease, such cancellation or termination to be effective upon the date specified in such notice.

ARTICLE XXI. WAIVER

A. No Implied Waiver. No failure by either the LESSOR or the LESSEE to insist upon the strict performance of the other party under this Lease, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, term, or condition. A waiver or assent by the LESSOR, express or implied, of any breach or default of the LESSEE, in the performance of any of the agreements, covenants, obligations, promises, provisions, requirements, restrictions, stipulations, terms, or conditions of this Lease shall not be deemed or considered to be a waiver of any other or succeeding breach or default. No express written waiver of any default, or the performance of any agreement, covenant, obligation, promise, provision, requirement, restriction, stipulation, term, or condition hereof, shall affect any other default or performance, or cover any other period of time, other than default, performance, or period of time specified in such express waiver.

B. Cumulative Remedies. The rights, powers, privileges, options, and remedies of the LESSOR contained in this Lease shall be construed to be cumulative, and no one of them shall be deemed to be exclusive of the other, or exclusive of any right, power, privilege, option, or remedy provided by law.

ARTICLE XXII. WITHDRAWAL

A. LESSOR's Right. The LESSOR reserves and shall have the right, at any time during and throughout the term of this Lease, in its sole discretion, and regardless of whether or not the LESSEE has breached this Lease or has been or then is in default: (1) to withdraw all or any portion of the Premises from the Lease, terminate or cancel this Lease with respect to the portion(s) of the Premises so withdrawn, and to reoccupy said portion(s) of the Premises thereunder in the public interest; or (2) to recapture any portion(s) of the Premises not utilized by the LESSEE for the uses identified or prescribed by this Lease.

B. Notice. The LESSOR shall give the LESSEE written notice of any such withdrawal or recapture, and the LESSOR's intent to cancel or terminate this Lease as to the portion of the Premises so withdrawn or recaptured, not less than sixty (60) calendar days prior to the effective date of such cancellation or termination. The LESSOR and the LESSEE acknowledge and agree that the LESSOR shall not exercise its right of withdrawal under this Article XXII (Withdrawal) unless and until the dispute resolution process described in Article XLV (Dispute Resolution) herein shall have been fully concluded.

C. Leasehold Improvements. The LESSOR shall pay to the LESSEE the then unamortized value of the Leasehold Improvements built, constructed, erected, installed, or placed by the LESSEE, at the LESSEE's sole cost and expense, at, in, on, over, or under the portion(s) of the Premises being withdrawn or recaptured.

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The unamortized value of the withdrawn Leasehold Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the LESSEE.

D. No Claim Against LESSOR. The LESSEE shall peaceably surrender the portion(s) of the Premises the LESSOR desires to withdraw or recapture, and the LESSEE shall remove all Leasehold Improvements and the LESSEE's trade fixtures, equipment, and other Personal Property so situated on the portion(s) of the Premises so withdrawn or recaptured, all in accordance with Article XIV (Surrender of Premises) hereof, if required by the LESSOR, all at no cost to the LESSOR. The LESSEE shall not, by reason of its surrender, be entitled to any claim against the LESSOR for any of the LESSEE's cost of removal. The LESSEE shall not be entitled to any other payment (except as provided herein) for the LESSOR's withdrawal or recapture of the requested portion(s) of the Premises.

E. Surrender of Entire Premises. If the surrender of the portion(s) of the Premises requested by the LESSOR renders the remainder of the Premises unsuitable for the uses of the LESSEE under this Lease, and the LESSOR does not provide an alternate location, the LESSEE may surrender the remainder of the Premises and be relieved of any further obligation hereunder, except with respect to such other obligations of the LESSEE which are intended to survive the termination of this Lease, including, without limitation, those obligations set forth in Article XLVII (Survival of Obligations) hereof.

ARTICLE XXIII. TERMINATION BY LESSEE

If any one of the following events shall occur, the LESSEE may terminate this Lease, in its entirety, either prior to or subsequent to the commencement of the Lease term, to wit:

1. Abandonment. The permanent abandonment of the Harbor as a terminal for the ocean transport of persons, property, cargo, and/or mail.

2. Assumption. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Harbor, or any substantial part or parts thereof, in such a manner as to substantially restrict the LESSEE from conducting its operations thereat for a period of at least sixty (60) consecutive days.

3. Injunction. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Harbor for the purposes

authorized under this Lease, and the injunction remaining in force for a period of at least sixty (60) consecutive days.

4. Breach. The breach by the LESSOR of, or its failure to perform, any of the covenants or agreements contained in this Lease, and either the failure of the LESSOR to remedy such breach for a period of sixty (60) calendar days after receipt of a written notice from the LESSEE of the existence of such breach, or, if fulfillment of the LESSOR's obligations requires activity over a period of time, the failure of the LESSOR within said sixty (60)-day period to act in good faith to commence the required activity, and to continue the same thereafter except for causes beyond the LESSOR's control.

ARTICLE XXIV. SUSPENSION OR ABATEMENT

Upon the occurrence or maturity of any of the termination events contained in Article XXIII (Termination by LESSEE) hereof, the LESSEE may, in lieu of termination, and upon prompt written notice to the LESSOR, suspend this Lease, with such suspension or abatement to be effective from the time of the receipt of such written notice until there is a cessation of the occurrence or activity giving rise to the initial right to terminate this Lease. Nothing in this Article XXIV (Suspension or Abatement) herein shall be construed as prohibiting the LESSOR from exercising its rights under Article XXII (Withdrawal) hereof, to withdraw or recapture all or any portion of the Premises.

ARTICLE XXV. SUBORDINATION OF LEASE

A. Joint-Use. This Lease shall be subordinate in all respects to the provisions of any existing or future agreements between the LESSOR and the United States Government, or any agency thereof, relative to the vessel operating areas of the Harbor, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Harbor. In the event of any such inconsistency between such agreement(s) and the occupancy by the LESSEE of the Premises, and/or its use thereof, pursuant to Article III (Use of Premises) hereof, this Lease or the particular terms and conditions affected thereby shall be suspended or terminated without the LESSOR being liable for any damages.

This Lease shall be subordinate in all respects to the provisions of any existing or future Joint-Use Agreement between the LESSOR and the United States Navy, the United States Army, the United States Air Force, and/or the USCG. In the event of any such inconsistency described in the preceding section between this Lease and any existing or future Joint-Use Agreement, this Lease or the particular terms and conditions affected thereby, shall be suspended or terminated without the LESSOR being liable for any damages.

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B. National Emergency. During times of war, whether declared by Congress or not, or national emergency, the LESSOR shall have the right to enter into any agreement with the United States Government for any military use of part or all of the vessels berthing areas, the publicly-owned air and ocean navigation facilities, and all other areas and facilities of the Harbor. In the event any such agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended without the LESSOR being liable for any damages.

C. Rights of LESSEE. Nothing in this Article XXV (Subordination of Lease) herein contained shall detract from or limit, nor be construed to detract from or limit, the rights of the LESSEE set forth in Article XXIII (Termination by LESSEE) and Article XXIV (Suspension or Abatement) hereof, to seek damages or compensation from other than the LESSOR in the event of the execution of any such agreement described above, the terms of which are or may be inconsistent with the rights of the LESSEE under this Lease.

ARTICLE XXVI. CONDEMNATION

A. Definitions. For purposes of this Article XXVI (Condemnation), the following capitalized terms shall have the following meanings:

1. "Award" means all compensation, sums or value paid, awarded, or received for a Taking, whether pursuant to judgment, agreement, settlement, or otherwise.

2. "Date of Taking" means the earlier of: (a) the date upon which title to the portion(s) of the Premises taken passes to and vests in the condemnor; and, (b) the date on which the LESSEE is dispossessed.

3. "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Applicable Laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

B. General. If during the Lease term, any Taking of all or any part or portion of the Premises or any interest in this Lease occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Article XXVI (Condemnation). The LESSOR and the LESSEE intend that the provisions hereof govern fully in the event of a Taking. The LESSOR and the LESSEE acknowledge and agree that the federal government would be the only entity that would have sufficient authority to qualify as a condemnor of or a condemning authority for the Premises.

C. Total Taking; Automatic Termination. If a total Taking of the Premises occurs (all of the Premises are included in the Taking) then this Lease shall terminate as of the Date of Taking.

D. Partial Taking; Election to Terminate.

1. Entire termination. If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by the LESSEE for the conduct of the LESSEE's operations; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable, but the LESSOR is unwilling or unable to cure such condition; and (c) the LESSOR or the LESSEE elects to terminate.

2. Material portion taken. If a partial Taking of a material portion of the Premises occurs, the LESSOR and the LESSEE shall each have the right to terminate this Lease in its entirety.

3. Notice of election. A party's election to terminate this Lease pursuant to this Article XXVI (Condemnation) shall be exercised by giving written notice to the other party to this Lease on or before the date that is one hundred twenty (120) calendar days after the Date of Taking, and thereafter this Lease shall terminate on the thirtieth (30^{th}) consecutive day after such notice is given.

E. Award. Upon termination of this Lease pursuant to a Total Taking under Article XXVI.C (Total Taking; Automatic Termination) or an election under Article XXVI.D (Partial Taking; Election to Terminate) herein, then:

1. LESSEE.

a. Rent. The LESSEE's obligation to pay all rentals and other fees and charges required under this Lease, if any, shall continue up until the date of termination, and thereafter shall cease.

b. Surviving obligations. The LESSEE shall continue to be obligated to perform and comply with all of the LESSEE's Surviving Obligations, as set forth in Article XLVII (Survival of Obligations) hereof.

c. Leasehold Improvements. The LESSEE shall be entitled to recover the unamortized value of the Leasehold Improvements built, constructed, erected, installed, or placed at, in, on, over, or under the Premises by the LESSEE in the ratio that the

unexpired term of this Lease on the Date of Taking bears to the unexpired term of this Lease on the date the Leasehold Improvements were completed by the LESSEE.

d. No claim against LESSOR. The LESSEE shall have no claim against the LESSOR or others for: (i) compensation or indemnity for the LESSEE's leasehold interest; and (ii) compensation and damages payable for or on account of the Land (including access and easement rights) or improvements thereon, except as provided in Article XXVI.E.1.c (Leasehold Improvements) herein.

e. Separate claim against condemning authority. The LESSEE may make a separate claim for compensation from the condemning authority (federal government) for the LESSEE's relocation expenses, or the interruption of, or damage to the LESSEE's business, or damage to the LESSEE's Personal Property. If the condemning authority (federal government) or a court of competent jurisdiction concurs that said claim exists and is justified, the LESSEE may receive any Award made specifically to the LESSEE for such claim.

2. LESSOR. The LESSOR shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the leasehold estate created by this Lease), except for the unamortized value of the Leasehold Improvements, as set forth in Article XXVI.E.1.c (Leasehold Improvements) herein.

F. Partial Taking; Continuation of Lease. If a Partial Taking of the Premises occurs, and this Lease is not terminated in its entirety under Article XXVI.D (Partial Taking; Election to Terminate) herein, then this Lease shall terminate as to the portion(s) of the Premises so taken, but shall remain in full force and effect as to the portion(s) of the Premises not taken, and the rights and obligations of the LESSOR and the LESSEE shall be modified as follows:

1. Rent reduction. If the Taking causes any portion(s) of the Premises to become unusable for the conduct of the LESSEE's operations at the Premises, as authorized under this Lease, the rent (if any) shall be reduced by a factor computed by the square footage of the space comprising the Taking multiplied by the applicable rate based on the rates and charges established by the LESSOR.

2. Leasehold Improvements. The LESSEE shall be entitled to recover the unamortized value of the Leasehold Improvements built, constructed, erected, installed, or placed at, in, on, over, or under the Premises by the LESSEE in the ratio that the unexpired term of this Lease on the Date of Taking bears to the unexpired term of this Lease on the date the Leasehold Improvements were completed by the LESSEE.

3. No claim against LESSOR. The LESSEE shall have no claim against the LESSOR or others for: (i) compensation or indemnity for the LESSEE's leasehold interest; and (ii) compensation and damages payable for or on account of the Land (including

access and easement rights) or Leasehold Improvements thereon, except as provided in Article XXVI.F.2 (Leasehold Improvements) herein.

4. Separate claim against condemning authority. The LESSEE may make a separate claim for compensation from the condemning authority (federal government) for the interruption of, or damage to the LESSEE's business, or damage to the LESSEE's Personal Property. If the condemning authority (federal government) or a court of competent jurisdiction concurs that said claim exists and is justified, the LESSEE may receive any Award made specifically to the LESSEE for such claim.

5. LESSOR's Award. The LESSOR shall be entitled to the entire Award in connection with the Taking (including any portion(s) of the Award made for the value of the leasehold estate created by this Lease), except for the unamortized value of the Leasehold Improvements, as set forth in Article XXVI.F.2 (Leasehold Improvements) herein.

6. Prompt Use. Any portion of the Award received by the LESSEE shall be used promptly by the LESSEE to the extent necessary to restore or replace the Leasehold Improvements at, in, on, over, or under the remaining Premises, in accordance with plans, specifications, drawings, cost estimates, and schedules first approved, in writing, by the LESSOR.

7. Continuing obligation. Nothing herein shall be construed to excuse the LESSEE from the LESSEE's full performance of all covenants, agreements, promises, obligations, stipulations, terms, and conditions under this Lease as to the part(s) or portion(s) of the Premises not part of the Taking, and the LESSEE shall remain responsible for paying to the LESSOR all rents and other fees and charges (if any) required under this Lease.

G. Temporary Takings. Notwithstanding anything to contrary in this Article XXVI (Condemnation), if a Taking occurs with respect to all or any part or portion of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and the LESSEE shall continue to pay the rents and other fees and charges required under this Lease (if any), and to perform all of the covenants, agreements, obligations, stipulations, terms, and conditions of this Lease. In the event of such temporary Taking, the LESSEE shall not be entitled to receive any Award except for appropriate reimbursement.

ARTICLE XXVII. PERFORMANCE BOND

A. Requirements. [Reserved].

B. Surety. [Reserved].

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C. Beyond Termination Date. [Reserved].

D. Replacement Bond. [Reserved].

E. Lease Default. [Reserved].

F. Any Lapse. [Reserved].

ARTICLE XXVIII. LITIGATION

A. LESSEE Responsible. [Reserved].

B. Attorneys' Fees. [Reserved].

C. Prompt Notice. Each party shall give prompt written notice to the other party of any claim or lawsuit instituted against it that may affect the other party.

D. Waiver of Claims. The LESSEE hereby waives any claim against the LESSOR and the LESSOR's officers and employees for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any lawsuit or proceedings directly or indirectly challenging the validity of this Lease, or any part or portion hereof, or by any judgment or award in any lawsuit or proceedings declaring this Lease null, void, or voidable or delaying the same, or any part or portion hereof, from being carried out.

ARTICLE XXIX. LIENS

A. LESSOR's Lien. [Reserved].

B. Other Liens Prohibited. The LESSEE shall not commit or suffer any act or neglect whereby the Premises, or any part(s) or portion(s) thereof, including any portion of the Harbor, or the Leasehold Improvements thereupon or therein, or the estate or interest of the LESSEE in the same, at any time during the term of this Lease shall become subject to any attachment, lien, charge, or encumbrance whatsoever. The LESSEE shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises, or any part(s) or portion(s) thereof, except as otherwise authorized, in writing, by the LESSOR under this Lease.

ARTICLE XXX. ASSIGNMENT AND SUBLETTING

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A. Assignment or Other Transfers.

1. Assignment. The LESSEE shall not assign, encumber, or otherwise transfer, whether voluntary or involuntary, or by operation of law, the Premises, or any part(s) or portion(s) thereof, or any interest herein, or permit any other person to occupy or use the Premises, except by way of devise, bequest, or intestate succession, without the LESSOR's prior written consent, which consent may be granted or denied in the LESSOR's sole discretion. Any such transfer or assignment made without the LESSOR's consent shall constitute a default under this Lease and shall be voidable at the LESSOR's election.

2. Not Considered an Assignment. Use of the Premises by any department, unit, center, or group of the LESSEE or a State of Hawai'i entity affiliated with the LESSEE shall not be considered an assignment and the LESSEE shall not be required to obtain the LESSOR's written approval before allowing such use of the Premises.

B. Subletting.

1. LESSOR's Approval. The LESSEE shall not rent or sublet the whole or any portion of the Premises without the prior written approval of the LESSOR.

2. LESSOR approval of LESSEE subtenants. The LESSOR acknowledges that in performing its research and related activities within the Premises and operating the UH Marine Center, the LESSEE will be collaborating with a number of higher education, research, and government organizations and entities (such as the National Ocean and Atmospheric Administration/San Jose State University for the ongoing MOBY research project) (collectively the "LESSEE's Tenants"). LESSOR hereby approves all of the LESSEE's Tenants and their use of the Premises, subject to the following terms:

a. Recapture operating costs only. The LESSOR and the LESSEE agree that in allowing the LESSEE's Tenants to use space within the Premises, the LESSEE requires the LESSEE's Tenants to pay an amount not to exceed that which is sufficient to cover and reimburse the LESSEE for all costs associated with maintaining, repairing, and operating the spaces used by the LESSEE's Tenants, including any common and supporting areas and facilities (hereafter collectively the "Recaptured Costs"). The LESSEE represents that: (a) the Recaptured Costs charged by the LESSEE is what is necessary for the LESSEE to receive no more than full reimbursement for the costs associated with maintaining, repairing, and operating the spaces used by the LESSEE's Tenants, including any common and supporting areas and facilities and reserves for major maintenance and repair projects and (b) the LESSEE is not accruing or realizing a profit in receiving the Recaptured Costs.

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b. LESSOR's approval. The LESSOR approves the payment of the Recaptured Costs by the LESSEE's Tenants to the LESSEE and will not consider such Recaptured Costs to be revenues or profit to the LESSEE and will not require the LESSEE to pay any portion of the Recaptured Costs to the LESSOR.

ARTICLE XXXII. NOTICES

A. Official notification. Except as otherwise specifically provided in this Lease, any notice, consent, request, demand, or other correspondence given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid; to: (a) the LESSEE at the address provided on Page 1 of this Lease, with copies of all notices to also be sent to: Office of Procurement and Real Property Management, University of Hawai'i, 1400 Lower Campus Road, Room 15, Honolulu, Hawai'i 98622, Attention: Director; or (b) the LESSOR at the following address: State of Hawaii, Department of Transportation, Harbors Division, Hale Awa Ku Moku Building, 79 South Nimitz Highway, Room 310, Honolulu, Hawaii 96813-4898, Attention: Harbors Administrator; or (c) such other address as either the LESSEE or the LESSOR may designate, in writing, as its new address for such purpose by notice given to the other in accordance with this Article XXXII (Notices) herein. Any notice hereunder shall be deemed to have been given and received and effective two (2) calendar days after the date when it is mailed, if sent by first-class, certified mail, one (1) calendar day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the number set forth herein, or such other number as may be provided from time to time; provided, however, neither party may give official or binding notice by facsimile.

B. Points of contact. The following person will be the LESSOR's point of contact for purposes of all purposes under this Lease:

Calvert J. T. Chun
State of Hawai'i, Department of Transportation
Harbors Division, Property Management
79 S. Nimitz Highway
Honolulu, Hawai'i 96813
Phone: (808) 587-1944
Fax: (808) 587-2504
Email: Calvert J.T.Chun@hawaii.gov

The following person will be the LESSEE's point of contact for all purposes under this Lease:

Alexander (Sandy) Shor

Associate Dean for Research, SOEST
University of Hawai'i at Mānoa,
University of Hawai'i
1680 East-West Road, POST 802
Honolulu, Hawai'i 96822
Phone: (808) 956-5749
Fax: (808) 956-9152
Email: Alexander Shor shor@soest.hawaii.edu

ARTICLE XXXIII. INTERPRETATION OF LEASE

A. Headings. The headings and captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease.

B. Not Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein, and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. The language hereof, and in all parts of this Lease shall, in all cases, be construed simply according to its fair meaning, and not strictly for or against either the LESSOR or the LESSEE.

C. Fair Meaning. Provisions in this Lease relating to number of days shall be calendar days. Use of the word "including" shall mean "including, without limitation." References to statutes, sections, ordinances, or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the statute, section, ordinance, or regulation.

D. Gender and Number. Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "person" shall include corporation, limited liability company, partnership, trust, firm, and association.

ARTICLE XXXIV. NO PARTNERSHIP

It is expressly understood and agreed by and between the LESSOR and the LESSEE, that the LESSOR shall in no way be, nor for any purpose become or be construed to become a partner of the LESSEE in the conduct of the LESSEE's operations, or otherwise, or a joint venture or a member of a joint enterprise with the LESSEE, and the LESSOR does not assume

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responsibility for the LESSEE's conduct or performance under this Lease. The LESSOR and the LESSEE acknowledge and agree that there are no third-party beneficiaries to this Lease.

ARTICLE XXXV. FORCE MAJEURE

A. LESSOR's Obligations. The LESSOR shall not be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including (but without limitation thereto) strikes, boycotts, picketing, slow-downs, work stoppages, or labor troubles of any other type, whether affecting the LESSOR, and/or the LESSOR's contractors or subcontractors.

The LESSOR shall be under no obligation to supply any service or services, if and to the extent, and during any period that the supplying of any such service or services, or the use of any component necessary therefor, shall be prohibited by any federal, state, or municipal law, rule, regulation, requirement, order, or direction, and if the LESSOR deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order, or direction may not be mandatory on the LESSOR as a public agency.

B. LESSEE Enforcement. Nothing in this Article shall preclude nor be construed to preclude the enforcement by the LESSEE of any of its rights contained in Article XXIII (Termination by LESSEE) and Article XXIV (Suspension or Abatement) hereof.

ARTICLE XXXVI. ENTIRE AGREEMENT

The parties intend that this Lease (including all of the exhibits and attachments which are made a part of this Lease) shall be the final expression of their entire agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its covenants, agreements, obligations, stipulations, terms, and conditions, and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative, or other legal proceeding.

ARTICLE XXXVII. AMENDMENTS

Neither this Lease, nor any of the covenants, terms, and conditions contained herein may be varied, changed, modified, or revised by any oral agreement or representation, or otherwise, except by an instrument, in writing, of subsequent date hereto, executed by both parties by their respective officer(s) or other duly authorized person(s).

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ARTICLE XXXVIII. [RESERVED].

ARTICLE XXXIX. INVALID PROVISION-SEVERABILITY

If any provision of this Lease or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

ARTICLE XL. NON-LIABILITY OF INDIVIDUALS

Neither the LESSOR, the Director, nor any governmental agency of the State (including any as may succeed to the duties, powers or functions of the Department), nor the LESSEE, the Board of Regents, the President, nor any of them, nor any agency, officer, or employee of any of them, shall be charged personally by the LESSOR or the LESSEE with any liability, or be held liable to the LESSOR or the LESSEE under any covenant, provision, term, or condition of this Lease, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

ARTICLE XLI. RESERVATION OF MINERAL AND METALLIC RIGHTS

The LESSOR reserves the right, on its own behalf or through persons authorized by it, with respect to all minerals, as hereinafter defined, at, in, on, over, or under the Premises to: (1) prospect for, mine, and remove such minerals; and, (2) occupy and/or use so much of the vacant, unoccupied, and/or unused surface of the Premises as may be required for all purposes reasonably related to the mining and removal of such minerals by any means whatsoever, including strip mining.

"Minerals" as used herein shall mean and include any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, disapore, boehmite, laterite gibbsite, alumina, all ores of aluminum, and without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including geothermal resources, at, in, on, over, or under the Premises; provided, however, that the word "minerals" shall not mean and include any of the foregoing substances and deposits when used in road or building construction in furtherance of the LESSEE's permitted activities at, in, on, over, or under the Premises, and not for sale to others.

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If the LESSOR desires to exercise its rights under this Article XLI (Reservation of Mineral and Metallic Rights), the LESSOR must exercise its withdrawal rights under this Lease and comply with the LESSOR's obligations under Article XXII (Withdrawal), including, without limitation, paying compensation to the LESSEE for the Leasehold Improvements taken as part of the exercise of the LESSOR's said withdrawal rights.

ARTICLE XLII. PREHISTORIC AND HISTORIC REMAINS

A. Remains. Any and all prehistoric and historic remains found at, in, on, over, or under the Premises shall be and remain the property of the LESSOR, and shall not be disturbed or removed by the LESSEE, and/or the LESSEE's successors in interest, assigns, officers, employees, and Guests, without the express written approval of the LESSOR.

B. LESSEE to Cease Disturbance. Upon discovery of any prehistoric or historic remains, the LESSEE shall immediately stop and cease any further disturbance of the remains and surrounding portion(s) of the Premises containing the remains, and promptly notify the LESSOR of such discovery.

ARTICLE XLIII. NONDISCRIMINATION

A. Construction. The LESSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the Premises, that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Lease for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Federal Regulations may be amended.

B. Operation. The LESSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby further covenant and agree:

(1) That no person on the grounds of race, creed, color, national origin, sex, or a physical handicap or disability, as defined in the ADA, shall be denied

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the benefits of, or be otherwise subjected to discrimination in the use of said facilities and services;

(2) That in the construction of any improvements at, in, on, over, or under the Premises, and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, or a physical handicap or disability, as defined in the ADA, shall be denied the benefits of, or otherwise be subjected to discrimination;

(3) This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49, CFR Parts 23 and 26;

(4) That the LESSEE shall not discriminate against any business owner because of race, creed, color, national origin, sex, or a physical handicap or disability, as defined in the ADA, in connection with the conduct LESSEE's operations on the Premises and at the Harbor, or in connection with the award and performance of any lease agreement covered by Title 49, CFR Parts 23 and 26;

(5) That the LESSEE shall use the Premises and conduct the LESSEE's operations thereon and at the Harbor in compliance with all other requirements imposed by or pursuant to Title 49, CFR, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Federal Regulations may be amended; and,

(6) That the LESSEE will include the foregoing statements in any subsequent lease or other agreements it enters, and cause those businesses to similarly include the statements in further agreements.

C. Breach. In the event of breach of any of the foregoing nondiscrimination covenants, the LESSOR may terminate this Lease (but not until after the LESSOR and the LESSEE fully complete the dispute resolution process described in Article XLV (Dispute Resolution) herein) and re-enter and repossess the Premises, together with all Leasehold Improvements and the LESSEE's Personal Property thereon, and hold the same as if this Lease had never been made or issued.

ARTICLE XLIV. CIVIL RIGHTS PROVISION

The LESSEE assures that it will undertake an affirmative action program as required by Title 14, CFR Part 152, Subpart E, and as said regulation may be administered upon the Harbor by the federal government to insure that no person shall on the grounds of race, creed, color, national origin, sex, or a physical handicap or disability, as defined in the ADA, be excluded

from participating in any employment activities covered by Title 14, CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE further assures that it will require that its covered suborganizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by Title 14, CFR Part 152, Subpart E, to the same effect.

ARTICLE XLV. DISPUTE RESOLUTION

A. All Disputes. If any disputes arise between the LESSOR and the LESSEE concerning any aspect of this Lease, the LESSOR and the LESSEE will use their best efforts to address and resolve such disputes and the parties agree to negotiate face-to-face within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of this Lease. The meeting will be held on the island of Oahu, Hawai'i, at the place of business of the party receiving the letter unless the parties mutually agree to meet at another place.

B. Reference to LESSOR's Director and LESSEE's President. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, and the disputes cannot be resolved between the staffs of the LESSOR and the LESSEE, the parties agree that the LESSOR's Director of Transportation and the LESSEE's President will together address and attempt to resolve the dispute.

C. Governor to make final decision. If the LESSOR's Director of Transportation and the LESSEE's President are unable to resolve the dispute, the dispute will be submitted to the Governor for resolution. The decision of the Governor on any dispute under this Agreement shall be final and binding upon the parties.

ARTICLE XLVI. BROKERS

The LESSEE represents to the LESSOR that the LESSEE has not had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Lease. The provisions of this Article XLVI (Brokers) shall survive any expiration or sooner termination of this Lease.

ARTICLE XLVII. SURVIVAL OF OBLIGATIONS

A. LESSOR's Right to Enforce. Termination of this Lease, whether by expiration or sooner termination, shall not affect the right of the LESSOR to enforce any or all representations given or made by the LESSEE to the LESSOR under this Lease, nor shall it affect any of the LESSEE's Surviving Obligations.

B. Accrued Obligations. The LESSEE's obligation to make payments to the LESSOR with respect to the accrued rents and other fees and charges (including those which have not yet been billed), if any, and to make repairs (including those relating to the return of the Premises to the LESSOR) which are accrued at the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease.

ARTICLE XLVIII. QUIET ENJOYMENT

The LESSEE, upon paying all of the rents and other fees and charges required under this Lease, if any, and observing, complying with, performing, and/or completely satisfying the agreements, covenants, obligations, promises, provisions, requirements, stipulations, terms, and conditions hereof, shall peaceably and quietly have, hold, and enjoy the Premises, together with all Leasehold Improvements and appurtenances during the full Lease term as against all persons or entities claiming by and through the LESSOR. The LESSEE expressly acknowledges that the LESSEE's right to quiet possession of the Premises does not preclude the LESSOR's right to make changes and additions to the Harbor, including the Premises, and to do work at, in, on, over, or under the Premises as permitted by this Lease, including, without limitation, the LESSOR's right to relocate the LESSEE, as described in this Lease.

ARTICLE XLIX. ACCORD AND SATISFACTION

[Reserved].

ARTICLE L. JOINT AND SEVERAL LIABILITY

[Reserved].

ARTICLE LI. ESTOPPEL STATEMENTS

A. Delivery of Estoppel Statement by LESSEE. Within ten (10) calendar days after request therefor by the LESSOR, the LESSEE shall deliver, in recordable form, an estoppel statement certifying that this Lease is in full force and effect, the date of the LESSEE's

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most recent payment of rental, if any, and that the LESSEE has no defenses or offsets outstanding, or stating those defenses or offsets claimed by the LESSEE, and any other information reasonably requested by the LESSOR.

B. Failure of LESSEE to Deliver Estoppel Statement. If the LESSEE fails to deliver the requested estoppel statement to the LESSOR within the specified period, the following shall be deemed conclusive: (1) this Lease is in full force and effect, without modification; (2) there are no uncured defaults in the LESSOR's performance under this Lease, and the LESSEE has no right of offset, counterclaim, or deduction against the rentals payable under this Lease; and (3) no more than one year's rental has been paid in advance by the LESSEE. Such conclusions shall be binding upon the LESSEE. Notwithstanding these conclusions, the LESSEE's failure to deliver the requested estoppel statement shall constitute a breach of this Lease.

ARTICLE LII. AUTHORITY

[Reserved].

ARTICLE LIII. CONSENTS

[Reserved].

ARTICLE LIV. COUNTERPARTS

This Lease may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this Lease, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document.

ARTICLE LV. GOVERNING LAW

This Lease shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Hawai'i.

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[Signature pages to follow]

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IN WITNESS WHEREOF, the parties have duly executed this Lease on the day and year first above written, to be effective as of the Commencement Date.

APPROVED AS TO FORM:

_____
Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By_____
Ford Fuchigami
Its Interim Director of Transportation

LESSOR

APPROVED AS TO FORM:

Office of the General Counsel:

_____
Darolyn Lendio, Vice President for
Legal Affairs and University General Counsel

APPROVED:

BOARD OF LAND AND
NATURAL RESOURCES

By_____
WILLIAM AILA, JR.
Chairperson and Member

Approved by the Board
at its meeting held on
_____, Item ____

UNIVERSITY OF HAWAI'I

By_____
David Lassner
Its President

By_____
Jan Gouveia
Its Vice President for Administration

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DRAFT

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

On this _____ day of _____, 2014, before me appeared DAVID LASSNER, to me personally known, who being by me duly sworn, did say that he is the President of the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed in behalf of said UNIVERSITY OF HAWAI'I by authority of its Board of Regents, and said DAVID LASSNER, as President, acknowledged said instrument to be the free act and deed of said UNIVERSITY OF HAWAI'I.

_____
Notary signature

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

My Commission Expires: _____

NOTARY CERTIFICATION
Doc. Date: _____ # Pages: _____
Notary Name: _____ _____Circuit
Doc. Description _____
_____

_____
Notary Signature Date

DRAFT

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

On this _____ day of _____, 2014, before me appeared JAN GOUVEIA, to me personally known, who being by me duly sworn, did say that she is the Vice President for Administration of the UNIVERSITY OF HAWAI'I, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed in behalf of said UNIVERSITY OF HAWAI'I by authority of its Board of Regents, and said JAN GOUVEIA, as said Vice President for Administration, acknowledged said instrument to be the free act and deed of said UNIVERSITY OF HAWAI'I.

_____
Notary signature

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

My Commission Expires: _____

NOTARY CERTIFICATION
Doc. Date: _____ # Pages: _____
Notary Name: _____Circuit
Doc. Description _____
_____

_____
Notary Signature Date

DRAFT