

**STATE LEASE NO. DOT-A-23-0018**

**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
AIRPORTS**

**NOTICE OF PUBLIC AUCTION**

**LAND LEASE**

**DANIEL K. INOUE INTERNATIONAL AIRPORT**

**ISLAND OF OAHU**

**STATE OF HAWAII**

LAND LEASE

DANIEL K. INOUYE INTERNATIONAL AIRPORT

ISLAND OF OAHU

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## NOTICE OF PUBLIC AUCTION

### LAND LEASE DANIEL K. INOUE INTERNATIONAL AIRPORT

Notice is hereby given that the State of Hawaii, Department of Transportation ("STATE") shall conduct a public auction ("Public Auction") for lease of land for the development of a hangar or facility for aeronautical or airport-related purposes, located at the Daniel K. Inouye International Airport ("Airport"), Honolulu, Hawaii, Island of Oahu, State of Hawaii.

A. Time and Place of Auction. The Public Auction shall be conducted at the Department of Transportation, Airport offices, located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880, on Friday, January 12, 2024, at 10:00 a.m.

B. General Description and Location of the Premises. The premises consists of Area/Space No. 001-101A, containing an area of approximately 10,224 square feet, more or less, of improved, paved land, identified by Tax Map Key: 1<sup>st</sup> Division, 1-1-76: portion of 002, located on the South Ramp at the Airport.

C. Term and Use. The term of the Land Lease ("Lease") shall be ten (10) years, commencing upon the execution of the Lease. The Lease premises shall be used for the development, construction, use, operation and maintenance of a hangar or facility for aeronautical or airport-related purposes.

D. Upset Rent. The upset annual rent for the first five (5) years shall be SEVENTY-TWO THOUSAND, NINE HUNDRED NINETY-NINE AND 36/100 DOLLARS (\$72,999.36). The rental amount shall be due and payable in monthly installments, in advance for the term of the Lease.

E. Availability of Documents for Inspection. The Notice of Public Auction and Instructions to Bidders (collectively the "Public Auction documents"), including the form of the Lease, may be examined and/or obtained from the STATE website at [www.hidot.hawaii.gov/airports/doing-business/concession-notices](http://www.hidot.hawaii.gov/airports/doing-business/concession-notices) under "Other Offerings" or from the Department of Transportation, Property and Business Development Office located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880. A copy of the Public Auction documents may also be purchased upon payment of the non-refundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Public Auction documents are subject to revision at any time prior to the Public Auction. All persons who have purchased the Public Auction documents will be notified of and provided copies of such revisions, if any.

F. Bidding. Each prospective bidder will be required to complete the Bid Intent Package, which is included in the Public Auction documents, that requires submission of financial statement(s), and other documents, and submit the same to the STATE, at the Property and Business Development Office, no later than 4:00 p.m. on Friday, December 8, 2023. Questionnaires included as part of the Bid Intent Package will be considered confidential and will not be made available for inspection by the general public.

Any qualified individual, corporation, limited liability company, partnership, joint venture or other entity may bid at the Public Auction after timely submission of an acceptable Bid Intent Package.

G. The STATE reserves the right to cancel the Public Auction, or to postpone or continue the same from time to time, as it may deem necessary, by publication of notice to that effect or by public announcement at the time scheduled, therefore.



EDWIN H. SNIFFEN  
Director of Transportation

Advertised:

Honolulu Star-Advertiser  
November 7, 2023



INSTRUCTIONS TO BIDDERS (IB)  
PERTAINING TO THE PUBLIC AUCTION  
LAND LEASE  
AT  
DANIEL K. INOUE INTERNATIONAL AIRPORT  
ISLAND OF OAHU  
STATE OF HAWAII

1. PURPOSE

The State of Hawaii, Department of Transportation (“STATE”), offers for lease, by Public Auction, improved, paved land for the development, construction, use, operation and maintenance of a hangar or facility for aeronautical or airport-related purposes, as described in Article II. (Premises) of Appendix B (Land Lease), located at the Daniel K. Inouye International Airport (“Airport”), Island of Oahu, State of Hawaii.

The Public Auction is scheduled for Friday, January 12, 2024, at 10:00 a.m., or as soon thereafter as may be practicable, at the Department of Transportation, Airport offices, located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880. The Public Auction may be cancelled, postponed or continued from time to time by publication of notice or by public announcement to that effect made by the Director of Transportation or his representative at the time and place appointed for the Public Auction.

2. OBTAINING PUBLIC AUCTION DOCUMENTS

The documents describing the Public Auction, including, without limitation, the Land Lease, may be examined and/or obtained from the Airports website at <http://hidot.hawaii.gov/airports/doing-business/concession-notices/> under “Other Offerings” or from the Department of Transportation, Property and Business Development Office located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880. The Public Auction documents may be purchased upon the tender of a non-refundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Public Auction documents are subject to revision at any time prior to the Public Auction. All persons who have purchased the Public Auction documents will be notified of and provided copies of such revisions, if any.

The Public Auction documents for the Land Lease will include; (1) Notice of Public Auction; (2) Instructions to Bidders; (3) Bid Intent Package, including the Notice of Intention to Bid (Appendix A), Tax Clearance Certificates (Appendix A, Attachment 1), and the Prospective On-Airport Operator Qualification (Appendix A, Attachment 2); (4) Land Lease (Appendix B); and (5) all of the attachments thereto.

3. BID INTENT PACKAGE: NOTICE OF INTENTION TO BID, TAX CLEARANCE CERTIFICATES, AND THE PROSPECTIVE ON-AIRPORT OPERATOR QUALIFICATION

In order to qualify to Bid, potential Bidders are required to submit a fully completed Bid Intent Package. Each Bid Intent Package submitted to the STATE shall be comprised of the following items:

- a. The Notice of Intention to Bid (Appendix A);
- b. Tax Clearance Certificates (Appendix A, Attachment 1);
- c. Prospective On-Airport Operator Qualification Form (Appendix A, Attachment 2); and
- d. Produce in cash or certified or cashier's check, an amount representing 10% of the upset annual lease rental in the amount of \$7,300.00; and
- e. Not be a minor.

The STATE may reject a Bid Intent Package or deem a Bidder disqualified for any of the following reasons:

- a. The Bid Intent Package shows any alterations, erasures, irregularities of any kind or additions not called for;
- b. If it is conditional or incomplete;
- c. If it fails to comply with any of the requisite conditions;
- d. If the potential bidder, whether an individual, corporation, limited liability company, partnership, joint venture, or other entity, including (1) any entity in which the bidder is an owner, and (2) any stockholders\*, members, partners, or owners of the bidder, is in arrears in any payment, or in default of any obligation, including taxes and special assessments, owing to the U.S. Internal Revenue Service and/or the State of Hawaii or any of its political subdivisions, (including default as a surety or failure to perform faithfully and diligently any previous lease, license, permit, or any other type of contract with the STATE or any of its political subdivisions), the potential bidder shall be disqualified. \* Stockholders are defined as a stockholder of a closely held corporation, a member of a limited liability company, a partner in a partnership or joint venture and an owner of an entity is defined as the holder of at least a ten percent (10%) or more ownership interest in the corporation, limited liability company, partnership, joint venture or entity; or

- e. If the potential bidder fails to submit to the STATE, the required Tax Clearance Certificates from the State of Hawaii Department of Taxation, Federal Tax Clearance required by State of Hawaii law from the U.S. Internal Revenue Service, and the City and County of Honolulu, as required by Appendix A, Attachment 1 of the Bid Intent Package.

The Bid Intent Package must be witnessed, acknowledged and notarized by a notary public, and addressed/submitted to the Director of Transportation, c/o Department of Transportation, Property and Business Development Office located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880, on or before the deadline date and time set for the submission.

A potential Bidder's failure to submit its fully completed Bid Intent Package by the deadline date and time specified in the Notice of Public Auction shall disqualify the potential Bidder from bidding, unless the specified deadline is postponed through a written notice from the STATE.

All bidders or authorized representatives must be present in person at the Public Auction. The STATE reserves the right to cancel the Public Auction for any reason whatsoever. The STATE also reserves the right to reject any and all Bid Intent Packages or to waive any defects when, in the opinion of the STATE's Director of Transportation, such rejection or waiver will be in the best interest of the public. The STATE reserves the right to re-advertise for Public Auction, or to accept any Bid Intent Package, if the acceptance of such Bid Intent Package is deemed by the STATE to be in the best interests of the STATE.

#### 4. DETERMINATION OF SUCCESSFUL BIDDER

Bidding shall commence at the upset rent stated in the Notice of Public Auction and the qualified Bidder making the highest Bid at the fall of the hammer shall be considered the successful Bidder.

#### 5. AWARD OF LEASE, EXECUTION OF LEASE, AND PERFORMANCE BOND

- a. The successful Bidder shall also, within one working day from the date of sale, pay the difference between 10% of the annual rent bid and 10% of the annual upset rental. Should the successful Bidder default in making said payment, the 10% of the upset rental paid to the STATE by the successful Bidder shall be forfeited together with the costs incurred by the STATE in advertising the public auction. In addition, within 30 days after the Public Auction, the successful Bidder shall deliver a satisfactory performance bond and/or security deposit as required by the Land Lease.
- b. The Land Lease (Appendix B), shall be executed by the successful Bidder, whose signature shall be witnessed, acknowledged and notarized by a notary public, and returned to the STATE, together with a Performance Bond satisfactory to the STATE, within fourteen (14) business days after the

successful Bidder has received the Land Lease for execution, or within such time as the STATE's Director of Transportation may allow in writing. Failure on the part of the successful Bidder to timely execute, notarize and return the Land Lease to the STATE, and to submit to STATE an acceptable Performance Bond as required, within fourteen (14) days after the successful Bidder has received the Land Lease for execution, or within such further time as the STATE's Director of Transportation may allow in writing, shall be just cause for the annulment of the award. If the successful Bidder refuses or fails to execute the Land Lease within the required time, the STATE may award the Land Lease to the next highest responsible qualified Bidder or cancel the solicitation and publish another call for Bidders.

- c. The Performance Bond, or equivalent security deposit as described in Article XXVII. (Performance Bond) of the Land Lease, shall be in an amount equal to the annual rental, and shall be maintained in full force and effect by the successful Bidder, as LESSEE under the Land Lease, at all times from the commencement date of the Lease until no less than ninety (90) calendar days after the later of: (a) expiration or sooner termination of the Land Lease, or (b) the end of any holdover period. The sureties on the Performance Bond must be properly licensed and authorized to do business under the laws of the State of Hawaii. The Performance Bond shall be maintained by the successful Bidder, at its sole cost and expense, and shall cover the successful Bidder's compliance with, and full and complete performance of, the terms and conditions of the Land Lease; provided that lawsuits thereon by the STATE or anyone else entitled to do so may be commenced in accordance with applicable law.

If the Performance Bond is for a period less than that required under the Land Lease, the successful Bidder, as LESSEE under the Land Lease, at least sixty (60) calendar days prior to the expiration date of the Performance Bond, shall submit another Performance Bond acceptable to the STATE, providing the coverage required under the Land Lease is at least ninety (90) calendar days beyond the expiration date of the Land Lease or any holdover period.

If the STATE should receive a notice that the Performance Bond has been or will be canceled, the successful Bidder as LESSEE under the Land Lease shall provide the STATE with a replacement Performance Bond acceptable to the STATE to be in effect for ninety (90) calendar days after the end of the Land Lease, or any holdover period, providing the coverage required under the Land Lease, from the effective date and time of the bond cancellation so that there is no period of time wherein a Performance Bond does not cover the Land Lease, as provided for herein. Such a replacement Performance Bond must be forwarded to and received by the STATE at least twenty (20) calendar days prior to the effective date and time of the prior bond cancellation or expiration.

## 6. OTHER REQUIREMENTS

Each Bidder shall carefully examine all documents relating to this Public Auction and judge for itself all the circumstances and conditions affecting its Bid. The Bidder's



failure to make such examination and to investigate thoroughly shall not be grounds for any claim that the Bidder did not understand the terms, conditions, or procedures set forth in the Public Auction documents, including the Land Lease, or that there were any circumstances that prevented, inhibited or adversely affected the Bidder's ability to understand or understanding of the terms, conditions, or procedures set forth in the Public Auction documents including the Land Lease. A Bidder shall have the burden to notify the STATE's Director of Transportation, in writing, of any ambiguity, inconsistency, or conflict in the Public Auction documents, including the Land Lease, prior to the applicable deadlines for submission of the Bid Intent Package. Failure to so notify the STATE's Director of Transportation, in writing, shall be deemed to be a waiver of that Bidder's right to claim any ambiguity, inconsistency, or conflict in the Public Auction documents, including the Land Lease.

## 7. APPENDICES

### A. Bid Intent Package, Notice of Intention to Bid

Appendix A, Attachment 1 (Tax Clearance Certificates)

Appendix A, Attachment 2 (Prospective On-Airport Operator Qualification)

### B. Land Lease

Exhibit A and Exhibit B

Appendix B, Attachment 1 (Development Standards for Leased Airport Property)

Appendix B, Attachment 2 (Tenant Improvement Guidelines, Manuals 1 and 2)

(May be reviewed and downloaded from the address below)

<http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines>

Appendix B, Attachment 3 (Design and Construction Requirements as Required by Hawaii Revised Statutes §103-50 dated June 2016)

Appendix B, Attachment 4 (Minimum Standards for Commercial Aeronautical Activities at Public Airports, Airports Division Procedure No. 4.9 dated May 3, 1990)

Appendix B, Attachment 5 (Department of Transportation Assignment of Lease and Premium Evaluation Policy Annex I)

APPENDIX A

BID INTENT PACKAGE

LAND LEASE

AT

DANIEL K. INOUE INTERNATIONAL AIRPORT

ISLAND OF OAHU

STATE OF HAWAII

Name of Bidder (Print) \_\_\_\_\_

Business Address (Print) \_\_\_\_\_

\_\_\_\_\_

APPENDIX A

NOTICE OF INTENTION TO BID

Date: \_\_\_\_\_

Director of Transportation  
c/o Department of Transportation  
ATTN: Property and Business Development Office  
Daniel K. Inouye International Airport  
Terminal 1, 400 Rodgers Boulevard, Suite 700  
Honolulu, Hawaii 96819-1880

Dear Colleague:

You are hereby notified that it is the intent of the undersigned to bid at the Public Auction for the Land Lease situated at the Daniel K. Inouye International Airport (Airport), Island of Oahu, State of Hawaii, to be held on Friday, January 12, 2024, at 10:00 a.m., at the Department of Transportation, Airport offices, located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880.

Attached hereto are the fully completed Bid Intent Package, including this Notice of Intention to Bid, Tax Clearance Certificates (Appendix A, Attachment 1), and the Prospective On-Airport Operator Qualification Form (Appendix A, Attachment 2).

Very truly yours,

\_\_\_\_\_  
(Name of Firm or Individual)

By \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone No.)

\_\_\_\_\_  
(Email address)

## APPENDIX A, ATTACHMENT 1

### TAX CLEARANCE CERTIFICATES

Each bidder shall be responsible for obtaining Tax Clearance Certificates from the State of Hawaii, Department of Taxation and the counties of the State of Hawaii, for itself and its affiliated entities. "Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the bidding entity; any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the bidding entity; and any entity in which the bidding entity has more than fifty percent (50%) interest.

All Tax Clearance Certificates must be submitted with the bidder's completed Bid Intent Package, including the Notice of Intention to Bid (Appendix A) and must be dated within one (1) month of the submission date for the bidder's Bid Intent Package.



STATE OF HAWAII — DEPARTMENT OF TAXATION  
**TAX CLEARANCE APPLICATION**

Form A-6 can be filed electronically OR for all state, city, or county government contracts, may be obtained through Hawaii Compliance Express. See Instructions.

(NOTE: References to "married" and "spouse" are also references to "in a civil union" and "civil union partner," respectively.)

**1. APPLICANT INFORMATION:** (PLEASE TYPE OR PRINT CLEARLY)

Applicant's Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Postal/Zip Code \_\_\_\_\_

DBA/Trade Name \_\_\_\_\_

**2. TAX IDENTIFICATION NUMBER:**

HAWAII TAX I.D. # \_\_\_\_\_

FEDERAL EMPLOYER I.D. # (FEIN) \_\_\_\_\_ - \_\_\_\_\_

SOCIAL SECURITY # (SSN) \_\_\_\_\_ - \_\_\_\_\_

**3. APPLICANT IS A/AN:** (Check only ONE box)

- CORPORATION                       S CORPORATION                       TAX EXEMPT ORGANIZATION
- INDIVIDUAL                               PARTNERSHIP                       ESTATE                       TRUST
- LIMITED LIABILITY COMPANY       LIMITED LIABILITY PARTNERSHIP
- Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN \_\_\_\_\_
- Subsidiary Corporation; enter parent corporation's name and FEIN \_\_\_\_\_

**4. THE TAX CLEARANCE IS REQUIRED FOR:** (MUST check at least ONE box)

- CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII \*
- LIQUOR LICENSE
- REAL ESTATE LICENSE               CONTRACTOR LICENSE               FINANCIAL CLOSING
- PROGRESS PAYMENT                   PERSONAL                               HAWAII STATE RESIDENCY
- FEDERAL CONTRACT                   SUBCONTRACT                         LOAN
- OTHER \_\_\_\_\_

\* IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.



A6\_I 2022A 01 VID01

**5. DECLARATION** - I declare that I am either the taxpayer whose name is shown on line 1, or a person authorized under section 231-15.6 or 231-15.7, HRS, to sign on behalf of the taxpayer. If the request applies to a joint return, at least one spouse must sign. I declare to the best of my knowledge and belief, that this is a true, correct, and complete form, made in good faith pursuant to Title 14 of the HRS, and the rules issued thereunder.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

( ) \_\_\_\_\_  
TELEPHONE

( ) \_\_\_\_\_  
FAX

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor

**POWER OF ATTORNEY.** If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required. Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.

**PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.**

SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

APPLICANT'S NAME FROM PAGE 1 \_\_\_\_\_

6. CITY, COUNTY, OR STATE GOVERNMENT CONTRACT:  Bid/Entering Into  Ongoing Contract  Completion/Final Payment  
For completion/final payment of contract, provide the name, agency, and telephone number of the contact person at the State or County Agency.

Name: \_\_\_\_\_ Agency: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

7. LIQUOR LICENSING:  Initial  Renewal  Transfer-Seller  Transfer-Buyer  Special Event

8. CONTRACTOR LICENSING:  Initial  Renewal

9. STATE RESIDENCY: DATE APPLICANT ARRIVED OR RETURNED TO HAWAII \_\_\_\_\_

10. ACCOUNTING PERIOD:  Calendar year  Fiscal year ending (MM/DD) \_\_\_\_\_

11. TAX EXEMPT ORGANIZATION:

A) Provide the Internal Revenue Code section that applies to your exemption (e.g., 501(c)(3)): \_\_\_\_\_

B) Does your organization file federal Form 990-T, Exempt Organization Business Income Tax Return?  YES  NO

C) Is your organization required to file federal Form 990, Return of Organization Exempt From Income Tax, or federal Form 990-EZ, Short Form Return of Organization Exempt From Income Tax?  YES  NO

If "YES," your organization is required to obtain a general excise tax license. Go to line 13.

If "NO," go to line 11D.

D) Does your organization have fundraising income?  YES  NO

If "YES," your organization is required to obtain a general excise tax license.

12. INDIVIDUAL: Spouse's Name \_\_\_\_\_ SSN \_\_\_\_\_

13. IF YOU DO NOT HAVE A GENERAL EXCISE TAX LICENSE AND REQUIRE A TAX CLEARANCE:

A) Description of your firm's business \_\_\_\_\_

B) Has your firm had any business income in Hawaii?  YES  NO

C) Has your firm had an office, inventory, property, employees, or other representatives in the State of Hawaii?  YES  NO

D) Has your firm provided any services within the State of Hawaii (e.g., servicing computers, training sessions, etc.)?  YES  NO

E) In the current or preceding calendar year has your firm had gross income of \$100,000 or more, or entered into 200 or more separate transactions attributable to Hawaii in any of the following, or combination of the following, activities? a) Tangible property delivered in Hawaii; b) Services used or consumed in Hawaii; or c) Intangible property used in Hawaii.  YES  NO

Note: If you answer "Yes" to any of the above questions, you are required to apply for a general excise tax license.

FILING THE APPLICATION FOR TAX CLEARANCE

The completed application may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch. Form A-6 may be used to get both a state tax clearance and a federal tax clearance. If you need to get a tax clearance from both agencies, you should submit a separate Form A-6 to each agency.

State Department of Taxation  
Taxpayer Services Branch  
P.O. Box 259  
Honolulu, HI 96809-0259

Telephone No.: 808-587-4242  
Toll Free: 1-800-222-3229  
Fax No.: 808-587-1488  
or  
830 Punchbowl Street  
Honolulu, HI 96813-5094

Internal Revenue Service  
W&I Field Assistance  
300 Ala Moana Blvd., #1-128  
Honolulu, HI 96850

(By appointment only. To make an appointment, please call 844-545-5640.)

Automated phone messaging: 808-466-6011  
Fax No.: 855-877-0789

Applications are available at Department of Taxation and IRS offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll-free at 1-800-222-3229. The Tax Clearance Application, Form A-6, can be downloaded from the Department of Taxation's website at [tax.hawaii.gov](http://tax.hawaii.gov).

STATE OF HAWAII — DEPARTMENT OF TAXATION  
**INSTRUCTIONS FOR FORM A-6  
TAX CLEARANCE APPLICATION**

(NOTE: References to "married" and "spouse" are also references to "in a civil union" and "civil union partner," respectively.)

**GENERAL INSTRUCTIONS**

- This form is used to obtain a **State Tax Clearance**.
- This form may be used to obtain a **State or Federal Tax Clearance** for the purpose of entering into contracts/submitting bids with and/or seeking final payment of contracts from state or county agencies in Hawaii. Contractors winning the bids are not required to have their subcontractors obtain a tax clearance. If a Federal Tax Clearance is required, Internal Revenue Service (IRS) Form 8821, or IRS Form 2848 is also required.
- The current version of Form A-6 must be used. Type or print clearly with a pen. After approval, the front page of the application will be your tax clearance certificate with a QR code presented in the State Approval Stamp Box. The QR code can be scanned to authenticate the tax clearance.
- Applications (Form A-6) are available at Department of Taxation and Internal Revenue Service (IRS) offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll free at 1-800-222-3229. This form can be downloaded from the Department of Taxation's website at [tax.hawaii.gov](http://tax.hawaii.gov).
- Vendors selling goods and services to state, city, or county agencies may register with Hawaii Compliance Express and have their tax clearance status available online for all state, city, or county contracts. Go to <https://vendors.ehawaii.gov> for more information.

**LINE-BY-LINE INSTRUCTIONS**

**Line 1 — Applicant Information**

**Applicant's Name.** — Enter your legal name. The name appearing on your application must match the name on file with the State Department of Taxation, IRS, and, if applicable, the State Department of Commerce and Consumer Affairs.

**Address.** — Enter the address to which correspondence regarding this application for tax clearance should be mailed. In most cases, the address should be that which is on file with the Department of Taxation and/or IRS.

**DBA (Doing Business As)/Trade Name.** — If you have a trade or business name which is different from your legal/registered name, enter that name here.

**Line 2 — Tax Identification Numbers**

**Hawaii Tax I.D. #.** — Enter your tax identification number. Enter "NONE" if you do not have one.

**Federal Employer I.D. #.** — Enter your 9-digit federal employer identification number (FEIN). Enter "NONE" if you do not have one.

**Social Security #.** — If you are an individual/sole proprietor, enter your social security number (SSN).

**Line 3 — Applicant is a/an**

Check the box which best describes your entity type.

If you are a Single Member LLC disregarded as separate from the owner, enter the owner's FEIN/SSN in the space provided.

If you are a Subsidiary Corporation, enter the parent corporation's name and FEIN in the space provided.

**Line 4 — The Tax Clearance is Required For**

Check the box(es) which correspond to your reason(s) for obtaining the tax clearance. The asterisk ("\*") indicates the reason for which a state and federal clearance is required.

Check the "Other" box if you are required to obtain a tax clearance for the credit for school repair and maintenance or for the purchase of cigarette tax stamps at the reduced rate.

**Line 5 — Signature**

**Signature.** — The application must be signed by an individual/sole proprietor/owner, trustee, executor, corporate officer (president, vice-president, secretary, treasurer, etc.) or general partner or member. An employee of your company or authorized agent may sign the application if he/she possesses a valid power of attorney. Power of attorney forms are available at the Department of Taxation (Form N-848) and IRS (Form 8821 or Form 2848) as indicated on page 1 of the application. Unsigned or unauthorized signatures on applications will be returned.

**Print Name.** — Enter the name of the person signing the application.

**Print Date/Telephone/Fax/Title.** — Enter the date the application is signed, and the telephone/fax number which the Department of Taxation or IRS can call during business hours should any questions arise while processing the application for tax clearance. Also enter the title of the person signing the application.

**Line 6 — City, County, or State Government Contract**

Indicate whether you are submitting a bid for a contract, entering into a contract, have an ongoing contract, completing a contract, and/or waiting for final payment on a contract.

If you are requesting a tax clearance for a completion/final payment of contract, please provide the name, agency, and telephone number of the contact person at the State or County Agency in the spaces provided.

**Line 7 — Liquor Licensing**

For liquor licensing purposes, indicate whether you are applying for an initial liquor license, renewing your current liquor license, transferring a liquor license, or applying for a one time special event license.

**Line 8 — Contractor Licensing**

Indicate whether you are applying for your initial contractor's license or renewing your current license.

**Line 9 — State Residency**

Enter the date you arrived in the State of Hawaii or returned to the State of Hawaii if your reason for applying is residency status.

**Line 10 — Accounting Period**

If you file your tax returns on a calendar year basis (1/1 — 12/31), check the first box. If you file your tax returns on a fiscal year basis other than a calendar year, check the second box, and enter the month and day your fiscal year ends. For example, a corporation whose tax year is July 1<sup>st</sup> through June 30<sup>th</sup> would write "06/30" on the line provided.

**Line 11 — Tax Exempt Organization**

If you are a tax exempt organization, you must enter the Internal Revenue Code section that applies to your exempt status. For example: IRC §501(c)(3). Also, you must answer the questions in this section.

**Line 12 — Individual**

If you are an individual/sole proprietor who is married, enter your spouse's name and social security number on the lines provided.

**Line 13 — If You Do Not Have a General Excise Tax License and Require a Tax Clearance**

If you do not have a general excise tax license and require a tax clearance, you must complete this section. Contact the State Department of Taxation if you have additional questions. Refer to page 2 of Form A-6 for the telephone number or mailing address.

**Filing the Application for Tax Clearance**

Applications may be submitted either in person, fax, by mail, or electronically. Mailing addresses and other contact information for the State Department of Taxation and the IRS are provided on page 2 of the application.

A "mailed-in" tax clearance application generally takes **10 - 15 business days** to process.

If all required returns have been filed and all required taxes, penalties, and interest have been paid, a "walked-in" tax clearance to any district tax office will generally be processed the same business day.

Form A-6 also can be filed electronically through our website at [hitax.hawaii.gov](http://hitax.hawaii.gov). An electronically filed tax clearance application generally takes **10 - 15 business days** to process. For more information, go to [tax.hawaii.gov/eservices/](http://tax.hawaii.gov/eservices/).



CITY AND COUNTY OF HONOLULU  
 DEPARTMENT OF BUDGET AND FISCAL SERVICES  
 DIVISION OF TREASURY  
 530 SOUTH KING STREET, ROOM 115  
 HONOLULU, HAWAII 96813  
**TAX CLEARANCE APPLICATION**

**APPLICATION FOR CLEARANCE OF REAL PROPERTY TAXES AND OAHU TRANSIENT ACCOMMODATIONS TAXES  
 (PRINT OR TYPE CLEARLY)**

**1. APPLICANT INFORMATION**

Applicant \_\_\_\_\_  
Last, First, MI or Name of Business

Address \_\_\_\_\_  
Street City/State Zip Code

**2. REAL PROPERTY IDENTIFICATION (I.D.) NUMBER** Tax Map Key (TMK) # \_\_\_\_\_  
**TRANSIENT ACCOMMODATIONS TAX I.D. NO.** TA - \_\_\_\_\_

**3. APPLICANT IS**

Individual       Corporation       Partnership

Limited Liability Company       Other (Explain) \_\_\_\_\_

**4. TAX CLEARANCE IS FOR:**

Leasing/Renting State Property      Property Address: \_\_\_\_\_  
 Short-Term Rentals       Other (Explain) \_\_\_\_\_       Taxi Driver Contract  
\*Per Ordinance 22-7

\*This tax clearance applies solely for the purpose of registration of a short-term rental pursuant to Ordinance 22-7 for the property identified in section 2 with respect to the payment of Real Property Tax and Transient Accommodations Tax during the previous tax year.

**5. SIGNATURE**

**I certify that the applicant has no outstanding delinquent tax(es) due to the City & County of Honolulu.**

\_\_\_\_\_  
 PRINT NAME      PRINT SPECIFIC TITLE

\_\_\_\_\_  
 SIGNATURE      DATE      ( ) TELEPHONE      EMAIL ADDRESS

**Note: Upon receipt it may take up to 10 business days to process.**

**FOR OFFICE USE ONLY**

\_\_\_\_\_  
 For Director of Budget & Fiscal Services      DATE      Certificate No.  
 City & County of Honolulu

Taxes	Agency	Location	Comments	Approved	Date
Real Property Taxes	BFS Treasury	530 South King St Room 115			
Transient Accommodations Tax TA- _____	BFS Treasury	530 South King St Room 400			



**CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF BUDGET AND FISCAL SERVICES  
DIVISION OF TREASURY  
530 SOUTH KING STREET, ROOM 115  
HONOLULU, HAWAII 96813  
TAX CLEARANCE APPLICATION INSTRUCTIONS**

**GENERAL INSTRUCTIONS**

The City requires **ORIGINAL SIGNATURES** on all **CITY TAX CLEARANCE FORMS**. The form must be printed on **8.5" X 11" letter size paper**.

Do not fax back the completed form because original signatures are required. Please mail the tax clearance form to the address below and upon receipt it may take up to **Ten (10) business days** to process. Please include a self-addressed envelope with first class postage if you would like the processed application mailed.

City and County of Honolulu  
Department of Budget & Fiscal Services  
Division of Treasury  
530 South King Street, Room #115  
Honolulu, HI 96813

Attn: Joan Alexander

You may also hand deliver the tax clearance form to the Division of Treasury located at Honolulu Hale, 530 South King Street, Room 115, Honolulu HI 96813, during our normal business hours Monday through Friday 7:50AM to 4:15PM.

Processed application may also be picked up at Division of Treasury located at Honolulu Hale, 530 South King Street, Room 115, Honolulu HI 96813, during our normal business hours Monday through Friday 7:50AM to 4:15PM.

The Treasury Division will issue the Certificate Number on the tax clearance form.

If you have any questions, you may contact Joan Alexander of the Treasury Division at:

Phone: (808) 768-3999  
E-mail: joan.alexander@honolulu.gov

CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF BUDGET AND FISCAL SERVICES  
DIVISION OF TREASURY  
530 SOUTH KING STREET, ROOM 115  
HONOLULU, HAWAII 96813  
TAX CLEARANCE APPLICATION INSTRUCTIONS  
(PLEASE TYPE OR PRINT CLEARLY)

**LINE-BY-LINE-INSTRUCTIONS**

**Line 1 –Applicant Information**

**Applicant’s Name.** – Enter your legal name or Business Name.

**Address.** – Enter a physical address. Do not enter a P.O. Box address.

**Line 2 – Real Property Identification Numbers**

**Tax Map Key # (TMK).** – If you own a real property, enter your 12-digit real property tax map key number. Enter “NONE” if you do not have one.

**Transient Accommodations Tax I.D. Number** that starts with TA, the 10-digit account number and the 2-digit extension number. Enter “NONE” if you do not have one.

**Line 3 – Applicant Is**

Check the box which best describes your entity type. If you check the “Other” box, list the type of entity on space provided.

**Line 4 – Tax Clearance Is For**

Check the box which corresponds to your reason for obtaining the tax clearance. If you check the “Leasing/Renting State Property” box, write the address of the leased/rented state property on space provided. If you check the “Other” box, list the reason on space provided.

**Line 5 – Signature**

**Print Name/Title.** – Enter the name of the person signing the application. Also, enter the title of the person signing the application.

**Print Date/Telephone/E-mail.** - Enter the date the application is signed, and the telephone number and e-mail address which the Division of Treasury can contact you during business hours should any questions arise while processing the application for tax clearance.

**Signature.** – The application must be signed by an individual/sole proprietor, corporate officer (president, vice-president, secretary, treasurer, etc.), general partner or member. An employee of your company or authorized agent may sign the application if he/she possesses a valid power of attorney. Unsigned or unauthorized signatures on applications will be returned.

APPENDIX A, ATTACHMENT 2

PROSPECTIVE ON-AIRPORT OPERATOR QUALIFICATION

PART I: GENERAL INFORMATION

1. Name of Applicant: \_\_\_\_\_
2. Mailing Address: \_\_\_\_\_
3. Phone: (Bus) \_\_\_\_\_ (Res/Emerg) \_\_\_\_\_ (Cell) \_\_\_\_\_
4. Key Management Personnel:
  - (a) President: \_\_\_\_\_
  - (b) Executive Vice President: \_\_\_\_\_
  - (c) Director of Operations: \_\_\_\_\_
  - (d) Finance Officer/Comptroller: \_\_\_\_\_
  - (e) Maintenance Supervisor: \_\_\_\_\_
  - (f) Office Manager: \_\_\_\_\_
5. Specify the term which applies to your firm: ( )
  - ( ) Individual
  - ( ) Sole Proprietorship
  - ( ) Joint Venture
  - ( ) Partnership
  - ( ) Corporation
  - ( ) Limited Liability Company
6. If partnership or joint venture, complete the following:
  - (a) Name, address, and percentage share owned by each partner or joint venture Member:

<u>Name</u>	<u>Addresses</u>	<u>Share</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
  - (b) Date of organization: \_\_\_\_\_

- (c) General or limited partnership (if applicable: \_\_\_\_\_)
- (d) Currently registered in the State of Hawaii: (Please Circle) Yes/No
- (e) Name of managing partner: \_\_\_\_\_
- (f) Provide the following information for the managing partner and each partner or joint venture member:
  - (i) Name and address: \_\_\_\_\_
  - (ii) Percentage of ownership interest; \_\_\_\_\_
  - (iii) Whether a general or limited partner; and \_\_\_\_\_
  - (iv) If the partner/member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership and management (i.e., principal owners and their respective ownership interests, directors, officers, etc.).  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7. If Applicant is a corporation, complete the following:

- (a) When incorporated: \_\_\_\_\_
- (b) In what state of country: \_\_\_\_\_
- (c) Authorized to do business in the State of Hawaii: (Please Circle) Yes/No
- (d) Provide name, address, and shares of stock for each officer:
  - President: Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Number of stock shares: \_\_\_\_\_ Percentage of shares: \_\_\_\_\_
  - Vice President: Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Number of stock shares: \_\_\_\_\_ Percentage of shares: \_\_\_\_\_
  - Treasurer/Other: Name \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Number of stock shares: \_\_\_\_\_ Percentage of shares: \_\_\_\_\_



8. If Applicant is a limited liability company (LLC), complete the following:
- (a) In what state or country: \_\_\_\_\_
  - (b) Date when LLC was formed: \_\_\_\_\_
  - (c) Registered to do business in the State of Hawaii: (Please Circle) Yes/No
  - (d) Member-managed or manager-managed? \_\_\_\_\_
  - (e) Provide the following information for each member of the LLC:
    - (i) Name and address: \_\_\_\_\_
    - (ii) Percentage of ownership interest: \_\_\_\_\_
    - (iii) If the member is an entity, describe the type of entity, where/when it was formed, and the entity's ownership and management (i.e., principal owners and their respective ownership interests, directors, officers, etc.):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PART II: QUALIFICATION AND EXPERIENCE**

9. Describe the Applicant's qualifications and experience in owning, constructing, and/or operating the type of business operations and use(s) proposed for the premises. Include any pertinent information, including but not limited to the names and locations of other similar businesses owned, developed, operated, or managed by Applicant, and the following information for each such business:
- (a) Describe each business operation (i.e., type of operations, annual gross and net revenues, number of employees, etc.).  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - (b) Describe how you expect to use the premises at the airport. Also, address the following three (3) sub-categories in your explanation:  
 \_\_\_\_\_  
 \_\_\_\_\_

- (i) The size (land or floor area) needed to conduct your work. Include figures for office, shop, work benches, reception, parts warehouse, customer parking, employee parking, etc.
  
- (ii) List and explain the number and types of improvements or changes you would make. Give an estimate of the cost of such improvements and a time schedule of when you anticipate to make them. The improvements include landscaping. Submission of preliminary drawings of your plans or facility layout is preferred.
  
- (iii) Describe the type of building (shape, function, material, number of stories, etc.) if applicable, you would construct. Give the size and general dimensions of the building(s) you expect to erect. If your building(s) is of a pre-engineered design, list the name of the designer/manufacturer who will supply the building(s).
  
- (c) Submit copies of your operating and licensing certificates issued by the U. S. Department of Transportation, Federal Aviation Administration and any other Federal agency.
  
- (d) Indicate the number and type of aircraft in your fleet (leased or owned), the aircraft under a service-hangar keeper contract to you, and customers' aircraft which you expect to have on the premises.
  
- (e) Indicate the number of persons to be employed or under contract for your operations which you will have on the premises-include titles and job description.
  
- (f) How many customers, visitors, guests, and deliveries (pick-up/drop-off) do you expect to have each day.
  
- (g) Indicate what your regular business hours will be. If you expect to conduct off-hour operations, describe your projected schedules.

- (h) List the type and amount of insurance coverage you now have for your business. (Note: The State of Hawaii requires, as a minimum, a general comprehensive public liability policy with a combined single limit coverage of not less than \$1,000,000 for bodily injury and property damage per occurrence.
- (i) If any, indicate the number and describe any sub-tenants you expect to allow on the premises.

10. Financial Capability. Provide a financial statement in a form satisfactory to the Airports.

- (a) Provide a statement(s) as evidence of your financial background duly verified and prepared by a certified public accountant or authorized personnel/management. The statement(s) must be submitted in one of the following ways:
  - (i) A complete audited financial statement prepared by a certified public accountant for the previous three (3) years of operation. If you were in existence and/or in business for less than three (3) years, but greater than one (1) year, the years of operation will suffice.
  - (ii) A complete unaudited financial statement (balance sheet and income statement) with supporting documentation for all balance sheet items, along with a complete copy of your federal income tax return submitted to the Internal Revenue Service (must include all forms/schedules, be signed and dated by an owner/officer and preparer) for the previous three (3) years of operation verified by authorized personnel/management of our organization. If you were in existence and/or in business for less than three (3) years, but greater than one (1) year, the years of operation will suffice.
  - (iii) A complete audited or unaudited financial statement with supporting documentation for all balance sheet items for the most recent month or quarter of operation, whichever greater, if the company was in business for less than one (1) year.

Note: If your organization is a parent company, subsidiary, holding company, or affiliate, the information requested above is also required for such companies.

- (b) Present your business plan. Indicate how you expect to run your business, who will be your patrons, customers, and clientele, and your revenue-expense projections. Describe how you plan to finance the construction of your facility (if applicable).

You must include your business projections and financial plans that you expect to employ to initiate your operations, develop your business, and maintain the level of sales or service commensurate with a viable enterprise.

- (c) Submit three (3) or more letters of reference, one which shall show your credit worthiness and capability to manage your finances; the other letters should attest to your business and professional record.

11. Provide a resume or similar statement of experience in the aviation industry, business, or related field, for each principal in your organization.
12. List any certificates, degrees, designations, or special awards (e.g. fuel handling) received by your firm or members of your staff.

**LAND LEASE  
STATE LEASE NO. DOT-A-23-0018**

**DANIEL K. INOUE INTERNATIONAL AIRPORT**

**ISLAND OF OAHU  
STATE OF HAWAII**

**TOTAL AUCTION BID**

**HIGHEST LEASE RENT BID AMOUNT (FOR FIRST FIVE YEARS):**

\_\_\_\_\_

\_\_\_\_\_  
(Written in words)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print: \_\_\_\_\_

APPENDIX B

LAND LEASE  
DANIEL K. INOUE INTERNATIONAL AIRPORT

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ATTACHMENTS:

EXHIBITS A AND B

ATTACHMENT 1 DEVELOPMENT STANDARDS FOR LEASED AIRPORT PROPERTY

ATTACHMENT 2 TENANT IMPROVEMENT GUIDELINES, MANUALS 1 AND 2

May be reviewed and downloaded from the address below:

<http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines>

ATTACHMENT 3 DESIGN AND CONSTRUCTION REQUIREMENTS AS REQUIRED UNDER §103-50 HAWAII REVISED STATUTES DATED JUNE 2016

ATTACHMENT 4 MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITIES AT PUBLIC AIRPORTS, AIRPORTS DIVISION PROCEDURE NO. 4.9 DATED MAY 3, 1990

ATTACHMENT 5 DEPARTMENT OF TRANSPORTATION ASSIGNMENT OF LEASE AND PREMIUM EVALUATION POLICY ANNEX I



APPENDIX B

LAND LEASE

AT

DANIEL K. INOUYE INTERNATIONAL AIRPORT  
ISLAND OF OAHU, STATE OF HAWAII

THIS INDENTURE OF LEASE ("Lease"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, by its Director of Transportation, hereinafter referred to as "STATE", and \_\_\_\_\_, a \_\_\_\_\_, whose post office address is \_\_\_\_\_, hereinafter referred to as "LESSEE";

WITNESSETH:

WHEREAS, the Department of Transportation, pursuant to Chapters 171, 261, 262, and 263 of the Hawaii Revised Statutes, is vested with certain control and jurisdiction over the operation of airports within the State of Hawaii, and more particularly that airport located in the City and County of Honolulu, Island of Oahu, State of Hawaii, known as Daniel K. Inouye International Airport, shown and delineated on the map labeled Exhibit A, attached hereto and made a part hereof, and hereinafter referred to as the "Airport" and encumbered by Governor's Executive Order No. 3201, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as Document No. 1186999 on August 18, 1983; and

WHEREAS, STATE, pursuant to Sections 261-7, 171-14, 171-16, and 171-32, Hawaii Revised Statutes, and other applicable sections of Hawaii Revised Statutes has determined that a need exists to lease land for the development, construction, use, operation and maintenance of a hangar or facility for aeronautical or airport-related purposes by Public Auction at the Airport; and,

WHEREAS, the LESSEE was the successful bidder at the public auction held on January 12, 2024 at 10:00 am ("Public Auction"), pursuant to a notice of said Public Auction having been duly published in the STATE's web page at [www.hidot.hawaii.gov/airports/doing-business/concession-notices](http://www.hidot.hawaii.gov/airports/doing-business/concession-notices), under "Other Offerings" and the Star Advertiser.

NOW, THEREFORE, for and in consideration of the promises, and of the mutual agreements, covenants, provisions, requirements, restrictions, terms, and conditions hereinafter contained to be kept and performed by STATE and LESSEE, respectively, and other valuable consideration, STATE does hereby grant, demise, and let unto LESSEE, and LESSEE does hereby lease and hire from STATE at or on the Airport, that certain parcel of land, more particularly described in Article II. (Premises) hereof, and STATE and LESSEE DO HEREBY AGREE AS FOLLOWS:



## ARTICLE I. DEFINITIONS

Unless the context indicates otherwise, as used herein, the term:

- A. "ADA" means the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq.
- B. "ADAAG" means United States Access Board's ADA Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles.
- C. "Airport" means the Daniel K. Inouye International Airport, located in Honolulu, City and County of Honolulu, Island of Oahu, State of Hawaii.
- D. "AOA" means the Airport Operations Area.
- E. "CFR" means Code of Federal Regulations.
- F. "County" means the City and County of Honolulu, State of Hawaii.
- G. "DCAB" means Disability and Communication Access Board.
- H. "Department" means the State of Hawaii, Department of Transportation.
- I. "Director" means the Director of Transportation, State of Hawaii.
- J. "DOH" means the State of Hawaii, Department of Health.
- K. "Environmental Laws" means all federal, State of Hawaii, 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.
- L. "EPA" means the U.S. Environmental Protection Agency.
- M. "FAA" means the U. S. Federal Aviation Administration.
- N. "Guests" means and includes licensees, permittees, contractors, subcontractors, sub-subcontractors, vendors, visitors, providers of utility services and other services, customers, passengers, patrons, and invitees of LESSEE.
- O. "HAR" means Hawaii Administrative Rules.

P. "Hazardous Substance" means and 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 of Hawaii or federal authority under any Environmental Law 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 the State of Hawaii or federal authorities.

Q. "HRS" means Hawaii Revised Statutes.

R. "Land Board" means the Board of Land and Natural Resources of the State of Hawaii.

S. "Leasehold Improvements" means and 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 LESSEE during this Lease term, and includes walls, floors, roofing, interior finishing, doors, windows, ceilings, built-in cabinets and shelving, counters, flooring material and carpeting glued, nailed or tacked down, all utility lines, conduits, piping, service panels, connections and receptacles, all lighting fixtures (bulbs included) 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.

T. "LESSEE" means the legal entity named in the first paragraph of this Lease; provided however, that from and after any valid assignment or transfer in whole of said LESSEE's (as Assignor) interest under this Lease pursuant to Article XXX. (Assignment and Subletting) hereof, "LESSEE" shall mean only the assignee or transferee of said interest.

U. "Personal Property" means and consists of any kind of property that is temporary or movable property and not real property, including any and all trade fixtures, office and business furnishings, decorations, equipment and furniture, draperies, grease racks, piping, movable display cases and shelving, movable appliances and drinking fountains, communication instruments (including, without limitation, all telephone, radio, telegraph, computer, wireless, cellular, and television) and antenna, window air conditioning units, portable heaters, and other temporary or movable goods or chattels owned, purchased, and/or installed by LESSEE, and other similar articles or chattels not firmly or permanently affixed or attached to the Premises and/or Leasehold Improvements situated thereon.

V. "STATE" means the State of Hawaii, 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.

W. "TSA" means the U. S. Department of Homeland Security, Transportation Security Administration, or its successor agency.

## ARTICLE II. PREMISES

STATE, for the term, and for and in consideration of the rentals, fees, and other charges to be paid by LESSEE, as prescribed and set forth in Article V. (Rental) hereof, and upon 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 STATE, the exclusive right to occupy and use that certain land area, at the Airport, designated as Area/Space No. 001-101A, containing an area of approximately 10,224 square feet, more or less, of improved, paved land, as shown and delineated on the map labeled Exhibit B, attached hereto and made a part hereof, said land area hereinafter referred to as the "Premises".

## ARTICLE III. USE OF PREMISES

LESSEE shall have the right to use the Premises for a fixed-wing aeronautical or airport-related business operation, hereinafter referred to as "LESSEE's Operations", for any of the following purposes:

A. Fixed-Wing Aeronautical Operations. The right to operate, use and maintain a facility for fixed-wing aeronautical operations, including by not limited to the following:

1. Aircraft. The right to sell, lease, rent, park, store, and exchange or otherwise dispose of or deal in aircraft, aircraft components, aircraft parts, and aviation equipment.

2. Aircraft Equipment. The right to repair, maintain, condition, service, modify, manufacture, and assemble aircraft equipment, accessories and component parts, and mobile aviation service equipment owned, leased, or contracted by LESSEE in connection with LESSEE's Operations.

3. Aircraft Repair. The right to repair, maintain, condition, service, modify, manufacture, assemble and store Personal Property related to aviation (including, but not limited to, repair parts, supplies, and the like) in connection with LESSEE's Operations.

4. Flight Training. LESSEE shall have the right to train and educate persons in all phases of aviation and aeronautics which are part of LESSEE's Operations; provided however, that the training and education of flight personnel shall be subject to FAA certification, and in strict compliance with all laws, statutes, governmental rules, regulations, codes, directives, and orders.

5. Testing. The right to test certain aircraft component parts and other equipment owned, serviced by, contracted through and/or operated by LESSEE. STATE however my prohibit LESSEE from testing certain equipment if testing of such equipment is detrimental to the operations of occupants of the Airport or properties adjacent or near to the Airport. Detrimental effects shall be deemed to include, but not be limited to, excessive jet or propeller wash, interference to electrical or electronic equipment, fumes from gas and liquids, and noise levels in excess of applicable governmental standards.

B. Airport-Related Operations. The right to operate, use and maintain a facility for an airport-related business operation, where LESSEE provides a service to the general aviation and commercial aviation community.

C. Offices. The right to establish and maintain private or business operation offices in connection with LESSEE's Operations and administrative offices for LESSEE's employees.

D. Parking. The right to park, or permit the parking of automobiles operated by LESSEE, its officers, employees, agents, customers, passengers, invitees, and Guests.

E. Incidental Operations. The right to conduct, after obtaining STATE's prior written approval, any other operation or activity, which is reasonably necessary or incidental to the conduct of LESSEE'S Operations.

#### ARTICLE IV. TERM

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 ten (10) years, commencing on \_\_\_\_\_ ("Lease Term Commencement Date") and ending on \_\_\_\_\_, unless sooner terminated as provided herein.

#### ARTICLE V. RENTAL

A. Annual Rental. LESSEE shall pay to STATE, unless this Lease is sooner terminated as provided herein, without notice or demand, as and for rental for the use of the Premises and for the right, privilege, and authority of doing business at the Airport, for and during the term of this Lease, free from any and all claims, deductions, and set offs against STATE, unless otherwise noted herein, and at such times and in such manner as hereinafter provided, the amounts provided herein and set forth below:

1. Annual Rental for the First Five (5)-Year Period. Beginning upon the commencement date hereof, LESSEE shall pay to STATE an annual rental in the amount of \_\_\_\_\_ and XX/DOLLARS (\$ \_\_\_\_\_), payable in monthly installments of \$ \_\_\_\_\_, in advance, based upon the highest bid of the successful bidder at the Public Auction.

2. Annual Rental for the Second Five (5)-Year Period. Beginning upon the first day of the sixth (6<sup>th</sup>) year of the Lease term, LESSEE shall pay to STATE an annual rental in the amount of \_\_\_\_\_ and XX/DOLLARS (\$ \_\_\_\_\_), payable in monthly installments of \$ \_\_\_\_\_, in advance, based upon the product of the annual rental for the fifth (5<sup>th</sup>) year of the Lease term (\$ \_\_\_\_\_) and 115%.



B. Rent Commencement. The rental payment shall commence on the Lease Term Commencement Date of this Lease as established in Article IV. (Term) hereof.

C. General Payment Provisions.

1. Time of Payment. The rental, fees, and other charges required herein shall be paid monthly, in advance, but not more than one year in advance, on the first day of each and every month of each and every year of this Lease term hereof.

2. Place of Payment. All payments of money, including rental payments, required to be made by LESSEE to STATE hereunder, shall be made when due in legal tender of the United States of America, at STATE's office at the Airport, or at such other place as STATE may designate in writing.

3. Late Payment; Delinquent Accounts. Without prejudice to any other remedy available to STATE, LESSEE agrees, without further notice or demand, as follows:

a. Interest Charges. In addition to any late or delinquent payment, LESSEE agrees to pay interest to STATE at the rate of twelve percent (12%) per annum, on the outstanding delinquent balance of each of LESSEE's delinquent accounts; and,

b. Service Charge. To pay such charge as may be prescribed by the HAR adopted by the STATE.

4. Delinquent Payment Defined. The term "delinquent payment", as used herein, means any payment of rental, fees, interest or service charges, and other charges or amounts payable by LESSEE to STATE, which are not paid when due, as prescribed in this Article V. (Rental).

5. Accrued Rental, Fees, and Other Charges. The expiration or sooner termination of this Lease by the lapse of time, or otherwise, shall not relieve LESSEE of its obligation to pay any and all rental, fees, interest or service charges, and other charges or amounts accrued during a period in which this Lease is or was in effect, and which are unpaid at the time of any such expiration or termination.

6. Pro Rata Payment. If this Lease terminates without fault of LESSEE on any day other than the last day of any calendar month, the applicable rents, and other charges for said month shall be paid pro rata in the same proportion that the number of days this Lease is in effect for that month bears to the total number of days in that month.

D. Additional Charges. In addition to the right of STATE to charge and collect upon demand interest and service charge fees as provided in this Article V.C.3.a. (Interest Charges) and Article V.C.3.b. (Service Charge) or to terminate this Lease pursuant to Article XX. (Termination by STATE) hereof, STATE may levy on and collect from LESSEE a charge of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per day, paid in legal tender of the United States of America, for each and every day LESSEE is in violation of any of the agreements, covenants, promises, provisions, requirements, reservations, restrictions,

stipulations, terms, or conditions of this Lease; provided, however, that there shall be no levy unless the violation(s) continues beyond the period specified in Article XX. (Termination by STATE) hereof, for remedial action(s); and provided further, that separate charges may be levied by STATE for violations of separate provisions by LESSEE even though the violation(s) may be concurrent. Payment of the additional charges by LESSEE shall be due and payable to STATE on demand and shall bear interest when not paid at the same rate and in the same manner as for unpaid rentals as prescribed and set forth in Article V.C.3.a. (Interest Charges).

E. Return of Prepaid Rental. In the event this Lease is terminated prior to its expiration for any cause except LESSEE's default, all unearned, prepaid rentals received by STATE from or on behalf of LESSEE hereunder shall be returned or refunded to LESSEE.

## ARTICLE VI. RESERVED

## ARTICLE VII. IMPROVEMENTS

A. Acceptance of Premises. LESSEE warrants it has examined and knows of the condition of the Premises, and takes the Premises, "as is", in its existing form, content and state of condition without any representation by or on behalf of STATE, and LESSEE further agrees that STATE shall not be liable for any latent, patent or other defects in, on, over or under, or about the Premises, including easements and appurtenances thereto. By executing this Lease, LESSEE releases and discharges any claims, rights, and actions LESSEE may have with respect to the condition of the Premises.

B. In General. LESSEE shall, at LESSEE's sole cost and expense, prepare the land surface, to the extent applicable, of the demised Premises, construct, erect, and install buildings, structures, utility lines, and other improvements on the Premises for the purposes denoted in Article III. (Use of Premises) herein, subject to all applicable easements and restrictions, if any, as shown and delineated on Exhibit B, attached hereto and hereby made a part hereof, and any and all other covenants, terms, and conditions that may be required or imposed by STATE. The construction, erection, and installation of the Leasehold Improvements must receive STATE's prior written approval and must meet or satisfy applicable County building standards and specifications, STATE, DOH, and FAA rules and regulations.

C. Environmental Report. Prior to the commencement of any construction work at, on, in, or over the Premises LESSEE shall, at LESSEE's sole cost and expense, provide or submit to STATE a Final Environmental Assessment or Final Environmental Impact Statement or other appropriate environmental report, if so required by STATE or another governmental agency. The required assessment, statement, or report shall be prepared by LESSEE or LESSEE's agent and processed through appropriate governmental agencies, including the DOH, for STATE's final written approval at LESSEE's sole cost and expense.

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 LESSEE's Leasehold Improvements at, in, on, over, or under, or about the Premises, shall hereinafter be referred to collectively as "LESSEE's Plans".

2. Properly Licensed. A properly licensed architect or engineer must prepare LESSEE's Plans. Properly licensed contractors must construct, erect, and install LESSEE's Leasehold Improvements.

3. Submittal Deadlines. LESSEE shall submit to STATE, LESSEE's Plans for STATE's prior written approval within four (4) months from the commencement date of this Lease. Prior to any subsequent Leasehold Improvements, LESSEE shall submit to STATE, LESSEE's Plans covering any other portion of the Premises for STATE's review and approval.

4. Compliance with Development Standards. LESSEE shall obtain STATE's prior written approval for LESSEE's Plans and LESSEE's Leasehold Improvements, including all initial and subsequent construction, repair, refurbishment, or installation of improvements at, in, on, over, or under the Premises and 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; (d) meet applicable County building codes, standards, and specifications; and, except as otherwise stated herein, (e) adhere to and completely comply with and satisfy STATE's: (i) Development Standards for Leased Airport Property (Appendix B, Attachment 1); and, (ii) Tenant Improvement Guidelines, Manuals 1 and 2 (Appendix B, Attachment 2), hereinafter referred to collectively as the "Development Standards", all of which are attached hereto and hereby made a part hereof, including any and all subsequent amendments and other design development guidelines adopted by STATE.

5. Plans Reviewed by DCAB. To ensure compliance with the requirements outlined in "Design and Construction Requirements as required under §103-50, Hawaii Revised Statutes dated June 2016 (Appendix B, Attachment 3)", LESSEE shall obtain prior written approval for LESSEE's Plans and LESSEE's Leasehold Improvements, including all initial and subsequent construction, repair, refurbishment, or installment of improvements at, in, on, over, or under the Premises from DCAB.

6. STATE's Approval. STATE shall not unreasonably withhold approval for LESSEE's Plans. STATE may reasonably withhold such approval, including without limitation, if, in the sole discretion of STATE, 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 of Hawaii; or

d. Development Standards Violation. Not in compliance with the Development Standards, including STATE's requirements relating to the development of facilities, which effectively and harmoniously matches the external architecture of other similar portions of the Airport at which the facilities will be constructed, erected, or installed; or

e. Violation of FAA Requirements. Not in compliance with any rule, regulation, or order of the FAA; or

f. Violation of any other Federal Requirements. Not in compliance with any federal law, code, statute, rule, regulation, or order.

7. STATE's Disapproval. If STATE disapproves of LESSEE's Plans, STATE shall give LESSEE written notice of STATE's disapproval, which notice shall state the reason or reasons for STATE's disapproval of LESSEE's Plans. LESSEE shall thereupon prepare and submit to STATE new or revised LESSEE Plans as shall reasonably satisfy STATE's prior disapproval.

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

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

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

c. Materials. LESSEE's Leasehold Improvements and other improvements shall be constructed of prefabricated metal or concrete block, or any similar fireproof material approved, in writing, by STATE, with concrete floors, especially if used for the storage or handling of flammable fluids, chemicals, or lubricants and aircraft servicing and maintenance.

d. Setbacks. Building(s) shall be set back a minimum of ten (10) feet from property lines or in accordance with any other required setback, unless otherwise approved, in writing, by STATE.

e. Utility Lines. Utility lines shall be located above or underground.

f. Grease Traps. Grease traps shall be provided to collect all spills of petroleum products.

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



h. Security Fencing. In the event LESSEE is required to install additional security fencing mandated by federal or State of Hawaii laws, rules, or regulations, LESSEE shall complete the installation of said fencing with the required chain-link fence, and where necessary for airport security purposes, with three (3) strands of barbed wire or with other security walls, barricades, and fencing that meet airport standards, all as approved, in writing, by STATE. 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 LESSEE and lessee of the adjacent property, if there is an adjoining lessee at the time LESSEE constructs, erects, or installs the required fencing. If there is no adjoining lessee, LESSEE shall be responsible for all costs and expenses for the installation of the security fencing. LESSEE's failure to conform to security regulations may subject STATE to a monetary fine, as imposed or prescribed by a government agency. LESSEE shall reimburse STATE for any fines so paid by STATE, or at the sole discretion of STATE, STATE may assess LESSEE the fine and LESSEE shall be liable and shall assume responsibility to pay such fine directly to the citing government agency. Failure of LESSEE to reimburse STATE within thirty (30) calendar days after STATE's demand for reimbursement is made to LESSEE shall be cause for a charge by STATE and/or termination of this Lease as provided in Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof.

i. Height Limitations. All Leasehold Improvements, including all buildings and other improvements and structures on the Premises, shall not exceed the Airport height limitation prescribed by STATE or the FAA or cause a hazard to air safety, as prescribed and set forth in Article XXXVIII. (Approach Protection) hereof or pursuant to any federal, State of Hawaii, or county law, statute, ordinance, rule, or regulation.

j. Signs. Signs bearing 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 LESSEE's Leasehold Improvements. Illuminated, neon, or other similar signs are prohibited. Prior to the erection, installation, or placement of any sign by LESSEE, LESSEE must first obtain STATE's written approval of each sign's design, graphics, color, layout, and method of mounting.

k. Easement. Structures or foundations comprising LESSEE's Leasehold Improvements, including all buildings and other improvements on the Premises, 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 without LESSEE first obtaining STATE's prior written approval.

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

9. Completion of Construction.

a. Leasehold Improvements. LESSEE shall complete the construction and installation of its Leasehold Improvements at, in, on, over, or under the Premises within two (2) years from the commencement date of this Lease.

b. Failure to Complete. STATE may, at its sole discretion, approve an extension of time for LESSEE to complete the construction and installation of its Leasehold Improvements for reasonable, unforeseen delays caused by nature or labor disputes or other reasons deemed acceptable to STATE and outside LESSEE's control; provided, however, that: (1) LESSEE submits a written request to STATE prior to the expiration of the two-year time limit to complete construction and installation of its Leasehold Improvements; and (2) the extension of time is granted, in writing by STATE, and does not exceed a maximum of ninety (90) calendar days in length. If LESSEE fails to completely construct and install its Leasehold Improvements at, in, on, or over the Premises by the deadlines set forth above, STATE may, at its sole discretion, send a written notice of default under this Lease to LESSEE. If LESSEE fails to cure this default as required under this Lease, STATE may terminate this Lease or assess and collect from LESSEE, any and all charges related to defaults under this Lease, including the additional charges under Article V.D. (Additional Charges) and such other charges as may be assessed under the provisions of Article XX. (Termination by STATE) or resort to any other remedy available to STATE or some combination of all remedies.

c. Delay of Completion. Should significant delays occur, which prevent or hinder LESSEE from completing the construction and installation of its Leasehold Improvements at, in, on, or over the Premises, in a timely and reasonable manner, STATE may, at its sole discretion, in writing, waive or reduce the minimum improvements requirement, unless the delay is caused by LESSEE. STATE shall be the sole judge of whether a delay is caused by LESSEE.

d. Removal of Temporary Contractor's/Construction Office Trailer, Shed or Other Structure. LESSEE shall not leave on the Premises, after the two-year limit to construct its Leasehold Improvements, as prescribed herein (or approved extension period), any container, office trailer, contractor's shed, lean-to, shelter, or other structures, construction materials, equipment (including heavy equipment), or parts used during the construction period, nor shall any temporary office trailer, cargo container, or like structures or enclosures be erected, installed, or placed on the Premises for the remaining Lease term, or any portion thereof, without the prior written approval of STATE. Failure by LESSEE to completely abide by or comply with this subsection of this Article VII. (Improvements) shall be a violation of this Lease and shall give STATE the right to assess a charge, and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof.

E. Construction Program.

1. STATE Approval of Leasehold Improvements. Prior to the commencement of any work being done, LESSEE shall obtain STATE's written approval of LESSEE's Plans covering the portion of the Premises upon which such work is to be done and shall obtain all licenses and permits required by any governmental authority (whether federal, State of Hawaii, municipal or county). LESSEE's Plans shall employ optimum essentials of aesthetics, quality of materials and equipment, convenience, function, and design and shall be compatible in such respects with those of the Airport and the Development Standards.

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 the Premises without the prior written approval of STATE and upon such terms and conditions that may be prescribed by STATE in each and every instance.

2. Plans and Specifications. LESSEE shall, at its sole cost and expense, employ competent and properly licensed architects, engineers, and interior designers who will prepare LESSEE's Plans, including, without limitation, architectural, interior, exterior and engineering designs, detailed plans, specifications, and cost estimates of all Leasehold Improvements and Personal Property to be installed at, in, on, over, or under the Premises. LESSEE shall, at its sole cost and expense prior to the start of construction, obtain all necessary licenses and permits required by any governmental authority (whether federal, State of Hawaii, municipal, or county). LESSEE shall submit five (5) sets of LESSEE's Plans for review and approval by STATE in accordance with a time schedule established by STATE.

All of LESSEE's Plans shall be first submitted to STATE and DCAB for written approval before LESSEE awards, issues, or lets any and all contracts for the construction of its Leasehold Improvements and/or enters into any and all contracts for the purchase of any Personal Property to be installed at, in, on, over, or under the Premises.

3. Adherence to LESSEE's Plans. No substantial change, addition, or alteration shall be made in LESSEE's Plans so approved without first obtaining STATE's approval in writing. No Leasehold Improvements or other improvements or Personal Property 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 STATE and any and all terms and conditions relating thereto imposed by STATE 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 the Leasehold Improvements and Personal Property, as approved by STATE, LESSEE shall not make any structural alterations (including, without limitation, ceilings, walls, and floors) to any portion of the Premises without first obtaining STATE's written consent; provided, however, that LESSEE may make nonstructural alterations which LESSEE deems necessary for the conduct of LESSEE'S Operations at the Airport in accordance with Article VII.G.5. (Damage Repair); provided however, that LESSEE reports to STATE such nonstructural alterations and submits to STATE the costs thereof.

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

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



a. Certificate. A certificate certifying that the Leasehold Improvements and Personal Property 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 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 LESSEE and either LESSEE's architect or engineer that such submitted drawings constitute true and accurate representations of the as-built condition of this Leasehold Improvement, and one complete set in Computer Aided Design (CAD) format which complies with STATE's current CAD standards. The construction as-built drawings must include any and all applicable governmental approval or permit numbers, this Leasehold Improvements constructed, erected, installed, or placed by 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. 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 or the Leasehold Improvements.

Failure by LESSEE to submit LESSEE's Plans and/or complete its Leasehold Improvements, or tender such as-built drawings, plans, and specifications and improvement costs within the prescribed times shall constitute a violation of this Lease and give STATE the right to assess a penalty and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof.

c. Field Changes, Updates and Revisions. As construction, erection, installation, or placement of the Leasehold Improvements and Personal Property is later completed, but within the first year of this Lease, a record of the in-place costs, and if requested by STATE, duplicate receipted invoices for all materials and construction and installation costs incurred which LESSEE records as capital expenditures as part of this Leasehold Improvements and Personal Property at, in, on, over, or under the Premises.

F. Title.

1. Leasehold Improvements. Subject to the provisions of Article XIV. (Surrender of Premises) hereof, title to any and all of LESSEE's Leasehold Improvements, including fixed additions and trade fixtures, constructed, erected, installed, or placed by LESSEE, at LESSEE's sole cost and expense, at, in, on, over, the Premises shall remain with LESSEE during the term of this Lease. Title to any and all of the Leasehold Improvements at the expiration or sooner termination of this Lease shall vest, at the sole discretion of STATE, in STATE, free and clear of any and all claims, liens, judgments, and encumbrances. However, at least six (6) months prior to the expiration or earlier termination of this Lease, STATE shall inform LESSEE of any Leasehold Improvements it will not take title to when this Lease expires or terminates. LESSEE shall remove any such Leasehold Improvements within ninety (90) days after the expiration or sooner termination of this Lease. Should LESSEE fail to remove any of the identified Leasehold Improvements that STATE will not take title to within ninety (90) days after this Lease

expires or terminates, STATE may remove the same at the sole cost and expense of LESSEE. Title to any of the Leasehold Improvements not identified by LESSEE in accordance with this Article VII.F.1. (Leasehold Improvements) shall, at STATE's sole option, vest in STATE.

2. Personal Property. Subject to the provisions of Article XIV. (Surrender of Premises) hereof, title to any and all Personal Property constructed, erected, installed, or placed by LESSEE, at LESSEE's sole cost and expense, at, in, on, or over the Premises shall remain in LESSEE during the term of this Lease.

3. Bill of Sale. At the expiration or sooner termination of this Lease, at request of STATE, LESSEE shall without compensation deliver to STATE a bill of sale or other appropriate document evidencing the vesting of title to all Leasehold Improvements in STATE's name, at no cost to STATE; provided further, however, that upon the termination of this Lease, for any reason whatsoever, LESSEE shall comply with any requirement of STATE to remove, at LESSEE's sole cost and expense, all or any portion of the Leasehold Improvements at, in, on, over, or under the Premises, including, without limitation, any building, structure or other improvement erected, constructed, or installed by LESSEE upon the Premises, that STATE requires LESSEE to so remove, in accordance with Article VII.F.1. (Leasehold Improvements).

4. Sale of Trade Fixture or Personal Property. If LESSEE expects to, contemplates, or could sell, transfer, or convey title to an interest in any trade fixture or any Personal Property purchased by, used, and installed by LESSEE at LESSEE's own expense upon the Premises, as part of any assignment of this Lease, it shall be LESSEE's sole responsibility to submit to STATE evidence of the item and the purchase price paid by LESSEE for such trade fixture within thirty (30) calendar days from said purchase. LESSEE's failure to submit the necessary information and evidence to STATE within the prescribed time limit will discharge STATE from any obligation or duty to consider the adjusted depreciated cost of any said trade fixture, or other Personal Property, in a lease assignment or transfer pursuant to Article XXX. (Assignment and Subletting) hereof.

G. LESSEE's Maintenance and Repair.

1. LESSEE's General Obligations. 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, inside and outside paved and unpaved areas, landscaping, glass of every kind, and utility, mechanical, electrical and other systems; and (f) all areas within the Premises, particularly those adjacent to the entrances and exits, including keeping them free of obstructions. 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 any and all Leasehold Improvements made during this Lease term, in as good condition as at the time of the construction or installation thereof, ordinary wear and tear excepted, which does not adversely affect the structural integrity of, or materially and adversely affect the efficient or proper utilization of, any part or portion of the Premises.

2. Preventative Maintenance. To accomplish this requirement, LESSEE shall establish an adequate preventative maintenance program and the provisions of LESSEE's program shall be subject to periodic review and approval by STATE.

3. Refurbishment. Refurbishing shall include, without limitation, all refinishing, repairs, replacement, redecorating, and painting necessary to keep and maintain the Premises in a first-class condition.

4. Failure to Comply. If LESSEE fails to properly perform and complete its maintenance, repair, and refurbishment obligation hereunder, particularly with respect to nonstructural repairs, replacement, redecorating, and painting, within a period of ten (10) calendar days after LESSEE receives written notice from STATE of such failure by LESSEE, STATE may, at its option, and in addition to all other remedies which may be available to STATE, repair, replace, rebuild, redecorate, or paint any portion of the Premises included in said notice from STATE to LESSEE, and the cost thereof, plus fifteen percent (15%) for administrative overhead, shall be paid by LESSEE to STATE upon demand from STATE.

5. Damage Repair. 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 LESSEE, LESSEE's officers, employees, agents, and Guests. Any and all structural repairs, alterations, and additions to be made by the LESSEE to, at, in, or on the Premises, and any and all other such work which is non-structural and costs \$1,000.00 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 STATE.

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

7. Safety Equipment. 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.



8. STATE's Security Fence. If STATE erects any security fence that connects to or runs along the LESSEE's Premises, LESSEE shall, at its sole cost and expense, maintain all portions of said security fence designated by the STATE. LESSEE shall also maintain security in such a manner that unauthorized persons shall not have access to any secured or restricted areas of the Airport, including all AOA through the Premises, and LESSEE's officers, employees, agents, and Guests, and any other party acting on behalf of or with the permission of LESSEE shall be under the control, supervision, or guidance of LESSEE when entering any such secured or restricted areas of the Airport, including all AOA. LESSEE shall enter into any separate supplemental agreement required by STATE or TSA covering Airport security requirements. LESSEE's failure to observe any Airport security requirement shall constitute a violation of this Lease and give STATE the right to assess a penalty and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof.

9. Sidewalks. LESSEE shall clean and maintain, and repair, if damaged by LESSEE, and/or LESSEE's officers, employees, agents and/or Guests, any and all sidewalks, or any part or portion thereof, abutting the Premises.

10. Landscaping. LESSEE shall maintain and properly care for any and all landscaping at, in, on, or over 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. 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 or equipment, vehicle parts, and machinery that are unsightly, dangerous, in disrepair, unclean, or inoperative.

H. Minimum Investment in Improvements. LESSEE shall, within two (2) years of the date of commencement of the Lease, invest the sum of not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) for upgrading and improving the Premises and constructing its Leasehold Improvements, and shall submit within such time to STATE 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 LESSEE's itemized cost statement shall be due and delivered to STATE no later than thirty (30) days after completion of such subsequent renovations, additions, or alterations.

Failure by LESSEE to observe the requirements of Article VII.H. (Minimum Investment in Improvements) within the two (2)-year limit for the initial upgrade, improvement, and construction, unless extended by STATE, and the thirty (30)-day limit for subsequent renovation, addition, or alteration shall constitute a violation of this Lease and give STATE the right to assess a charge and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof.

## ARTICLE VIII. GENERAL RIGHTS AND RESPONSIBILITIES OF LESSEE

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

A. Commercial Aeronautical Activities. Unless otherwise stated herein, LESSEE shall have the right to perform commercial aeronautical activities as stated in Article III. (Use of Premises); provided, however, that LESSEE shall comply with and conducts such activities in accordance with STATE's Minimum Standards for Commercial Aeronautical Activities at Public Airports, Airports Division Procedure No. 4.9, dated May 3, 1990, attached hereto as Appendix B, Attachment 4 and hereby made a part hereof, including any and all amendments, changes, revisions, updates, or supplements made thereto and adopted by STATE after the commencement date of this Lease.

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

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) and at such other location(s) at, in, or on the Airport, if any, as may be requested by LESSEE and consented to in writing by STATE.

In the event that STATE constructs or installs, or hereafter voluntarily and not at the request of LESSEE constructs or installs upon the Premises or elsewhere at the Airport, conduits, ducts, or other facilities and appurtenances and equipment for use in common by aircraft operators (including LESSEE) for the installation of wires, cables, pneumatic tubes, or similar communication connections, LESSEE may use such conduits, ducts or other facilities, appurtenances, and equipment for the purpose for which they are provided, if and to the extent that space therein is available, and subject to rules promulgated by STATE, upon payment of any rental, charge, or fee for the use of such conduits, ducts, facilities, appurtenances, and equipment, as STATE may prescribe; and provided that 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 STATE, and any other cost in connection with the aforesaid installations; and provided, further, that 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 LESSEE's acts or omissions or those of LESSEE's officers, employees, agents, or Guests.

LESSEE shall also have the right to use rights-of-way at locations hereafter designated, in writing, by STATE and with the prior written consent of STATE either for the exclusive use of LESSEE or for use in common with others. LESSEE, with the prior written consent of the STATE, 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, 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 LESSEE for its exclusive use elsewhere at the Airport.

LESSEE shall pay a reasonable rental for the use of such conduits, ducts, pipes, wires, cables, installations and facilities, easements, and rights-of-way.

C. Architects, Contractors, and Builders. LESSEE shall have the right to employ such architects, contractors, or builders as 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. Other Activities. LESSEE shall also have the right to do and perform any of the things described in or authorized pursuant to Article III. (Use of Premises) and Article VIII. (General Rights and Responsibilities of LESSEE) hereof.

#### ARTICLE IX. TAXES

A. Taxes and Assessments. LESSEE shall pay in full any and all taxes and assessments levied or assessed upon LESSEE or the Premises, including, but not limited to, LESSEE's federal income taxes, State of Hawaii income and general excise taxes, and County real property taxes, before the delinquent date thereof, and, subject to the provisions of Article XX.A.11. (Failure to Pay Taxes) hereof, LESSEE shall release, indemnify, defend, keep, save, insure, and hold STATE and the Premises harmless against any and all attachments, claims, or liens related to or connected with such taxes, charges, or assessments and all expenses resulting therefrom, including reasonable attorney's fees. LESSEE shall have the right to contest the amount or validity of any such tax, charge, and/or assessment by appropriate legal proceedings in LESSEE's own name.

B. Tax Clearances. LESSEE shall, upon demand by STATE, present evidence, such as tax clearances from the respective tax offices, to STATE, demonstrating LESSEE's payment of all applicable federal, State of Hawaii, and County taxes prior to the commencement date of this Lease and for any other year or series of years during the term of this Lease.

#### ARTICLE X. PROHIBITED ACTS

LESSEE shall not perform any service nor use the Premises for any purpose not enumerated in Article III. (Use of Premises) hereof, or not authorized pursuant thereto.

A. Nuisance. 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 at, on, in, or over the Premises and shall not do or permit to be done anything, which may result in the

creation or commission or maintenance of any such nuisance on the Premises. Further, 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. Illegal Acts. LESSEE shall not use the Premises, or any part or portion thereof, or permit the same to be used by any of LESSEE's sublessees, tenants, officers, employees, agents, and/or Guests for any illegal act or purpose.

C. Discrimination. LESSEE shall not use the Premises in support of any policy, which discriminates against anyone based upon race, creed, color, national origin, sex, age, or a physical disability.

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

E. Security. LESSEE shall not allow entry to the AOA of the Airport or any other secured or restricted areas of the Airport through the Premises by any unauthorized persons and ground vehicles.

F. Lodging. The Premises may not be used as a hotel, motel, inn, hostel, bed and breakfast, temporary or legal residence or any similar boarding or lodging.

G. Alcoholic Beverages. The consumption of alcoholic beverages by anyone at, in, or on the Premises is prohibited at all times.

H. Interference. 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 in and to the Premises or public areas adjacent thereto, or in the streets or sidewalks adjoining the Premises.

I. Overload. LESSEE shall not overload any floor, or place loads upon any floor, wall, or ceiling of any building or other structure situated at, upon, or within the Premises that may endanger such building or other structure.

J. Obstruction. LESSEE shall not obstruct any sidewalk, walkway, or passageway in front of, within, or adjacent to the Premises.

K. Effect on Insurance. 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 STATE, if any, covering the Premises, together with any and all buildings and other structures and improvements situated thereon. 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 Hawaii; (2) any and all present and future rules and regulations of STATE and the Airport; (3) any and all present and future laws, statutes, orders, decisions, rules, and regulations of 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 STATE and LESSEE, which may pertain or apply to the Premises and LESSEE's use of and operation upon the Premises and Airport.

L. Vending Machines. LESSEE shall not install, maintain, operate, or permit the installation, maintenance, or operation of any currency, coin, token, or credit card-operated vending machine or device, for the purpose of vending or providing any product (including food and beverage items) or service (for the purposes hereof, amusement or entertainment shall be deemed a service) upon any part or portion of the Premises or the Airport without the prior written approval of STATE. Vending machines include, but are not limited to, newspaper racks, and any currency and coin, or token operated devices.

LESSEE shall further observe, comply with, and abide by that certain Settlement Agreement, dated July 28, 1993 (as amended by Amendment 1 dated May 31, 1995 and Amendment No. 2 dated August 1, 2012), made by and among the Hawaii State Committee on Blind Vendors, the Hawaii Blind Vendors Association, Walter Ishikawa, Charlotte Kauhana, Esrom Nihoa, Yoshiko Nishihara, Mirian Onomura, Clyde Ota, Alice Schaar, Warren Toyama, Filo Tu, and Jeanette Tu, the Department of Human Services, State of Hawaii, and the Department of Transportation, State of Hawaii, together with the attached Schedules and Exhibits, hereinafter collectively referred to as the "Blind Vendors Agreement", which Blind Vendors Agreement is hereby incorporated herein and made part of this Lease by this reference, affecting the installation and operation of other vending machines, which LESSEE may desire to have and use on the Premises or at the Airport.

M. Promotional Medium Restriction. 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.

N. Distribution of Handbills. LESSEE shall not distribute handbills or promotional circulars to patrons of the Airport, or engage in any other advertising at, upon, or within the Airport (except as may be specifically permitted under this Lease).

O. Recruitment. LESSEE shall not engage in any activity outside the Premises within Airport property for the recruitment or solicitation of business.

P. Injury to Reputation. LESSEE shall not act or permit acts to be done that will injure the reputation of STATE, the Airport, or the appearance of the Airport. LESSEE shall not, without the prior written consent of STATE, reference STATE or the Airport for any purpose other than the address of the business to be conducted by LESSEE at, in, on, or over the Premises, nor shall LESSEE do or permit anything in connection with LESSEE'S Operations or advertising which in the judgment of STATE may reflect unfavorably on STATE or the Airport, or confuse or mislead the public as to the relationship between STATE and LESSEE.



## ARTICLE XI. SIGNS

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

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

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

3. Submit Drawings. Prior to the erection, construction, or placing of any such signs or displays, LESSEE shall submit to STATE, for STATE's review and approval in writing, drawings, sketches, design dimensions, type, and character of the proposed sign(s) or display(s). Any conditions (including a requirement that such sign(s) or display(s) be multilingual), restrictions, or limitations imposed by STATE, as part of STATE's written approval, shall become conditions on the use of such 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, LESSEE, if requested by STATE, 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 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 STATE. If LESSEE fails to so remove, obliterate, or paint out each and every sign, poster, piece of advertising, display, or similar device in a manner satisfactory to STATE after being so requested by STATE, STATE may perform such removal work, and LESSEE shall immediately pay to or reimburse STATE for any and all costs and expenses so incurred by STATE, upon demand from STATE.

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. LESSEE and LESSEE's officers, employees, agents, and Guests, 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 Airport area to or from which such persons shall reasonably require ingress or egress, in such manner, upon such terms, and at such locations as STATE may from time to time designate; provided, however, that the

aforementioned right of ingress and egress, as it applies to the suppliers of any flammable fuel or other such products or materials, shall be subject to the prior written permission of STATE.

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

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

D. LESSEE's Release. LESSEE hereby releases and discharges STATE and STATE'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 LESSEE may now, or at any time hereafter, have against STATE and STATE'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 Airport.

E. No Rent Relief. LESSEE in entering into this Lease with STATE recognizes STATE's right and responsibility to provide convenient and efficient public access and thoroughfare and, therefore, acknowledges STATE's right to adjust, amend, alter, or otherwise revise pedestrian and vehicular traffic patterns in the best interest of the operation of the Airport as determined by STATE. LESSEE shall have no claim for any rebate or adjustment of rents or fees owed to STATE for any changes that may arise as a result of STATE's adjustment or revision to pedestrian and vehicular traffic routes on the Airport.

### ARTICLE XIII. LIABILITY AND INDEMNITY

A. Assumption of Risk. The use of the Airport and the Premises by LESSEE and LESSEE's officers, employees, agents, and Guests, in common with others, shall be at the sole risk of LESSEE.

B. Indemnity. STATE shall not be liable for and LESSEE shall protect, defend, save, hold harmless, release, and indemnify the STATE, STATE's officers, employees, agents, guests and STATE's successors and assigns, and State of Hawaii's directors, officers, agents, elected officials, boards (including the Land Board), and employees, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses, including, without limitation, costs of suit and fees directly related thereto and reasonable attorney's fees, claimed by anyone by reason of actual or alleged injury to or death of persons, including, but not limited to, actual or alleged work-related injuries or death suffered by employees of the LESSEE, or actual or alleged damage to or destruction of property, including, but not limited to, property of the LESSEE, sustained in, on, over, under, or about the Premises or the Airport, as a result of or related to the LESSEE's use and occupancy of the Premises or use of any other portions of the Airport or any act or omission of the LESSEE or the LESSEE's agents, officers, employees, and Guests.

This provision shall not be construed to be a limitation of any other indemnity by the LESSEE as may be contained in Article XV.B.6. (LESSEE's Indemnification), or Article XV.C.13. (Release and Indemnity), or Article XXVIII. (Litigation), or anywhere else within this Lease.

C. LESSEE's Release. LESSEE does hereby release, without limitation, STATE and STATE's officers, employees, agents, and guests and STATE's successors and assigns, and State of Hawaii's directors, officers, elected officials, boards (including the Land Board), from any and all actions, causes of action, claims, damages, demands, judgments, liabilities, losses, suits, costs, and expenses, including attorneys' fees and other legal or court costs, and demands therefor, that may arise during the term of this Lease from damage to or destruction of LESSEE's property that is not the result of, or caused by the sole negligence of STATE or STATE's officers, employees, agents, contractors, invitees, and guests, and STATE's successors and assigns, and State of Hawaii's directors, officers, elected officials, boards (including the Land Board), employees, and agents.

#### ARTICLE XIV. SURRENDER OF PREMISES

A. In General. LESSEE shall yield and deliver peaceably to STATE 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 Leasehold Improvements, as at the time of the installation or construction of such Leasehold Improvements, excepting reasonable wear and tear arising from the use of the Premises to the extent permitted elsewhere in this Lease and damage resulting from causes over which LESSEE had no control. The Premises shall be clean and clear of any and all trash, debris, abandoned items, trade fixtures, equipment, appliances, furniture, junk and other similar and like items. All gates, doors and locks shall be secured, and the keys turned in to STATE.

LESSEE shall have the right at any time during this Lease to remove, and if so directed by STATE, shall remove from the Premises, on or before the expiration or sooner termination of this Lease, all of LESSEE's Personal Property, and any Leasehold Improvements deemed by STATE 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 Airport, and in the event of any such damage, LESSEE agrees, at its sole cost and expense, to repair the same.

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 this Lease and as further described in Article XV.C. (Compliance with Environmental Matters) hereof. If LESSEE fails or neglects to so properly remove, STATE, at its sole option in any combination or selection, may either: (1) remove and dispose of the same and charge the cost of such removal and disposal to LESSEE, which cost 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, and charge LESSEE the proportionate rental fee, based upon the then current rental values at the Airport for the thirty (30)-day period, which rental fee the LESSEE hereby agrees to pay.



B. Hold Over. In the event LESSEE shall, with the consent of STATE and Land Board, if required, hold over and remain in possession of the Premises after the expiration or sooner termination of this Lease, such hold 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, including LESSEE's payment of the rentals and fees existing immediately prior to the holding over, except that: (1) payment shall be due and payable in advance on the first day of each month; and (2) STATE may, upon thirty (30)-day advance written notice, after the hold over commences, amend and/or increase the rentals and fees payable by LESSEE to the comparable charges at, in, or on the Airport at that time.

C. Environmental Compliance prior to LESSEE's Surrender. LESSEE shall observe, comply with, and completely satisfy all of the Environmental/Hazardous Substances requirements prescribed and set forth in Article XV.C. (Compliance with Environmental Matters) hereof, prior to returning the Premises to the control and jurisdiction of STATE.

#### ARTICLE XV. COMPLIANCE WITH LAWS

A. In General. LESSEE and LESSEE's officers, employees, agents, and Guests shall, 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 of Hawaii, 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 Airport; (2) all phases of LESSEE's conduct of LESSEE's Operations; (3) LESSEE's maintenance and repair of the Premises; and (4) LESSEE's performance under this Lease.

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

Notwithstanding the foregoing covenants, provisions, and requirements, LESSEE shall have the right, in its own name, to contest, in good faith, the validity or applicability of any law, statute, code, ordinance, order, decree, rule, or regulation of any governmental body or agency pertaining to the Premises and LESSEE's conduct of LESSEE's Operations thereon. The fact that LESSEE may, in connection with such contest, refrain from complying with such law, statute, code, ordinance, order, decree, rule, or regulation, shall not affect in any way LESSEE's obligation to: (1) refrain from subjecting any part or portion of the Premises to forfeiture or loss; and (2) pay the required rentals and other fees and charges prescribed and set forth in Article V. (Rental) hereof.

B. Compliance with Americans with Disabilities Act.

1. LESSEE's Warranty. LESSEE agrees that it shall conduct LESSEE'S Operations and occupy or use the Premises in accordance with: (a) the ADA, including, without limitation, modifying the LESSEE's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons; and (b) the ADAAG.

2. Accessible Services. 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. LESSEE shall provide the services or conduct LESSEE's Operations as specified in this Lease in a manner that complies with the ADA and any and all other applicable federal, State of Hawaii, and local disability rights legislation. LESSEE agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Lease and LESSEE further agrees that any violation of this prohibition on the part of LESSEE, and LESSEE's officers, employees, agents, Guests, successors, and assigns shall constitute a material breach of this Lease.

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

4. ADA Audit. LESSEE shall conduct and complete, at LESSEE's sole cost and expense, an audit as required under the ADA identifying and describing the architectural barriers to disabled access which must or should be removed, which audit shall be subject to STATE's review and approval. LESSEE agrees to remove, at LESSEE's sole cost and expense, all such barriers identified and described in the audit approved by STATE.

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

6. LESSEE's Indemnification. LESSEE shall release, indemnify, defend, keep, save, and hold STATE and STATE's officers, employees, agents, and guests and STATE's successors and assigns, and State of Hawaii's directors, officers, elected officials, boards (including the Land Board), harmless from and against any and all actions, causes of action, claims, demands, lawsuits, judgments, liabilities, losses, damages, costs, and expenses, including any and all attorneys' fees and demands therefor, resulting or arising from LESSEE's failure or alleged failure to observe, comply with, and completely satisfy LESSEE's obligations hereunder with respect to the ADA and the ADAAG.



This provision shall not be construed to be a limitation of any other indemnity by the LESSEE as may be contained in Article XIII.B. (Indemnity), or Article XV.C.13. (Release and Indemnity), or Article XXVIII. (Litigation), or anywhere else within this Lease.

C. Compliance with Environmental Matters.

1. Compliance with Environmental Laws. LESSEE agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to its occupancy, activities, operations, and use of the Premises that is the subject of this Lease. 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 Environmental Laws shall constitute a violation of this Lease and gives the STATE the right to assess a penalty and/or terminate this Lease, pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE) and take any other action at law or in equity it deems appropriate.

2. Hazardous Substances. LESSEE shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substance, or allow the same by any of its officers, employees, agents, Guests, or successors and assigns, on, in, over, under, or about the Premises without first obtaining prior written consent of STATE, which consent may be withheld by the STATE at its sole discretion, and comply with all Environmental Laws, including giving all required notices, reporting to, and obtaining licenses and permits required by any government authority (whether federal, State of Hawaii, municipal, or county), from all appropriate authorities, and complying with all provisions of this Lease.

3. Notice to STATE. LESSEE shall keep STATE fully informed at all times regarding all matters related to any Environmental Laws affecting the LESSEE or the Premises. This duty shall include, but not be limited to, providing the STATE with a current and complete list and accounting of all Hazardous Substances of every kind which are present on, in, over, under, or about 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 of Hawaii or county authority under any authority or Environmental Laws. LESSEE shall provide said list and accounting at the commencement of this Lease and shall update said list and accounting whenever any Hazardous Substance not accounted for by LESSEE is present on the Premises by any means. LESSEE shall also 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 so, communicated in any way to the LESSEE by any federal, State of Hawaii or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to STATE shall include copies of all written communications from any federal, State of Hawaii or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by LESSEE. At least thirty (30) days prior to termination of this Lease, or termination of the possession of the Premises by LESSEE, whichever occurs first, LESSEE shall provide the STATE with written evidence satisfactory to STATE that 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 STATE pursuant to Article XV.C.5 (Environmental Investigations and Assessments), or by any governmental agency responsible for enforcement of the Environmental Laws.

4. Disposal/Removal. Except for the possession and handling of Hazardous Substances for which the LESSEE is exempt, and those Hazardous Substances for which LESSEE has obtained all currently required licenses and permits to store or use certain Hazardous Substances on or about the Premises, including written permission from STATE, 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. LESSEE shall provide STATE 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.

5. Environmental Investigations and Assessments. 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 Substance on, in, or under the Premises as may be directed from time to time by the STATE, in its sole discretion, or by any federal, State of Hawaii or county agency or authority. The extent and number of any environmental investigations and assessments, including all testing and analyses incident thereto, shall be determined by STATE or the federal, State of Hawaii or county agency or authority directing said investigations and assessments to be conducted. LESSEE shall retain a competent, certified and qualified person or entity that is satisfactory to the STATE or governmental authority, as the case may be, to conduct said investigations, assessments, testing and analysis incident thereto. LESSEE shall direct said person or entity conducting those assessments, investigations, tests and analyses to provide STATE or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide to STATE and government authority with the written results of all assessments, investigations, tests, and analyses on said samples upon completion of said testing.

In any event, LESSEE shall be required to have environmental assessments conducted as aforesaid prior to, or at the time of, 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. STATE may, at its sole discretion, waive this requirement, provided, however, that any such waiver shall be in writing.

6. Hazardous Substances Baseline for Premises. LESSEE shall establish, at its sole cost and expense, a Hazardous Substances baseline acceptable to STATE. The Hazardous Substances baseline shall consist of the following reports: (a) Phase 1 Baseline Environmental Site Assessment Report, hereinafter referred to as the "Phase 1 Baseline Report"; and (b) if necessary, a Phase 2 Baseline Environmental Site Assessment Report, hereinafter referred to as the "Phase 2 Baseline Report", both of which must be acceptable to STATE, as necessary, and must cover the Premises at the Airport. Both the Phase 1 Baseline Report and the Phase 2 Baseline Report must be handled, prepared, and certified by a qualified, professional person(s), or firm experienced in environmental investigation, assessment, clean-up, decontamination, and remediation matters relating to

Hazardous Substances. LESSEE shall: (a) submit to STATE the name, address, and qualifications of the qualified, professional person(s) or firm, together with a scope of work; and (b) obtain STATE's prior written approval (which shall be at STATE's sole discretion) before permitting such person(s) or firm to commence work hereunder. The Phase 1 Baseline Report must consist of and include a study and evaluation of: (a) measurements taken, and the assessment of the presence and impact of any and all Hazardous Substances at, in, on, over, or under the Premises; and (b) the storage, escape, disposal, discharge, spillage, or release of Hazardous Substances therefrom, if any, caused or permitted by the previous lessee, tenant, licensee, permittee, or user of the Premises. The Phase 1 Baseline Report shall be completed and delivered to STATE not more than thirty (30) calendar days after the commencement of this Lease. The Phase 2 Baseline Report, if necessary, shall be completed and delivered to STATE not more than sixty (60) calendar days after the commencement of this Lease. The foregoing baseline environmental site assessment reports are hereinafter referred to collectively as the "Hazardous Substances Baseline." If the Hazardous Substances Baseline is acceptable to STATE, at the expiration or sooner termination of this Lease, STATE will only hold LESSEE responsible for the clean-up, decontamination, remediation, and/or removal of any and all Hazardous Substances at levels in excess of the Hazardous Substances Baseline; provided, that LESSEE was not the previous lessee, tenant, licensee, permittee, or user of the Premises.

7. Closure Report. Immediately prior to the expiration or sooner termination of this Lease, LESSEE shall, at LESSEE's sole cost and expense, conduct, and prepare a thorough Environmental Site Assessment Closure Report that shall be prepared, handled, and certified for LESSEE by a qualified, professional firm or person(s) acceptable to STATE and experienced in environmental investigation, clean-up and remediation matters relating to Hazardous Substances. LESSEE shall submit the name, address, and qualifications of the qualified firm or person(s), together with a scope of work, to STATE for STATE's prior written approval, which approval shall be at STATE's sole discretion. The Environmental Site Assessment Closure Report shall be subject to STATE's prior written approval, and shall contain a study and evaluation of, measurements taken at, and assessment of the impact and presence of any and all Hazardous Substances, at, in, on, over or under the Premises at the Airport, and the escape, disposal, discharge, spillage, and release of Hazardous Substances therefrom, caused or permitted by LESSEE. This report shall be delivered to STATE at least forty-five (45) business days prior to the expiration or sooner termination of this Lease.

8. No Waiver; LESSEE's Liability and Obligation and Duty to Perform. The conduct, preparation, and delivery of any environmental site assessment report including any Hazardous Substances Baseline, as required by Article XV.C.6. (Hazardous Substances Baseline for Premises), and Environmental Site Assessment Closure Report, as required by the preceding Article XV.C.7. (Closure Report), shall not waive or diminish LESSEE's liability, obligation, and duty to perform, at LESSEE's sole cost and expense, any and all environmental clean-up, decontamination, detoxification, remediation, or removal work due to the escape, disposal, discharge, spillage, or release of Hazardous Substances caused or permitted by LESSEE during the conduct or preparation of such reports or the conduct of LESSEE'S Operations at, in, on, or over the Premises at the Airport up to the day of expiration or sooner termination of this Lease.



9. Remediation. In the event that any Hazardous Substance is used, stored, treated, disposed on the Premises, handled, discharged, released, or determined to be present on the Premises, LESSEE shall, at its sole expense and cost remediate the Premises of any Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with Article XV.C.4. (Disposal/Removal) herein. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the STATE to the LESSEE to remediate Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is satisfactory to STATE and all other governmental authorities, as the case may be. If LESSEE conducted an initial baseline site assessment of the Premises which includes soil and ground water analyses for Hazardous Substances at the commencement of this Lease or at LESSEE's occupancy of the Premises, whichever shall have first occurred, to the satisfaction of the STATE, and established a Hazardous Substances Baseline, LESSEE shall be responsible for remediation and restoration of the Premises to the extent it is necessary to remediate and restore the Premises to the condition that existed on the Premises at the commencement of this Lease or at LESSEE's occupancy of the Premises, whichever shall have first occurred, as shown by said initial Hazardous Substances Baseline.

10. Restoration and Surrender of Premises. LESSEE hereby agrees to timely surrender the Premises upon termination of this Lease and, prior thereto, shall restore the Premises, 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 STATE, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of LESSEE. This duty to restore the Premises includes remediation as described in Article XV.C.9. (Remediation). This duty 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 LESSEE does not timely restore the Premises to a satisfactory condition, as determined by STATE, LESSEE understands and agrees that STATE may exercise its rights under Article XV.C.12. (STATE's Right to Act) and until such time as the restoration is complete to the satisfaction of STATE, 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 STATE may have incurred, including penalties, fines and assessments related to the Premises which may be imposed on the STATE or LESSEE by any governmental authority.

11. Tanks, Pipelines, Inspections and Repairs. Unless STATE 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" individually or "Facilities" collectively), that 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. LESSEE shall provide STATE with prior notice of LESSEE's intent to install a Facility to allow STATE ample time, as determined by STATE, 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 STATE. Within ninety (90) calendar days of the commencement of this Lease, or commencement of possession of the Premises by LESSEE, whichever first occurs, LESSEE shall submit to STATE 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 STATE. LESSEE shall also submit to STATE a plan for 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 STATE. 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 all required permits, licenses or approvals shall constitute a breach of this Lease, giving STATE the right to immediately terminate this Lease, take possession of the Premises, and pursue any other remedy available to STATE.

12. STATE's Right to Act. In the event 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 STATE, STATE shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. LESSEE hereby grants access to the Premises at all reasonable hours to STATE, its agents and anyone designated by STATE, in order to perform said acts and duties. Any cost, expense or liability of any type that may be incurred by STATE in performing said acts or duties shall be the sole responsibility of LESSEE and LESSEE hereby agrees to pay for those costs and expenses and release, indemnify, defend and hold harmless STATE, its directors, officers, elected officials, boards (including the Land Board), employees, agents, any person acting for or on behalf of STATE, and STATE's successors and assigns, for any liability incurred. This obligation shall extend to any costs and expenses incident to enforcement of STATE's right to act, including litigation costs, attorneys' fees and the costs and fees for collection of said cost, expense or liability.

13. Release and Indemnity. LESSEE hereby agrees to release STATE, its directors, officers, employees, agents, boards (including the Land Board), any person acting for or on behalf of STATE, and its successors and assigns, from liability of any kind, including, but not limited to, any liability for alleged or actual damages, penalties, fines, judgments or assessments that may be imposed or obtained by any person, agency or governmental authority against LESSEE or STATE by reason of any Hazardous Substance that may be present by whatever means on, in, over, under, about, or emanating from the Premises. LESSEE hereby agrees to release, indemnify, defend with counsel acceptable to STATE, insure and hold harmless STATE, its directors, officers, employees, agents, guests, elected officials, boards (including the Land Board), any person acting for or on behalf of STATE, and its successors and assigns, from any liability that may arise in connection with, or by reason of, any alleged or actual occurrence involving any Hazardous Substance that may be connected to, or related in any way with, the LESSEE's Operations, the Premises, STATE's ownership of the Premises, or this Lease, including the presence or alleged presence of any Hazardous Substance in, on, over, under, about, or emanating from the Premises. The parties understand and agree that the intent of this indemnification agreement includes, but is not limited by, those agreements authorized by 42 U.S.C. Section 9607(e) (1), as amended, and any successor section thereof.



LESSEE further agrees to release, indemnify, defend and hold harmless STATE from any fines or penalties, assessed pursuant to any federal or State of Hawaii laws or regulations against STATE as an owner or operator of a Facility or of the Premises, for LESSEE's failure to have, maintain, or comply with any permit or plans due to LESSEE's storage of oil or petroleum, including the Spill Prevention Control and Countermeasure Plan or a Facility Response Plan, if required under 40 CFR Part 112, the Clean Water Act, or any other federal or State of Hawaii laws or regulations.

This indemnity provision shall not be construed to be a limitation of any other indemnity by the LESSEE as may be contained in Article XIII.B. (Indemnity), or Article XV.B.6. (LESSEE's Indemnification), or Article XXVIII. (Litigation), or anywhere else within this Lease.

14. Spill Prevention, Control and Countermeasure. In accordance with the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. Section 1251, et seq.; and Title 40, CFR, Part 112 often referred to as the Spill Prevention, Control and Countermeasure (hereafter "SPCC") Plan regulation, LESSEE agrees at its sole expense and cost to comply with and completely satisfy SPCC rules now or hereafter adopted, amended, or published, throughout the entire term of this Lease. If LESSEE stores oil, or petroleum products or by-products in any quantity of less than 1,320 gallons, but has in or on the Premises, at least one or more storage containers or tanks equal to or larger than 55 gallons capacity, LESSEE is required to prepare and implement a written plan which conforms to the SPCC Plan requirements under 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 maintaining all records pertaining to such matters.

15. National Pollutant Discharge Elimination System. In accordance with the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. Section 1251, et seq.; and the requirements contained in the National Pollutant Discharge Elimination System (hereafter "NPDES") regulations found in the HAR Chapter 11-55 and the Appendices thereto, as amended, LESSEE shall obtain a Notice of General Permit Coverage by applying for general permit coverage and shall comply with and completely satisfy all of the NPDES regulations governing general permits and consolidated permits, if applicable, now or hereafter adopted, amended or published throughout the entire term of this Lease.

16. Burden of Proof. In all instances covered in this Article XV.C. (Compliance with Environmental Matters), LESSEE accepts the burden of establishing that it is not responsible for the existence of Hazardous Substances on the Premises. If LESSEE cannot establish that it is not responsible for the existence of Hazardous Substances on the Premises, LESSEE shall be deemed responsible for the existence of the Hazardous Substance.

D. Airport Security. In addition to the Airport security requirements prescribed in Article VII.D.8.h. (Security Fencing), Article VII.G.8. (STATE's Security Fence), and Article X.E. (Security), LESSEE shall observe, comply with, and completely satisfy all of the security requirements for the Airport, and any and all applicable security access procedures, rules, and/or regulations prescribed by STATE, TSA, FAA, or other federal agency. LESSEE

accepts liability and responsibility for failing to prohibit unauthorized persons and vehicles from entering any restricted AOA through the Premises.

1. Security Agreements. LESSEE shall enter into security agreements with STATE that may be required by the TSA, FAA, or other federal agency for Airport security purposes, and said agreements shall become part of this Lease, and the agreements, covenants, promises, provisions, requirements, terms, and conditions contained herein, although executed separately.

2. LESSEE to Maintain Security. LESSEE shall also maintain security in such a manner that unauthorized persons shall not have access to any secure or restricted AOA through any part(s) or portion(s) of the Premises. Agents, Guests, or any other party acting with the permission or consent of LESSEE, shall be under the control, supervision, or guidance of LESSEE when entering any secure or restricted AOA. LESSEE shall enter into any separate supplemental agreement required by STATE, TSA, FAA, or other federal agency that covers Airport security requirements to ensure the protection of the Airport.

3. Failure to Prevent Violations. LESSEE accepts liability and responsibility for: (a) LESSEE's failure to observe, comply with, and completely satisfy any and all Airport security requirements and applicable security access procedures, rules, or regulations prescribed by STATE, TSA, FAA or other federal agency; (b) LESSEE's failure to prohibit unauthorized persons and vehicles from entering the Airport's restricted AOA through any part(s) or portion(s) of the Premises; and (c) any and all reimbursements to STATE wherein STATE has made direct payments to any citing authority of any fines or penalties for any and all Airport security violations by LESSEE and LESSEE's officers, employees, agents, or Guests. Failure on the part of LESSEE to observe, comply with, and completely satisfy this security requirement shall give STATE cause to assess a charge and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof.

E. Airport Fire. LESSEE shall observe, comply with, and completely satisfy all County, State of Hawaii, and federal fire codes, and shall be solely responsible for and pay any fines or penalties levied for any and all fire code violations. LESSEE shall also, at its sole cost and expense, provide and install connections and hook-ups to the Airport alarm system, when STATE establishes such a system. STATE's alarm system shall serve as a secondary fire alarm monitoring and indication system. LESSEE, and LESSEE's officers, employees, agents, representatives, Guests, and sublessees, are solely responsible for the primary notification and alarm to the appropriate Fire Department Station in case of fire on the Premises.

## ARTICLE XVI. RULES AND REGULATIONS

LESSEE shall observe, comply with, satisfy, and obey all rules and regulations of which may from time to time during this Lease term hereof be reasonably prescribed by STATE for the conduct and operations of LESSEE at, in, or on the Airport. LESSEE acknowledges that it is familiar with the rules and regulations of STATE presently in effect at the Airport.

## ARTICLE XVII. RIGHTS-OF-ENTRY RESERVED

A. Inspection. STATE, STATE's officers, employees, agents, and guests and STATE's successors and assigns, and State of Hawaii's directors, officers, employees, agents, elected officials, shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting the same, for observing the performance by LESSEE of its obligations under this Lease and to serve or post or keep posted notices provided by any law, statute, rule or regulations of the State of Hawaii which STATE deems to be for the protection of STATE or the Premises, and for any act which STATE may be obligated to have the right to do under this Lease or otherwise.

B. Maintain Systems. The STATE, and its officers, employees, agents, representatives and contractors and furnishers of utilities and other services, shall have the right on its own behalf, or for the benefit of LESSEE or others at the Airport, to maintain existing and future utility, mechanical, electrical, and other systems and to enter upon said Premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the STATE, be necessary or desirable and, from time to time, to construct or install over, in, on, about or under the Premises, new systems or parts thereof, and to use the Premises for access to other parts of the airport not otherwise conveniently accessible; said work shall in no event unreasonably disrupt or interfere with the operations of LESSEE.

C. 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 STATE any obligation to construct or maintain, or to make repairs, replacements, additions, or alterations to the Premises, nor shall STATE's entry upon the Premises, or any part(s) or portion(s) thereof, create any liability for any failure to do so.

D. Showing the Premises. At any time, and from time to time, during ordinary business hours, STATE, its officers, employees, agents, and invitees, or any person acting for on behalf of STATE, whether or not accompanied by interested parties, shall have the right to enter upon the Premises, or any portion thereof, for the purposes of exhibiting and viewing all parts of the same, provided STATE does not unreasonably interfere with the operations of the LESSEE.

E. No Abatement. No abatement of the required rentals and other fees and charges payable to STATE shall be claimed by or allowed to LESSEE by reason of the exercise by STATE of any or all of the rights contained in this Article XVII. (Rights-of-Entry Reserved); provided, however, that other than for emergency purposes, nothing contained in this Article XVII. (Rights-of-Entry Reserved) shall permit or be construed to permit STATE 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. LESSEE shall be responsible for all necessary excavation for, and the construction, installation, operation, and maintenance of, all mains, pipes, conduits, cables, wiring, and other equipment required to provide utility services in a manner adequate to supply LESSEE's needs therefore, and LESSEE shall have the right and duty to make connection for such utility services from the sources provided or identified by STATE and utility companies.

B. Utility Costs. During and throughout the term of this Lease, 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 STATE or by utility service corporations. 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 STATE or others, shall relieve or be construed to relieve LESSEE of any of its obligations hereunder, or shall be construed to be an eviction of LESSEE, or shall constitute grounds for any diminution or abatement of the fees and charges provided for herein, or grounds for any claim by LESSEE against STATE for damages (consequential or otherwise), unless first approved, in writing, by STATE.

2. Waiver of Damages. LESSEE hereby expressly waives any and all claims against STATE 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. LESSEE's waiver of STATE'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, or other acts of nature, such as earthquakes and seismic waves (tsunami) affecting the Premises and equipment operated and/or maintained by 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 LESSEE, and/or LESSEE's officers, employees, agents, or Guests, LESSEE shall, at its sole cost and expense, be responsible for the repair, restoration, or replacement of such utility service line or utility service connection.

## ARTICLE XIX. INSURANCE

### A. In General.

1. LESSEE's Cost. Prior to the commencement of this Lease, LESSEE shall procure, at its sole cost and expense, and keep in effect at all times during the term of this Lease, the types and minimum amounts of insurance coverage specified herein.

2. No Limitation. LESSEE's procurement and maintenance of insurance, or the delivery of certified copies of policies, or the delivery of certificates of insurance or other written evidence of insurance in form and substance acceptable to STATE shall not be construed as a limitation of any kind on LESSEE's obligations to release, indemnify, defend, insure, and hold harmless, as may be found under Article XV.B.6. (LESSEE's Indemnification), Article XV.C.13. (Release and Indemnity), or Article XXVIII. (Litigation), or anywhere else within this Lease.

### 3. Form of Policies.

a. Form and Substance. All insurance required to be furnished by LESSEE hereunder shall be pursuant to policies in form and substance satisfactory to STATE and issued by companies in good standing with the Insurance Division of the Department of Commerce and Consumer Affairs, of sound and adequate Financial Strength Rating and Financial Size Category, licensed and authorized to transact insurance business in the State of Hawaii on an admitted or non-admitted basis, all to the satisfaction of STATE. STATE may, upon reasonable notice and reasonable grounds, increase or change the insurance required hereunder, in which event LESSEE shall comply with the increases or changes within thirty (30) days of written notice of said increase or changes.

b. Required Provision. All insurance, policies shall:

(1) Additional Insured. Name STATE, STATE's directors, officers, agents, employees, guests, and STATE's successors and assigns, and State of Hawaii's directors, officers, agents, elected officials, boards (including the Land Board), and any person acting for or on behalf of STATE, and STATE's successors and assigns, as Additional Insured, except with respect to Workers' Compensation and Employers' Liability.

(2) Severability of Interest. Apply separately to each insured against whom claim is made or suit is brought, except with respect to the Limits of Insurance.

(3) Waiver of Subrogation. Contain a waiver of subrogation in favor of STATE, STATE's officers, employees, agents, and guests, and STATE's successors and assigns, and State of Hawaii's directors, officers, agents, elected officials, and boards (including the Land Board), and any person acting for or on behalf of the State of Hawaii.

(4) Notification. Provide that STATE shall be notified, in writing, at least sixty (60) calendar days prior to any cancellation, material change, or nonrenewal of any such insurance policy.



c. All Insurance. All insurance shall:

(1) Primary. Be primary, not in excess of or pro rata and non-contributing as to and with any other insurance held or maintained by STATE.

(2) No Premiums. Not require STATE to pay any premiums.

(3) No Partnership. The inclusion of STATE, STATE's officers, directors, employees, agents, and guests, elected officials, boards (including the Land Board), any person acting for or on behalf of STATE, or STATE's successors and assigns, as Additional Insured, is not intended to, and shall not make them or any of them, a partner or joint venture with LESSEE in the operation of LESSEE's business in, on, over, under, or about the Premises and LESSEE's conduct of LESSEE's Operations, including related functions performed by or on behalf of LESSEE at the Airport.

(4) Deductibles. Any insurance required hereunder may provide for deductibles or self-insured retentions, which are reasonable and prudent in relation to the soundness of LESSEE's financial condition, subject to the approval by STATE, and at the sole discretion of STATE.

(5) Failure to Obtain. Any lapse in, or failure by LESSEE to procure, maintain, and keep in full force and effect such insurance, as is required under this Lease, at any time during and throughout the term of this Lease, shall be a material breach of this Lease and shall give STATE the right to assess additional charges and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, hereof. Should STATE or any of its insurers expend any such funds which would have been or should have been covered by insurance as is required under this Lease, LESSEE agrees to assume the liability and to reimburse for such funds and to release, indemnify, defend and hold harmless STATE and its insurers.

d. Subrogation. STATE agrees to release LESSEE from STATE's claim for loss or damage caused by fire or other casualty covered by property insurance policies, to the extent of any payment received by STATE from the insurers. This release also includes a waiver of subrogation by STATE's insurer of any right of action against LESSEE in the event of such loss or damage and payment therefore to STATE. Said waiver of subrogation is conditional upon acceptance of such waiver by STATE's insurers affected thereby. Evidence of such waiver shall be in writing.

e. Proof of Insurance. LESSEE shall provide proof of all specified insurance and related requirements to STATE by delivering certified copies of all policies or certificates of insurance in form and substance acceptable to STATE, or by other written evidence of insurance acceptable to STATE. The documents evidencing all specified types and minimum amounts of insurance coverage shall be submitted to STATE, prior to LESSEE's occupancy and use of the Premises. Each policy, certificate of insurance, or other written evidence of insurance shall contain the applicable policy number(s), the inclusive dates of policy coverage and the insurance carrier's name, an original signature of an authorized representative of said carrier and shall provide that such insurance will not be subject to

cancellation, material change, or non-renewal, except after written notice to STATE at least sixty (60) calendar days prior to the effective date thereof. STATE reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

f. Interim Review. LESSEE agrees that the types and minimum amounts of insurance coverage specified by STATE herein may be reviewed for adequacy from time to time, throughout the term of this Lease by STATE who may, thereafter, upon thirty (30) days written notice, require LESSEE to modify the types and minimum amounts of insurance coverage based upon the nature of LESSEE's Operations and what a reasonable and prudent owner thereof would typically procure and maintain.

B. Construction. Before commencing construction of any initial or subsequent work on LESSEE's Leasehold Improvements or the construction or installation of other improvements at, in, on, over, or under the Premises, or any part(s) or portion(s) thereof, LESSEE shall require all contractors and subcontractors to procure, at no cost or expense to STATE, and keep in effect at all times during the period of construction and installation, the types and minimum amounts of insurance coverage specified, subject to the same general provisions contained in Article XIX.A. (In General) above, to protect both STATE and LESSEE. LESSEE's contractors and subcontractors are subject to the same insurance requirements of LESSEE, unless otherwise specified herein. If LESSEE or LESSEE's contractors or sub-contractors desire additional coverage, LESSEE and LESSEE's contractors and sub-contractors are responsible for the procurement and cost of such additional coverage. STATE retains the right to modify the types and minimum amounts of insurance required of LESSEE's contractors and subcontractors, upon thirty (30) days written notice to LESSEE, based upon the nature of LESSEE's Operations and what a reasonable and prudent owner thereof would typically procure and maintain.

The types and minimum amounts of insurance for LESSEE's contractors and sub-contractors are as follows:

1. Commercial General Liability or Aviation General Liability ("Occurrence Form"). Minimum limits of \$1,000,000.00 Each Occurrence (Bodily Injury and Property Damage Combined) and \$2,000,000.00 General Aggregate (if applicable), covering Bodily Injury, Property Damage, and Personal/Advertising Injury (subject to a Personal/Advertising Injury Aggregate of at least \$1,000,000.00) arising out of contractor's or sub-contractor's Premises, Operations, Products, and Completed Operations. The policy shall include Contractual Liability for Bodily Injury and Property Damage obligations assumed in the contract or agreement between LESSEE and LESSEE's contractor or sub-contractor, Broad Form Property Damage, coverage for explosion, collapse, and underground hazards "XCU", and Fire Damage Legal Liability (Damage to Rented Premises) of not less than \$50,000.00 Each Occurrence.

2. Automobile Liability. Hawaii No-Fault Automobile Liability insurance, covering any auto (all owned, hired, and non-owned autos), with minimum limits as follows:

a. If operating exclusively outside of the restricted AOA of the Airport, then a Combined Single Limit not less than \$1,000,000.00 Each Accident (Bodily Injury and Property Damage Combined); or

b. If entering and operating within the restricted AOA of the Airport at any time, then a Combined Single Limit not less than \$5,000,000.00 Each Accident (Bodily Injury and Property Damage Combined).

3. Workers' Compensation and Employers' Liability. Workers' Compensation coverage meeting the statutory requirements of the State of Hawaii and any other state in which employees are hired or work is performed and including Employers' Liability coverage with minimum limits of \$1,000,000.00 for Each Accident, Disease-Each Employee, and Disease Policy Limit, or as otherwise required by applicable federal and State of Hawaii laws.

4. Builder's Risk. LESSEE or LESSEE's contractors shall procure property insurance written on a builder's risk "all risk" or equivalent policy form, including insurance against the perils of fire (with extended coverage) and risks of physical loss or damage including but not limited to theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and startup. Coverage shall also apply to temporary buildings and debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements. The amount of insurance shall be no less than the initial contract sum, plus the value of subsequent contract modifications and the cost of materials supplied or installed by others, comprising the total value for the entire project at the site on a replacement cost basis, including reasonable compensation for architect's, engineer's, and similar consultant's services and expenses. This property insurance shall include coverage for portions of the project when stored off site or in transit. Such property insurance shall be maintained until the project is completed or until no person or entity has an insurable interest in the property other than LESSEE and STATE, whichever is later. This insurance shall include the insurable interests of STATE, LESSEE, and LESSEE's Contractors, Sub-Contractors, and Sub-subcontractors in the project, as their interest may appear. If this property insurance includes deductible provisions, LESSEE shall pay all deductibles or costs not covered because of such deductible provisions.

5. Professional Liability. When any architects, engineers, construction managers, or other professional consultants are hired by LESSEE or LESSEE's contractors or sub-contractors, Professional Liability Insurance covering their errors and omissions shall be maintained with limits of at least \$1,000,000.00 each occurrence and including contractual liability. If or when such policies are renewed or replaced, any policy retroactive date on the renewal or replacement policy must coincide with or precede the date work started under the contract for professional services. Any claims-made policy which is not renewed or replaced must have an extended reporting period of at least two (2) years.

C. Operation. LESSEE shall, at its sole cost and expense, procure, maintain, and keep in full force and effect during and throughout the term of this Lease, the types and minimum amounts of insurance coverage specified, to protect both STATE and LESSEE, subject to the same general provisions contained in Article XIX.A. (In General) above.



1. Commercial General Liability ("Occurrence Form").

a. Landside Operations. Minimum limits of \$1,000,000.00 Each Occurrence (Bodily Injury and Property Damage Combined) and \$2,000,000.00 General Aggregate (if applicable), covering Bodily Injury, Property Damage, and Personal/Advertising Injury (subject to a Personal/Advertising Injury Aggregate of at least \$1,000,000.00) arising out of LESSEE'S Premises, Operations, Products, and Completed Operations. The policy shall include Contractual Liability for Bodily Injury and Property Damage obligations assumed in the Lease, Broad Form Property Damage, coverage for explosion, collapse, and underground hazards "XCU", and Fire Damage Legal Liability (Damage to Rented Premises) of not less than \$100,000.00 Each Occurrence.

b. Airside Operations. Minimum limits of \$5,000,000.00 Each Occurrence (Bodily Injury and Property Damage Combined) and \$10,000,000.00 General Aggregate (if applicable), covering Bodily Injury, Property Damage, and Personal/Advertising Injury (subject to a Personal/Advertising Injury Aggregate of at least \$5,000,000.00) arising out of LESSEE'S Premises, Operations, Products, and Completed Operations. The policy shall include Contractual Liability for Bodily Injury and Property Damage obligations assumed in this Lease, Broad Form Property Damage, coverage for explosion, collapse, and underground hazards "XCU", and Fire Damage Legal Liability (Damage to Rented Premises) of not less than \$100,000.00 Each Occurrence. The policy shall also include coverage for bodily injury and property damage claims directly or indirectly, occasioned by, happening through, or in consequence of pollution or contamination of LESSEE'S products, including but not limited to fuel, propellants, lubricants, and other petroleum products.

2. Hangarkeeper's Liability. Minimum limits equal to the maximum estimated value of any aircraft that may be in the care, custody and control of LESSEE, or serviced, handled, or repaired by LESSEE at any given time, but in no event less than \$1,000,000.00 any one aircraft and \$1,000,000.00 any one occurrence.

3. Workers' Compensation and Employer's Liability. Workers' Compensation coverage meeting the statutory requirements of the State of Hawaii and any other state in which employees are hired or work is performed and including Employers' Liability coverage with minimum limits of \$1,000,000.00 for Each Accident, Disease-Each Employee, and Disease Policy Limit, or as otherwise required by applicable federal and State of Hawaii laws.

4. Pollution Liability. Minimum limit of \$1,000,000 covering bodily injury, property damage (including damage to natural resources), legal expenses, and LESSEE'S obligations to clean-up and/or remediate first- and third-party environmental liabilities or claims resulting from any pollution condition or conditions associated with or arising out of the LESSEE'S Premises or LESSEE'S Operations. Notwithstanding any provisions contained in Article XIX. (Insurance), including but not limited to paragraph A.3.b. (4) (Notification) and A.3.e. (Proof of Insurance), the Pollution Liability Insurance must be for a specific term during which said policy shall irrevocably remain in effect.

5. Buildings and Business Personal Property. LESSEE shall insure all buildings, structures, completed additions, including fixtures, machinery, and equipment which are a permanent part of buildings, and other Leasehold Improvements, whether owned by

STATE or LESSEE, and LESSEE's Personal Property, including but not limited to furniture, fixtures, supplies, computers, other contents, mobile equipment (if not covered by other insurance), and Personal Property of others (other than aircraft) in LESSEE's care, custody, and control, in, on, over, under, or about the Premises, as would be procured and maintained by a reasonable and prudent owner thereof, protecting against Causes of Loss - Broad Form (or equivalent), including but not limited to the perils of fire, lightning, explosion, windstorm (including hurricane), smoke, aircraft or vehicles, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, and accidental water damage, on a replacement cost basis. STATE shall be included as a Loss Payee, as its interest may appear. Coverage shall also apply to debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements.

6. Business Interruption and Extra Expense. LESSEE shall insure against loss of earnings, loss of rental value, and extra expenses LESSEE may incur to resume or continue operations as nearly as practicable following an insured property loss, protecting against Causes of Loss - Broad Form (or equivalent), including but not limited to the perils of fire, lightning, explosion, windstorm (including hurricane), smoke, aircraft or vehicles, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, and accidental water damage. The limit shall be the sum of the Annual Rental, but in no event less than \$75,000.00.

7. Automobile Liability. Hawaii No-Fault Automobile Liability insurance, covering any auto (all owned, hired, and non-owned autos), with minimum limits as follows:

a. If operating exclusively outside of the restricted AOA of the Airport, then a Combined Single Limit not less than \$1,000,000.00 Each Accident (Bodily Injury and Property Damage Combined); or

b. If entering and operating within the restricted AOA of the Airport at any time, then a Combined Single Limit not less than \$5,000,000.00 Each Accident (Bodily Injury and Property Damage Combined).

## ARTICLE XX. TERMINATION BY STATE

A. Events of Breach or Violation. LESSEE shall be in breach or violation of this Lease and STATE 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 STATE, any interest of LESSEE under this Lease is 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. When the ownership of LESSEE, without the prior written approval or consent of STATE, is changed by inter vivos stock transfer to one or more individuals or entities who are not stockholders at the inception of this Lease, or if LESSEE



is a partnership, whether limited or general, by the introduction of a new partner or partners, whether limited or general, who was not a partner or who were not partners at the inception of this Lease; or

3. Partnership Dissolution. If LESSEE is a partnership of any type and the partnership is dissolved as a result of any act or omission of its partners or any of them, or by operation of law, or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

4. Receivership. When, by or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession of all or substantially all of the property of LESSEE, and such possession or control shall continue in effect for a period of at least fifteen (15) consecutive days, without being contested by LESSEE in good faith by proper legal proceedings within said fifteen (15)-day period; or

5. Abandonment. When LESSEE: (a) voluntarily abandons, deserts, or vacates the Premises; or (b) discontinues conduct of LESSEE's Operations at, in, on, or over the Premises; or

6. Prevented from Use. After exhausting or abandoning any right of further appeal, 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 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 LESSEE's conduct of LESSEE's Operations at, in, on, or over the Premises authorized herein for a period exceeding thirty (30) consecutive days; or

8. Successor Corporation. LESSEE becomes, without the prior written approval of STATE, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution; or

9. Attachment. When any attachment, judgment, lien, or encumbrance is filed against LESSEE's interest in the Premises because of any act or omission of LESSEE, and said attachment, judgment, lien, or encumbrance is not discharged or contested by LESSEE in good faith by proper legal proceedings within thirty (30) calendar days; or

10. Failure to Pay Rent. When LESSEE fails to duly and punctually pay the rentals and other fees and charges required under this Lease, including any interest, service charges, or late fees, or to make any other payment required under this Lease when due to STATE or for failure to make payments within five (5) business days after LESSEE's receipt of a written notice from STATE demanding such payment or payments; or

11. Failure to Pay Taxes. When LESSEE fails to duly and punctually make payments due to any agency of the State of Hawaii or any political subdivision or county of the State of Hawaii, 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 LESSEE fails to keep, perform, and/or observe each and every other agreement, promise, covenant, term, or condition set forth in this Lease, on LESSEE's part to be kept, performed, and/or observed, and such failure shall continue for a period of more than sixty (60) consecutive days after LESSEE's receipt of a written notice from STATE of such breach or violation by personal service or registered mail or certified mail to LESSEE, except where fulfillment of LESSEE's obligation requires activity over a period of time, and 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 LESSEE's control; or

13. General Assignment. LESSEE makes a general assignment for the benefit of creditors, or files a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under any law or statute of the United States, or any law or statute of the State of Hawaii, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of LESSEE's property or LESSEE's property located at, in, on, over, or under the Premises; or

14. Lien. Any lien is filed against or affecting the Premises, or any part(s) or portion(s) thereof, because of any act or omission of LESSEE and such lien is not removed or enjoined or a bond for satisfaction of such lien is not posted within thirty (30) calendar days.

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) herein, STATE 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 LESSEE.

If LESSEE fails to correct the violation(s) contained in the Notice of Default to the satisfaction of STATE, STATE may, without prejudice to any other remedy, elect to:

1. Additional Charge. Assess a charge of Two Hundred Fifty and No/100 Dollars (\$250.00) per day, as prescribed and set forth in Article V.D. (Additional Charges) hereof; and

2. Termination Letter. Concurrent with or subsequent to the assessment of such additional charges, subject to Section 171-21, HRS, proceed to terminate this Lease by providing a written Letter of Termination and Notice to Vacate to LESSEE.

If this Lease is terminated by STATE because of default, LESSEE will not be allowed to enter into any other lease, or contract offered by the State of Hawaii for a period of five (5) years following the date of termination, as prescribed and set forth under Section 171-13, HRS.

C. Right of Re-entry. STATE 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 LESSEE under this Lease, and shall in no event constitute an acceptance of surrender.

D. LESSEE's Rights Cease. Upon such termination by STATE, all rights, powers, and privileges of LESSEE granted hereunder shall cease. Unless otherwise stated herein, LESSEE shall immediately vacate the Premises occupied and/or used by it under this Lease, and LESSEE shall have no claim of any kind whatsoever against STATE, by reason of such termination, or by reason of any act by STATE incidental or related thereto. In the event of the exercise by STATE of such option to terminate, LESSEE shall have no right to or claim upon the LESSEE's Leasehold Improvements, or the value thereof, which may have been previously constructed, installed, erected, or placed by LESSEE at, in, on, over, or under the Premises. STATE may also remove or store any of LESSEE's Personal Property located thereon or therein, at LESSEE's sole cost and expense, without STATE being liable to LESSEE for damage or loss thereby sustained by LESSEE.

E. Waiver of Redemption and Damage. LESSEE waives, releases, and discharges any and all claims it may now or hereafter have relating to STATE's exercise of its rights under this Lease to re-enter and regain and resume possession of the Premises and to remove LESSEE, the Leasehold Improvements, and LESSEE's Personal Property from the Premises and store or dispose of any of LESSEE's property, including 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 STATE obtains or retains possession of the Premises in any lawful manner. LESSEE further agrees that in the event the manner or method employed by STATE in re-entering or regaining possession of the Premises gives rise to a cause of action in LESSEE in forcible entry and detainer under the laws of the State of Hawaii, the total amount of damages to which LESSEE shall be entitled in any such action shall be the sum of ONE AND NO/100 DOLLAR (\$1.00), and 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.

If this Lease is terminated by STATE because of default, LESSEE will not be allowed to enter into any other lease or contract offered by the State of Hawaii for a period of five (5) years following the date of termination, as prescribed and set forth under Section 171-13, HRS.

F. Survival of LESSEE's Obligations.

1. LESSEE's Obligations Remain. In the event this Lease is terminated by STATE, or in the event STATE re-enters, regains, or resumes possession of the Premises, all of the obligations of LESSEE hereunder shall survive, and shall remain in full force and effect for the full term of this Lease as if there had been no termination, re-entry, regaining, or resumption of possession.

2. Rental Remains Due. Subject to STATE's obligation to mitigate damages, the amount of the rentals and other fees and charges shall become due and payable to STATE to the same extent, at the same time, and in the same manner as if no termination, re-entry, regaining, or resumption of possession had taken place. STATE may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

3. Subsequent to Termination. The amount of damages for the period of time subsequent to termination, re-entry, regaining, or resumption of possession by STATE, subject to an offset for any rentals and other fees and charges received by STATE during the remaining term of this Lease, as if no termination, re-entry, regaining, or resumption of possession had taken place from a succeeding operator of the Leasehold Improvements at, in, on, over, or under the Premises, and LESSEE's Operations at the Airport shall be the cumulative total of LESSEE's annual rental obligation, less the amount paid prior to the effective date of termination.

4. No Effect of STATE's Rights. STATE and LESSEE agree that damages specified above shall not affect or be construed to affect STATE's right to such damages in the event of termination, re-entry, regaining, or resumption of possession

G. Additional Rights of STATE. STATE, upon termination of this Lease, or upon re-entry, regaining, or resumption of possession of the Premises, may occupy the Premises and shall have the right to permit any person, firm, corporation, or entity to enter upon the Premises and use the same. Such occupation by others may be of only a part of the Premises, or the whole thereof, or a part thereof together with other space(s), and for a period of time the same as or different from the balance of the term remaining hereunder as if no termination, re-entry, regaining, or resumption of possession had taken place, and on terms and conditions the same as or different from those prescribed and set forth in this Lease. STATE shall also have the right to repair or to make such structural or other changes in and to the Premises as are necessary in its judgment to maintain the suitability thereof for uses and purposes similar to those granted under this Lease without affecting, altering, or diminishing the obligations of LESSEE hereunder.

H. 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 this Lease term, LESSEE shall not be entitled to enter into possession of the Premises, or any part(s) or portion(s) thereof, respectively, and STATE, upon the occurrence of any such event, or at any time thereafter during the continuance thereof, by twenty-four (24) hours' notice, may cancel or terminate the interest of LESSEE under this Lease, such cancellation or termination to be effective upon the date specified in such notice.



## ARTICLE XXI. WAIVER

A. No Waiver by STATE. No acceptance by STATE of rentals and other fees and charges, or other payments in whole or in part, for any period or periods after a default of any of the agreements, covenants, obligations, promises, provisions, requirements, restrictions, stipulations, terms, or conditions hereof to be performed, kept, or observed by LESSEE, shall be deemed a waiver of any right on the part of STATE to terminate this Lease for any like or other or succeeding breach or default.

B. No Implied Waiver. No failure by either STATE or 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 STATE, express or implied, of any breach or default of 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 conditions 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.

C. Cumulative Remedies. The rights, powers, privileges, options, and remedies of STATE 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. RESERVED

### ARTICLE XXIII. TERMINATION BY LESSEE

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

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

2. Assumption. The lawful assumption by the United States Government, or any authorized agency thereof, of the operations, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict LESSEE from conducting LESSEE's 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 Airport 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 STATE of, or its failure to perform, any of the covenants or agreements contained in this Lease, and either the failure of STATE to remedy such breach for a period of sixty (60) calendar days after receipt of a written notice from LESSEE of the existence of such breach, or, if fulfillment of STATE's obligations requires activity over a period of time, the failure of STATE 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 STATE'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, LESSEE may, in lieu of termination and upon prompt written notice to STATE, either suspend this Lease, or in the alternative, request a just abatement of such portion of the rental obligations of LESSEE, as may be mutually agreed upon, in writing, by and between STATE and LESSEE, 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.

#### 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 STATE and the United States Government, or any agency thereof, relative to the aircraft operating areas of the Airport, 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 Airport. In the event of any such inconsistency between such agreement(s) and the occupancy by 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 STATE 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 STATE and the United States Navy, the United States Army, and/or the United States Air Force. 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 STATE being liable for any damages.

B. National Emergency. During times of war, whether declared by Congress or not, or national emergency, STATE shall have the right to enter into any agreement with the United States Government for any military use of part or all of the landing area, the publicly owned air navigation facilities, and all other areas and facilities of the Airport. In the event any such agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of such agreement with the United States Government, shall be suspended without STATE 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 LESSEE set forth in Article XXIII. (Termination by LESSEE) and Article XXIV. (Suspension or Abatement) hereof, to seek damages or compensation from other than STATE in the event of the execution of any such agreements described above, the terms of which are or may be inconsistent with the rights of 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 condemner; and (b) the date on which 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 this 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). STATE and LESSEE intend that the provisions hereof govern fully in the event of a Taking.

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 LESSEE for the conduct of LESSEE's Operations; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable, but STATE is unwilling or unable to cure such condition; and, (c) STATE elects to terminate.

2. Material Portion Taken. If a partial Taking of a material portion of the Premises occurs, STATE shall have the right to terminate this Lease in its entirety.

3. Notice of Election. STATE's election to terminate this Lease pursuant to this Article XXVI. (Condemnation) shall be exercised by STATE giving notice to LESSEE 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<sup>th</sup>) 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. LESSEE's obligation to pay all rentals and other fees and charges required under this Lease shall continue up until the date of termination and thereafter shall cease.

b. Surviving Obligations. LESSEE shall continue to be obligated to perform and comply with all obligations that are intended to survive the termination of this Lease, including, without limitation, those obligations set forth in Article XLVII. (Survival of Obligations) hereof.

c. Leasehold Improvements. 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 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 LESSEE.

d. No Claim against STATE. LESSEE shall have no claim against STATE or others for: (i) compensation or indemnity for LESSEE's leasehold interest; and (ii) compensation and damages payable for or on account of 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. LESSEE may make a separate claim for compensation from the condemning authority for LESSEE's relocation expenses, or the interruption of, or damage to LESSEE's Operations, or damage to LESSEE's Personal Property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, LESSEE may receive any Award made specifically to LESSEE for such claim.

2. STATE. STATE 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 STATE and 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 LESSEE's Operations at, in, on, or over the Premises, as authorized under this Lease, the rent shall be reduced by a factor comprising the square footage of the space comprising the Taking, multiplied by the applicable rate based on the rates and charges established by the STATE.

2. Leasehold Improvements. 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 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 LESSEE.

3. No Claim against STATE. LESSEE shall have no claim against STATE or others for: (i) compensation or indemnity for LESSEE's leasehold interest; and (ii) compensation and damages payable for or on account of land (including access and easement rights) or Leasehold Improvements, except as provided in Article XXVI.F.2. (Leasehold Improvements) herein.

4. Separate Claim against Condemning Authority. LESSEE may make a separate claim for compensation against the condemning authority for the interruption of or damage to LESSEE's Operations or damage to LESSEE's Personal Property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, LESSEE may receive any Award made specifically to LESSEE for such claim.

5. STATE's Award. STATE shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of this 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 LESSEE shall be used promptly by LESSEE to the extent necessary to restore or replace the Leasehold Improvements at, in, on, or over, the remaining Premises, in accordance with plans, specifications, drawings, cost estimates, and schedules first approved, in writing, by STATE.

7. Continuing Obligation. Nothing herein shall be construed to excuse LESSEE from 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 LESSEE shall remain responsible for paying to STATE all rents and other fees and charges 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 LESSEE shall continue to pay the rents



and other fees and charges required under this Lease and to perform all of the covenants, agreements, obligations, stipulations, terms, and conditions of this Lease.

LESSEE may make a separate claim for compensation from the condemning authority for LESSEE's relocation expenses, or the interruption of, or damage to LESSEE's Operations, or damage to LESSEE's Personal Property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, LESSEE may receive any award made specifically to LESSEE for such claim.

#### ARTICLE XXVII. PERFORMANCE BOND

A. Requirements. Prior to the commencement date of this Lease, and throughout the term of this Lease and including not less than ninety (90) calendar days after the expiration or sooner termination of this Lease, LESSEE shall deliver to STATE, and keep and maintain in force and effect at all times a performance bond or cash or cash equivalent security deposit acceptable to STATE, in accordance with the covenants, terms, and conditions specified in this Article XXVII. (Performance Bond) herein, and in an amount equal to the annual rental then in effect (hereinafter referred to as the "Performance Bond"). Except for a cash or cash equivalent security deposit, the Performance Bond must:

1. Authorized Surety. Be executed by a surety company authorized to do business under the laws of the State of Hawaii (hereinafter referred to as the "Surety");

2. STATE Approval. Meet with the written approval of STATE, including, without limitation, meeting the requirement that the Surety, to STATE's sole satisfaction, has the financial capability to fully perform and complete the Surety's obligations under the Performance Bond;

3. STATE's Attorney Approval. Be in a form approved by an authorized representative of the Department of the Attorney General of the State of Hawaii;

4. Guarantee Full Performance. Require the Surety to guarantee to STATE that LESSEE shall fully and completely observe, comply with, perform, and completely satisfy all of the covenants, agreements, promises, provisions, duties, responsibilities, obligations, requirements, restrictions, stipulations, terms, and conditions prescribed and set forth in this Lease that LESSEE is required to perform;

5. LESSEE's Cost. Be procured, maintained, and kept in effect at LESSEE's sole cost and expense; and,

6. Guarantee LESSEE's Contractual Obligation. Guarantee all of LESSEE's contractual obligations during and throughout the term of this Lease, which are not otherwise covered by valid and collectible insurance; provided that lawsuits or actions thereon by the STATE, or anyone else entitled to do so may be commenced within the applicable period of limitation for contract claims unless otherwise specifically provided.

B. Surety. If STATE, in its sole discretion, permits LESSEE to obtain the Performance Bond from a surety or sureties other than a surety company authorized to do business under the laws of the State of Hawaii, such surety or sureties must meet the requirements of all applicable State of Hawaii laws, statutes, rules, and regulations, including Section 102-12, HRS.

C. Replacement Bond. If STATE should receive a notice that the Performance Bond will expire or will be canceled; LESSEE shall provide STATE with a replacement Performance Bond providing the coverage required herein from the effective date and time of the expiration or cancellation of the Performance Bond so that there is no period of time wherein an adequate Performance Bond does not cover this Lease, as provided for herein. Such a replacement Performance Bond must meet all of the requirements set forth in this Article XXVII. (Performance Bond) and be forwarded to and received by STATE at least ninety (90) calendar days prior to the effective date and time that the preceding bond will expire or be canceled.

D. Lease Default. In the event that a Performance Bond or a replacement Performance Bond in the required amount and meeting the required terms is not received by STATE prior to the effective date and time of the bond cancellation or expiration, as stated, LESSEE shall be deemed in default of this Lease, regardless of whether or not a notice of breach or default or time to correct breach or default has been provided to LESSEE by STATE, and the full value shown on the face of the Performance Bond and the additional charge of \$250.00 per day that there is no bond coverage shall be immediately payable by LESSEE to STATE as liquidated damages.

E. Any Lapse. Any lapse in keeping the Performance Bond in full force and effect, in the required sum or in accordance with the terms required herein, shall be a default of this Lease and shall give STATE the right to assess an additional charge and/or terminate this Lease pursuant to Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, herein.

#### ARTICLE XXVIII. LITIGATION

A. LESSEE Responsible. If STATE is made a party to any litigation commenced by or against LESSEE arising out of LESSEE's occupancy or use of the Premises, or attributable to the construction, installation, occupancy, or use of the Leasehold Improvements, or LESSEE's Personal Property (other than condemnation proceedings), that is not the result of, or caused by the sole negligence of STATE, LESSEE shall release, indemnify, defend, keep, save, and hold STATE and STATE's officers, employees, agents, and guests, and STATE's successors and assigns, and State of Hawaii's directors, officers, elected officials, boards (including the Land Board), employees, agents, and guests harmless, from and against any and all suits, judgments, injunctions, decisions, orders, liabilities, losses, damages, costs, and expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, charges, and reasonable attorneys' fees incurred or imposed on STATE in connection with such litigation. In any action by STATE for recovery of any sum due under this Lease, or to enforce any of the agreements, covenants, obligations, promises, stipulations, terms, or conditions contained in this Lease, STATE shall be entitled to recover any and all

costs, fees, charges, and reasonable attorneys' fees incurred or imposed on STATE in connection with such actions.

This provision shall not be construed to be a limitation of any other indemnity by LESSEE, including but not limited to Article XIII.B. (Indemnity), Article XV.B.6. (LESSEE's Indemnification), or Article XV.C.13. (Release and Indemnity), or any other indemnity found within this Lease.

B. Attorneys' Fees. For purposes of this Lease, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys, with the equivalent number of years of experience in the subject matter area of law for which STATE's attorneys' services were rendered.

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. LESSEE hereby waives any claim against STATE and STATE's officers, employees, agents, guests, and STATE's successors and assigns, and State of Hawaii's directors, officers, employees, agents, elected officials, and boards (including the Land Board), for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any lawsuit or proceedings directly or indirectly attacking 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. STATE's Lien. STATE shall have a lien upon all LESSEE's Personal Property upon the Premises, for the purpose of securing to STATE the payment of all sums, including rentals and other fees and charges, which may be due from LESSEE under this Lease. In the event that past-due rentals and other fees and charges are not paid by LESSEE within five (5) calendar days after a notice of default is given by STATE to LESSEE, STATE may take possession of and sell such portion of LESSEE's Personal Property as may be sufficient to pay the delinquent rentals and other fees and charges owed by LESSEE to STATE. A sale of LESSEE's Personal Property pursuant to this Article XXIX. (Liens) herein may be made either publicly or privately, upon the notice given to LESSEE as herein provided.

B. Other Liens Prohibited. 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 Airport, or the Leasehold Improvements, thereupon or therein, or the estate or interest of LESSEE in the same, at any time during the term of this Lease shall become subject to any attachment, lien, charge, or encumbrance whatsoever. LESSEE shall release, indemnify, defend, keep, save, and hold STATE harmless, and if or when appropriate or necessary, insure STATE, from and against any and all attachments, liens, charges, and encumbrances, and any and all actions, lawsuits, judgments, and orders relating thereto, and any and all costs, fees, charges, and expenses, including reasonable attorneys' fees resulting therefrom, it being expressly understood that 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 STATE under this Lease.

## ARTICLE XXX. ASSIGNMENT AND SUBLETTING

### A. Assignment or Other Transfers.

1. Assignment. LESSEE shall not assign, encumber, or otherwise transfer, whether voluntary or involuntary or by operation of law, the Lease or 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 STATE's prior written consent, which consent may be granted or denied in STATE's sole discretion. Any such transfer or assignment made without STATE's consent shall constitute a default under this Lease and shall be voidable at STATE's election. With prior written approval of STATE, and the prior approval of Land Board, such assignment and transfer of this Lease, or any interest therein, may be made in accordance with current industry standards, as determined by the Land Board, pursuant to Section 171-36, HRS; provided further, that prior to the written approval of STATE of any assignment of this Lease, STATE shall have the right to review and approve, in writing, the consideration paid by the Assignee, and may condition its consent to the assignment of this Lease on payment by LESSEE of a premium in accordance with the STATE's Department of Transportation Assignment of Lease and Premium Evaluation Policy Annex I, attached hereto, made a part hereof, and incorporated herein by reference as Appendix B, Attachment 5 (hereinafter referred to as the "Assignment Policy"). The premium on subsequent assignments shall also be based on the Assignment Policy.

### 2. Changes in LESSEE.

a. Controlling Interest. The merger of LESSEE with any other entity or the transfer of any controlling ownership interest in LESSEE, or the assignment or transfer of a substantial portion of the assets of LESSEE, whether or not located on the Premises, shall constitute an assignment. Without limiting the generality of the foregoing, if LESSEE is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of LESSEE, shall be deemed an assignment. If LESSEE is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization of LESSEE or the sale or other transfer of a controlling percentage of the capital stock or membership interests of LESSEE or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of LESSEE, shall be deemed an assignment. The phrase "controlling percentage" means the ownership of, and the right to vote stock, or interests possessing at least twenty percent (20%) (or a percentage less than twenty percent (20%) if such percentage represents a controlling interest in LESSEE) of the total combined voting power of all classes of LESSEE's capital stock or interests issued, outstanding, and entitled to vote for the election of directors.



b. Sale of Assets. The sale of all or substantially all of the assets of LESSEE, or the transfer of all or substantially all of its Leasehold Improvements at, in, on, over, or under the Premises, shall be deemed to constitute an "assignment" for purposes of this Lease which requires the prior approval of STATE in accordance with this Article XXX. (Assignment and Subletting) herein.

3. STATE's Approval Required for Each Assignment. The consent of STATE to any one assignment shall not constitute a waiver of STATE's right to approve subsequent assignments, nor shall consent of STATE to any one assignment relieve or release any party previously liable as LESSEE from any obligation under this Lease. The acceptance by STATE of the payment of rents and other fees and charges following an assignment shall not constitute consent to any other assignment, and STATE's consent shall be evidenced only in writing.

4. No Release. In no event shall STATE's consent to an assignment or transfer be deemed to be a release of LESSEE as the primary obligor hereunder. Nor shall the acceptance of rents and other fees and charges by STATE constitute a release or waiver of STATE's rights against LESSEE, or consent to any assignment or transfer, nor shall any other act of STATE in relation to said Assignee be so construed.

5. Void if not Properly Approved. Any transfer or assignment made in violation of the foregoing provision shall be void. Any attempted assignment, or any subleasing of the whole or any part(s) or portion(s) of the Premises, or any other transaction which violates Article XXX.A. (Assignment and Other Transfers) or Article XXX.B. (Subletting) herein shall be void and shall confer no right, title, or interest in or to this Lease, or right of occupancy or use of the whole or any part(s) or portion(s) of the Premises, upon any such purported assignee, sublessee, successor, or purchaser. STATE shall further have the right to terminate this Lease and to enforce such other remedies as are provided in this Lease.

B. Subletting.

1. STATE's Approval. LESSEE shall not rent or sublet the whole or any portion of the Premises without the prior written approval of STATE. Unless authorized by law, STATE shall deny consent to any uses not specified as allowable under this Lease. STATE may review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the proposed sublessee by LESSEE (STATE may also include such other terms and conditions as STATE may deem appropriate, prior to STATE's approval of the proposed sublease); provided, further, that the rent payable by LESSEE to STATE may not be revised downward.

If the proposed sublessee pays LESSEE any consideration other than said rent, whether by cash, credit or otherwise, or the term of the proposed sublease is for substantially the same term as this Lease or if it otherwise appears to STATE that the proposed sublease is actually an assignment, STATE may treat the proposed sublease as an assignment under Article XXX.A. (Assignment and Other Transfers) herein. If it appears to STATE that the proposed sublease is actually a combination of an assignment and a sublease, then STATE may treat the proposed sublease as both an assignment and a sublease and apply the applicable

portions of Article XXX.A. (Assignment and Other Transfers) and Article XXX.B. (Subletting), respectively.

2. LESSEE Proposal. Prior to negotiating a sublease agreement, LESSEE must submit to STATE a sublease proposal for STATE's prior written approval, which approval may be granted or withheld in STATE's sole discretion.

3. Sublease Form. Promptly after STATE has approved a sublease proposal, LESSEE must use diligent, good faith efforts to negotiate a sublease agreement with the proposed sublessee. LESSEE shall ensure that all of the terms and conditions contained in a sublease agreement between LESSEE and LESSEE's tenant conform to and are consistent with the terms and conditions contained in the sublease proposal (submitted to STATE pursuant to Article XXX.B.2. (LESSEE Proposal) herein) approved by STATE. If LESSEE wishes to vary from the business terms and conditions set forth in the sublease proposal approved by STATE, then LESSEE must submit a new sublease proposal for STATE's prior written approval.

4. Sublease Agreement. Promptly after LESSEE and the proposed sublessee have agreed on a form of sublease agreement that incorporates the business terms and conditions set forth in the sublease proposal approved by STATE, LESSEE must submit the sublease agreement to STATE for approval. STATE agrees that it will not unreasonably withhold its approval of the proposed sublease agreement if the proposed sublease agreement: (a) accurately incorporates the business terms and conditions approved by STATE; (b) conforms to and is consistent in all respects to the terms and conditions of the sublease proposal approved by STATE; and (c) is expressly subject to the terms and conditions of STATE's consent. Otherwise, STATE may withhold its approval in STATE's sole discretion.

5. STATE's Consent. If STATE approves a sublease agreement, STATE's consent shall include, without limitation, the following conditions:

a. Sublease Percentage Fee. In addition to any other fees, LESSEE shall pay to STATE a percentage fee (the "Sublease Percentage Fee") determined by applying the STATE's rate of five percent (5%) to all rents and other fees, charges and/or payments due to LESSEE, to include but not limited to maintenance fees, utility charges, and/or other service fees due from any and all sublessees under any and all sublease agreements. The Sublease Percentage Fee shall be paid monthly, in advance, on the first day of each and every month of each and every year of the sublease term, and pursuant to Article V.C. (General Payment Provisions) hereof. LESSEE shall be required to submit a notice to STATE of the termination of any and all sublease agreements. This notice to STATE must be submitted at least thirty (30) days prior to the date of the proposed termination of any and all sublease agreements.

b. No Other Transfer. Other than the sublease agreement, no other transfer is being permitted.

c. No Change. The sublease agreement shall not change, modify, waive, or amend any of the terms and conditions of this Lease.

d. Conflict. If there is a conflict between this Lease and the sublease agreement, this Lease shall control.

e. No Waiver. STATE's consent shall not be construed to be a waiver of any of STATE's rights under this Lease.

f. STATE Reservation. STATE reserves all of its rights under this Lease and does not incur any additional liability by consenting to the sublease agreement.

g. No Release. STATE's consent to the sublease agreement shall not release LESSEE from any of LESSEE's responsibilities, obligations, liabilities, and claims arising under or out of this Lease.

h. Priority of Lease. This Lease shall have priority over the sublease agreement, which shall be subordinate in all respects to this Lease.

i. Compliance with Conditions. LESSEE and the sublessee shall represent and warrant that each shall comply with all conditions that may be imposed by the Land Board or STATE in connection with STATE's consent to the sublease agreement.

j. Other Conditions. LESSEE and the sublessee shall comply with such other terms and conditions as may be imposed or prescribed by STATE relating to STATE's consent to the sublease agreement, including, without limitation, conditions relating to governing law (Hawaii), resident appointment, rights of holders of security interest, notice to STATE, extension notices, recordation, use restrictions, STATE's prior approval, compliance with laws, STATE remedies (including the payment of rent, fees, and other charges directly to STATE in the event of LESSEE's default), and any changes to STATE's assignment and/or sublease evaluation policies.

6. Delivery to STATE. If STATE approves a sublease agreement, LESSEE and the proposed sublessee must deliver an original, fully executed counterpart original sublease agreement to STATE in the form approved by STATE within fourteen (14) business days of receipt of STATE's written approval. If an original, fully executed counterpart sublease agreement in the form approved by STATE is not delivered to STATE within the fourteen (14) business days' time frame, then LESSEE must submit the proposed sublease agreement again for STATE's approval. If STATE rejects a proposed sublease agreement, then LESSEE may not enter into the sublease agreement.

7. No Impairment. Each and every covenant, condition or obligation imposed upon LESSEE by this Lease and each and every right, remedy, or benefit afforded STATE by this Lease will not be impaired or diminished as a result of any sublease agreement.

8. Excessive Sublease Rent. No sublessee shall be obligated to pay to LESSEE, and LESSEE shall not be permitted to charge any rent, percentage rent, bonus rent, key money, administration fee, or the like, which exceeds, in the aggregate, the total sums that LESSEE pays to STATE under this Lease for the portion of the Premises subleased by the sublessee under its sublease agreement (the "Sandwich Profit"). If, notwithstanding the foregoing prohibition, LESSEE receives any Sandwich Profit, LESSEE shall pay the same to STATE.



9. Rents Assigned. LESSEE assigns to STATE all rent and other payments due from any and all sublessees under any and all sublease agreements; provided, however, LESSEE is hereby granted a license to collect rents and other payments due from sublessees under their sublease agreements until the occurrence of a breach or violation of this Lease by the LESSEE in accordance with Article XX.A. (Events of Breach or Violation), regardless of whether or not a notice of that default has been given to LESSEE. At any time, STATE may notify a sublessee of this assignment and upon such notice, the sublessee will pay its rent and other payments directly to STATE. STATE will credit LESSEE with any rent received by STATE under such assignment, but the acceptance of any payment on account of rent from any sublessee as a result of a breach or violation of this Lease in accordance with Article XX.A. (Events of Breach or Violation), will in no manner whatsoever serve to release LESSEE from any liability under this Lease. No payment of rent or any other payment by a sublessee directly to STATE or other acceptance of such payments by STATE, regardless of the circumstances or reasons therefor, will in any manner whatsoever be deemed an attornment by the sublessees to STATE in the absence of a specific written agreement signed by STATE to such an effect.

10. Reports. LESSEE must, at LESSEE's sole cost and expense, prepare and submit the following reports and statements, the forms of which will be subject to the reasonable approval of STATE:

a. Annual Report. On or before the thirtieth (30<sup>th</sup>) day after the end of each calendar year, an annual report summarizing the subleasing activities for the preceding calendar year, and the total rents, fees, charges, and all other sums received by LESSEE from each sublessee during that year.

b. Other Reports. Such other reports and such other information concerning the operation and subleasing of the Premises as STATE may from time-to-time reasonably request.

C. Violation.

1. Lease Termination. Any attempt by LESSEE to assign, transfer, hypothecate, mortgage, or encumber LESSEE's interest or rights under this Lease, or any attempt by LESSEE to sublease the Premises, or any part or portion thereof, without first obtaining STATE's written consent, shall be deemed a violation of this Article XXX. (Assignment and Subletting). Any such attempted action or transaction on the part of LESSEE shall be null and void, and shall not confer any right, title, or interest in or to this Lease, or right of occupancy or use of the whole or any part or portion of the Premises, upon any such purported assignee, mortgagee, encumbrancer, pledgee, sublessee, successor, or purchaser. STATE shall further have the right to terminate this Lease and enforce such other remedies as are provided in Article V.D. (Additional Charges) and Article XX. (Termination by STATE), respectively, herein.

2. Assignor or Transferor. If the transferor or LESSEE defaults in the performance of any of the covenants, agreements, obligations, stipulations, terms, or conditions of this Lease, STATE may proceed directly against LESSEE, the transferor, or each transferor if there has been more than one assignment, encumbrance, or transfer (hereinafter referred to collectively as the "Transfer") without the necessity of exhausting remedies against LESSEE. STATE may consent to subsequent Transfers or amendments or modifications to this Lease



with transferees, without notifying the transferor (or if there has been more than one Transfer, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Lease, as amended.

D. Procedure and Conditions.

1. Procedure. LESSEE must provide, in writing, to STATE the following:

- a. The name and address of the proposed sublessee, assignee or transferee;
- b. The nature of the proposed business to be operated by the sublessee, assignee, or transferee on the Premises;
- c. The terms and conditions of the proposed sublease, assignment, or transfer; and,
- d. Reasonable financial information so that STATE can evaluate the proposed sublessee, assignee, or transferee under this Article XXX. (Assignment and Subletting) herein.

2. Conditions. Transfers by LESSEE are also subject to:

- a. The covenants, agreements, obligations, stipulations, terms, and conditions of this Lease;
- b. The term of any sublease, assignment or other Transfer agreement shall not extend beyond this Lease term;
- c. LESSEE shall remain liable for all Lease obligations;
- d. Consent to one Transfer does not waive the consent requirement for any future Transfers;
- e. Payments to STATE of all premiums, Sublease Percentage Fee, or other sums or amounts which LESSEE may be required to pay under this Article XXX. (Assignment and Subletting) herein; and,
- f. All other terms and conditions that may be imposed or prescribed by STATE.

## ARTICLE XXXI. SUCCESSORS AND ASSIGNS

Each and all of the expressions, phrases, terms, conditions, provisions, stipulations, promises, covenants, agreements, requirements, and obligations of this Lease shall, whenever applicable, extend to and bind and inure to the benefit of STATE and LESSEE, and the legal representatives, successors, and permitted assigns of either or both of them.

## ARTICLE XXXII. NOTICES

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) LESSEE at the address provided on Page 1 of this Lease; or (b) STATE at the following address: State of Hawaii, Department of Transportation, Airport offices, located at Terminal 1 of the Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880; or (c) such other address as either LESSEE or STATE 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, or 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.

## 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 STATE or 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, firm, and association.

#### ARTICLE XXXIV. NO PARTNERSHIP

It is expressly understood and agreed by and between STATE and LESSEE, that STATE shall in no way be, nor for any purpose become or be construed to become a partner of LESSEE in the conduct of LESSEE's Operations, or otherwise, or a joint venture or a member of a joint enterprise with LESSEE, and STATE does not assume responsibility for LESSEE's conduct or performance under this Lease. STATE and LESSEE acknowledge and agree that there are no third-party beneficiaries to this Lease.

#### ARTICLE XXXV. FORCE MAJEURE

A. STATE's Obligations. STATE 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 STATE and/or STATE's contractors or subcontractors.

STATE 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 of Hawaii, or municipal law, rule, regulation, requirement, order, or direction, and if STATE deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order, or direction may not be mandatory on STATE as a public agency.

B. Rentals Remain Payable. Unless and only to the extent otherwise specified in this Lease, no abatement, diminution, or reduction of the rentals and other fees and charges payable by LESSEE to STATE shall be claimed by or allowed to LESSEE for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances, or regulations of the United States of America, or of the State of Hawaii, or of the County, or of any other county, municipal, governmental, or lawful authority whatsoever; or by priorities, rationing, curtailment, or shortage of labor or materials, or by war, or any matter or thing resulting therefrom, or by strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or by any other cause or causes beyond the control of STATE, nor shall this Lease be affected by any such causes.

C. LESSEE Enforcement. Nothing in this Article XXXV. (Force Majeure) contained shall preclude nor be construed to preclude the enforcement by 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 appendices 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 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).

### ARTICLE XXXVIII. APPROACH PROTECTION

STATE reserves the right to take such action as may be necessary to protect the aerial approaches of the Airport against obstruction, in accordance with applicable standards or requirements, together with the right to prevent LESSEE or any other person, from erecting or permitting to be erected, any building or other structure on the Airport which would conflict with such standards or requirements, or which, at the discretion of STATE, would limit the usefulness of the Airport or constitute a hazard to aircraft.

LESSEE shall, upon being notified that any of its proposed construction may affect the safety or navigable airspace and operating aircraft on and around the Airport, prepare and submit to the appropriate office of the FAA the necessary notice and documents as required by Federal Aviation Regulation Title 14, CFR Part 77. This notice to the FAA must be submitted at least thirty (30) calendar days prior to the date of the proposed construction or the date that an application for a building permit with the appropriate agency of the County is filed, whichever is earlier.

Should LESSEE be notified by STATE that LESSEE's improvements pose a hazard to the navigation of operating aircraft at the Airport, then LESSEE shall make changes to the improvements to remove the hazard. Failure by LESSEE to make said changes to the improvements will be a violation of this Article XXXVIII. (Approach Protection) and give STATE the right to assess a charge and/or terminate this Lease pursuant to Article V.D. (Additional Charges), and Article XX. (Termination by STATE), respectively, hereof.



#### 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 STATE, the Director, nor any elected official, agent, director, officer, employee, nor any person acting for or on behalf of STATE, shall be charged personally by LESSEE, or be held personally liable or personally responsible to 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

STATE 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 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 LESSEE's permitted activities at, in, on, over, or under the Premises, and not for sale to others.

#### ARTICLE XLII. PREHISTORIC AND HISTORIC REMAINS

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

Upon discovery of any prehistoric or historic remains, 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 STATE of such discovery.

### ARTICLE XLIII. NONDISCRIMINATION

A. Construction. 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, LESSEE shall maintain and operate such facilities and services 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.

B. Operation. 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, age, or a physical disability, as defined in the ADA, shall be denied 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, age, or a 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 LESSEE shall not discriminate against any person because of race, creed, color, national origin, sex, age, or disability, as defined in the ADA, in connection with the conduct LESSEE's Operations on the Premises and at the Airport or in connection with the award and performance of any lease agreement covered by Title 49, CFR Parts 23 and 26;

5. That LESSEE shall use the Premises and conduct LESSEE's Operations thereon and at the Airport 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 LESSEE will include the foregoing statements in any subsequent lease or other agreements it enters into.

C. Breach. In the event of breach of any of the foregoing nondiscrimination covenants, STATE may terminate this Lease and re-enter and repossess the Premises, together with all Leasehold Improvements and LESSEE's Personal Property thereon and hold the same as if this Lease had never been made or issued.

#### ARTICLE XLIV. CIVIL RIGHTS PROVISION

LESSEE assures that it will undertake an affirmative action program as required by Title 14, CFR Part 152, Subpart E and Effectuate Title VI of the Civil Rights Act of 1964, and as said regulation may be administered upon the Airport by the FAA, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, or a physical disability, as defined in the ADA, be excluded from participating in any employment activities covered by Title 14, CFR Part 152, Subpart E and Title VI of the Civil Rights Act of 1964. 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. LESSEE assures that it will require that its covered sub-organizations provide assurances to STATE that they similarly will undertake affirmative action programs, and that they will require assurances from their sub-organizations, as required by Title 14, CFR Part 152, Subpart E and Title VI of the Civil Rights Act of 1964, to the same effect.

#### ARTICLE XLV. RESERVED

#### ARTICLE XLVI. BROKERS

LESSEE warrants and represents to STATE that 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. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, LESSEE shall be solely responsible for such commission or fee, and shall release, indemnify, defend, save, and hold STATE harmless from and against any and all actions, causes of action, claims, demands, lawsuits, judgments, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees and demands therefor, arising or resulting from LESSEE's dealings and interactions with any broker, finder, or person who could claim a right to a commission or finder's fee. The provisions of this Article XLVI. (Brokers) shall survive any expiration or sooner termination of this Lease.

#### ARTICLE XLVII. SURVIVAL OF OBLIGATIONS

A. STATE's Right to Enforce. Termination of this Lease, whether by expiration or sooner termination, shall not affect the right of STATE to enforce any or all indemnities and representations and warranties given or made by LESSEE to STATE under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof, including, without limitation, Article XIII. (Liability and Indemnity),

Article XV.C. (Compliance with Environmental Matters), Article XXVI. (Condemnation), Article XXVII. (Performance Bond), Article XXVIII. (Litigation), Article XXIX. (Liens), and Article XLVI. (Brokers). LESSEE specifically acknowledges and agrees that, with respect to each of LESSEE's indemnities contained in this Lease, LESSEE has an immediate and independent obligation to defend STATE from any claim which actually or potentially falls within the indemnity provision, even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to LESSEE by STATE.

B. Accrued Obligations. LESSEE's obligation to make payments to STATE with respect to the accrued rents and other fees and charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to STATE) 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

LESSEE, upon paying all of the rents and other fees and charges required under this Lease, 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 STATE. LESSEE expressly acknowledges that LESSEE's right to quiet possession of the Premises does not preclude STATE's right to make changes and additions to the Airport, including the Premises, and to do work at, in, on, over, or under the Premises as permitted by this Lease, including, without limitation, STATE's right to relocate LESSEE, as described in this Lease.

#### ARTICLE XLIX. NO ACCORD AND SATISFACTION

A. LESSEE's Instructions Void. The payment by LESSEE or the receipt by STATE of a lesser amount than the annual rental prescribed and set forth in this Lease may be, at STATE's sole option, credited or applied to the payment of: (1) first, any interest charges, service charges, and/or late fees; and, (2) second, any annual rental (beginning with earliest owing or accrued annual rental), notwithstanding any instructions by or on behalf of LESSEE to the contrary, which instructions (including any endorsement or statement on any check, or any letter accompanying any such check or payment) shall be null and void, and STATE may accept such check or payment without prejudice to STATE's right to recover the outstanding receivable balance of such accrued annual rentals, interest charges, service charges, and/or late fees, or to pursue any other remedy available in this Lease or at law.

B. Acceptance Does Not Invalidate Notice. STATE may accept any partial payment from LESSEE without invalidating any contractual notice given or required to be given herein pursuant to applicable law.



#### ARTICLE L. JOINT AND SEVERAL LIABILITY

The obligations, covenants, promises, liabilities, warranties, and representations of LESSEE under this Lease shall be joint and several, by and among any and all entities and persons comprising LESSEE.

#### ARTICLE LI. ESTOPPEL STATEMENTS

A. Delivery of Estoppel Statement by LESSEE. Within ten (10) calendar days after request therefor by STATE, LESSEE shall deliver, in recordable form, an estoppel statement certifying that this Lease is in full force and effect, the date of LESSEE's most recent payment of rental, and that LESSEE has no defenses or offsets outstanding, or stating those defenses or offsets claimed by LESSEE, and any other information reasonably requested by STATE.

B. Failure of LESSEE to Deliver Estoppel Statement. If LESSEE fails to deliver the requested estoppel statement to STATE 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 STATE's performance under this Lease, and 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 LESSEE. Such conclusions shall be binding upon LESSEE. Notwithstanding these conclusions, LESSEE's failure to deliver the requested estoppel statement shall constitute a breach of this Lease.

#### ARTICLE LII. AUTHORITY

If LESSEE executes as a corporation, a limited liability company, a joint venture, or a partnership, each of the persons executing this Lease on behalf of LESSEE does hereby covenant and warrant that LESSEE is a duly authorized and existing entity, that LESSEE has and is duly qualified to do business under the laws of the State of Hawaii, that LESSEE has full right and authority to enter into this Lease, and that each and all of the persons executing this Lease for and on behalf of LESSEE are authorized to do so. Upon STATE's request, LESSEE shall provide STATE with evidence reasonably satisfactory to STATE confirming the foregoing representations and warranties.

#### ARTICLE LIII. CONSENTS

In situations where STATE's consent cannot be unreasonably withheld, if it is legally adjudicated that STATE unreasonably withheld its consent or approval, LESSEE's sole and exclusive remedy is to seek specific performance, and in no event will STATE be liable for any monetary damages. All consents or approvals by STATE shall be in writing.

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 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, and construed in accordance with the laws of the State of Hawaii.

*(Remainder of this page intentionally left blank, signature page follows)*

IN WITNESS WHEREOF, the parties have duly executed this Lease on the day and year first above written.

APPROVED AS TO FORM:

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
MEGAN A. COBURN  
Deputy Attorney General

By \_\_\_\_\_  
EDWIN H. SNIFFEN  
Director of Transportation

STATE

( )

By \_\_\_\_\_  
Its

LESSEE

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

09-22-2023, Item M-3

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Notary Seal Affixed:

\_\_\_\_\_

Date of the Notarized Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

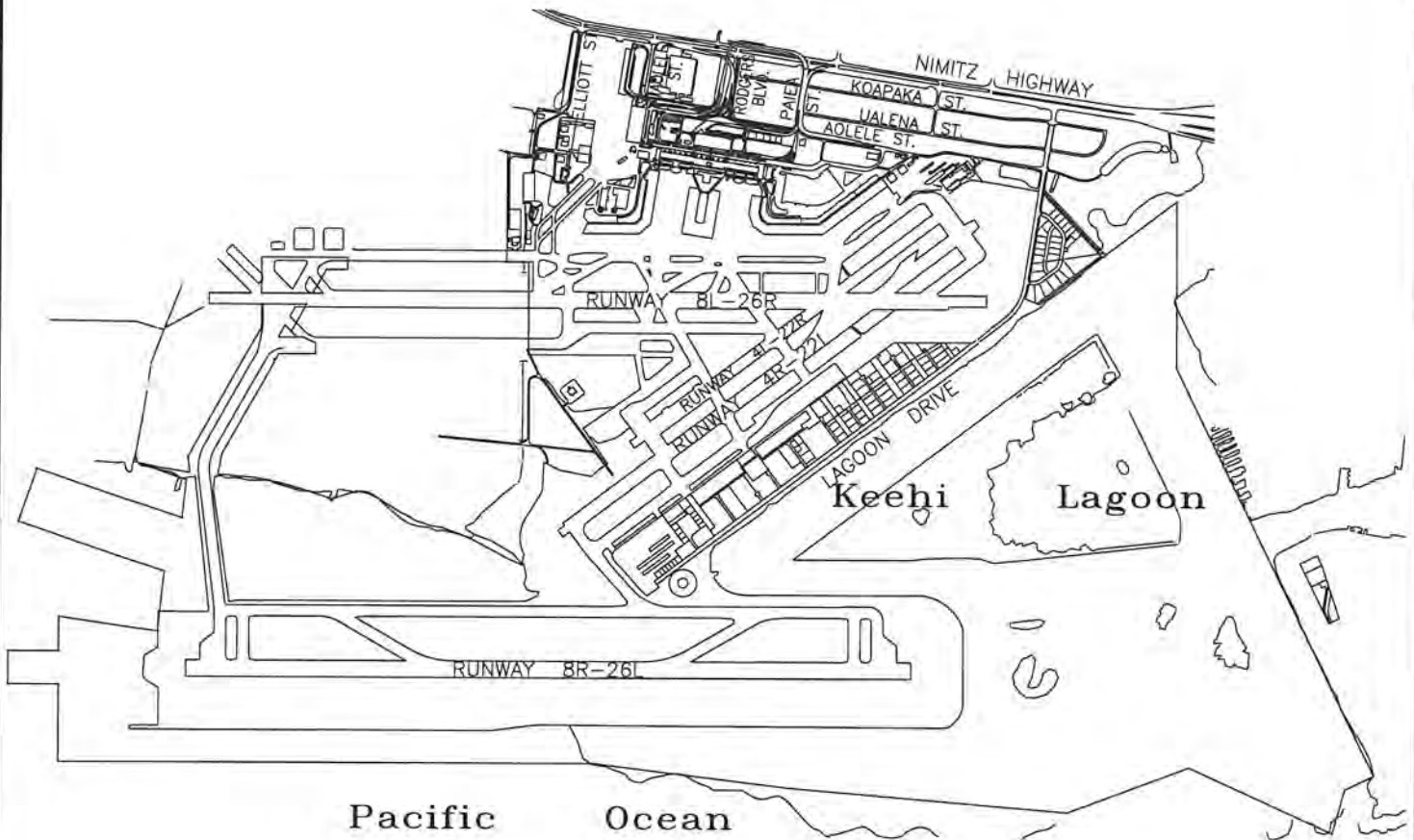
Identification or Description of the Document being Notarized:

\_\_\_\_\_  
\_\_\_\_\_

Printed Name of Notary: \_\_\_\_\_ Circuit

\_\_\_\_\_  
Notary's Signature and Notary's Official Stamp or Seal Date





Pacific Ocean

Keehi Lagoon

SCALE: 1" = 3000'

DATE :

EXHIBIT: **A**

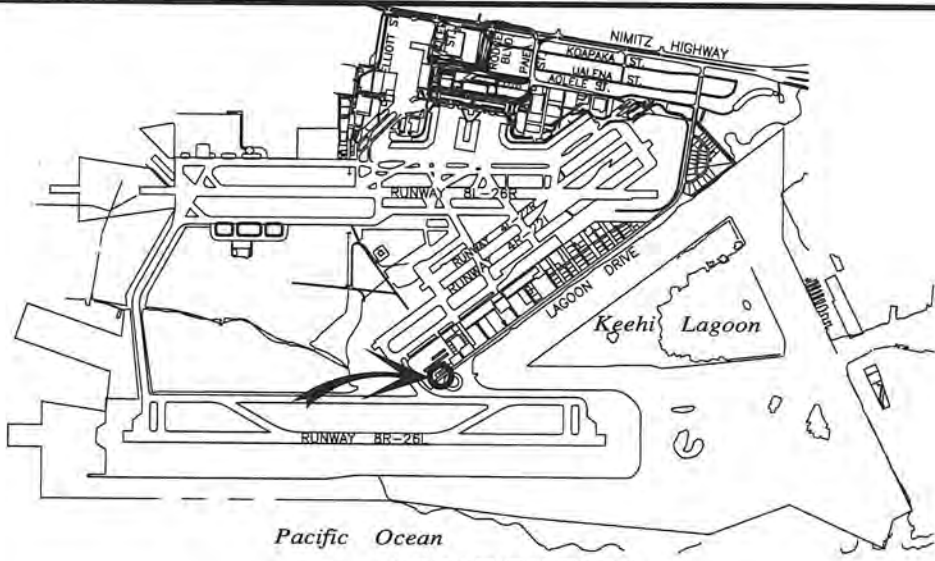


Airports Division

"AIRPORT"

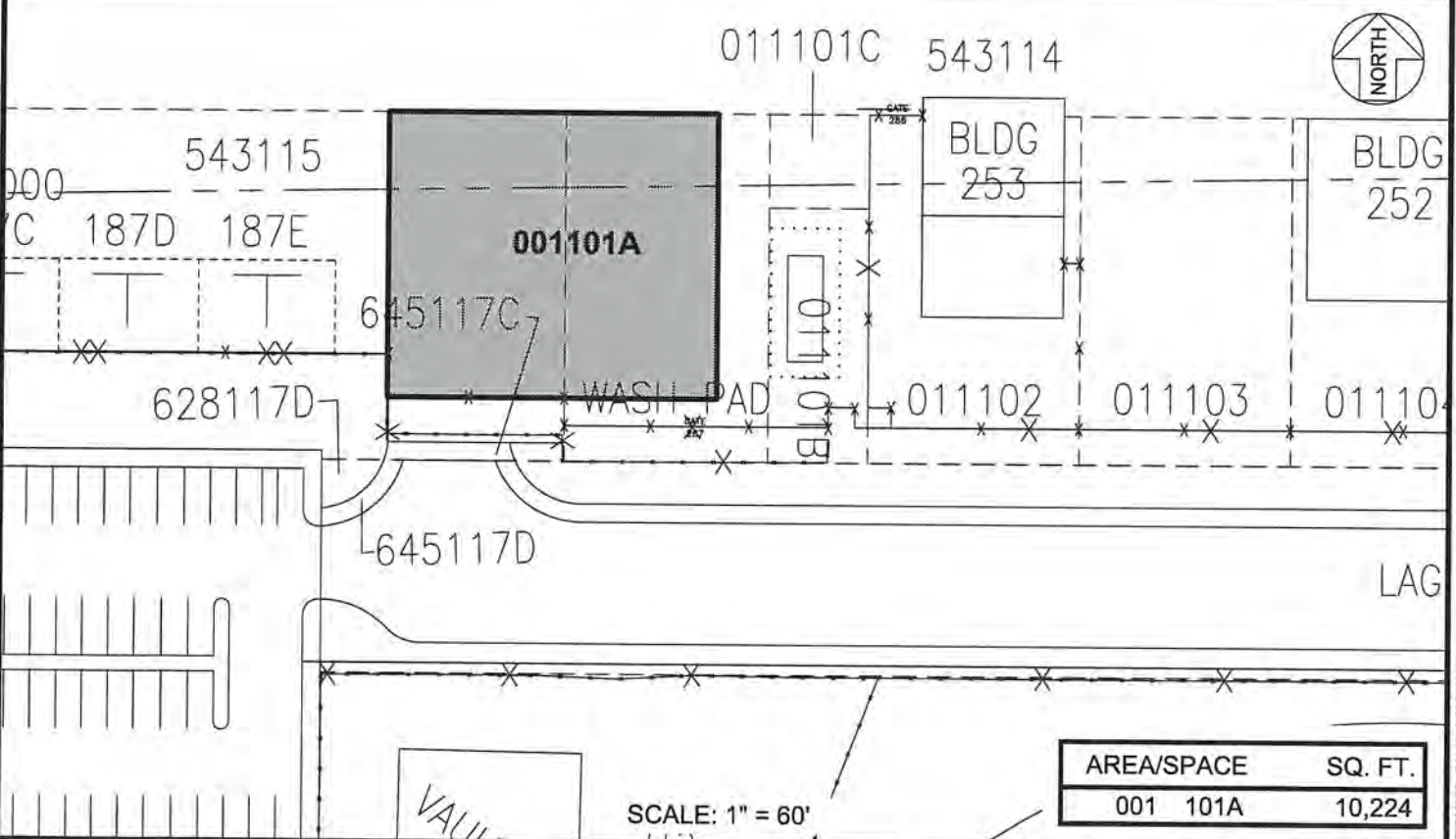
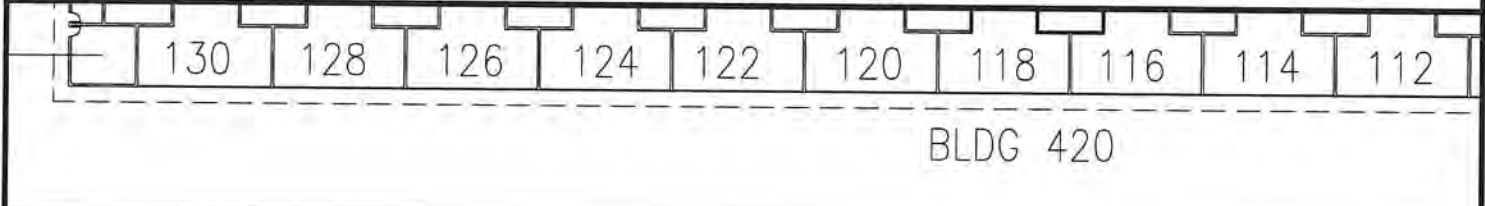
# HONOLULU INTERNATIONAL AIRPORT

N:\AIRPORTS\HNL\_HONOLULU\CAD\PIA\HNL\_EXHIBIT\_A1.DWG



**LOCATION PLAN**

5000:1



AREA/SPACE	SQ. FT.
001 101A	10,224

State Lease No. DOT-A-23-0018      DATE : JULY 2023      EXHIBIT: **B**



LOTS  
SOUTH RAMP

011101A

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**Procedure No. 7.6 DEVELOPMENT STANDARDS FOR LEASED AIRPORT PROPERTY**

Approved by Owen Miyamoto

Effective Date: 01/15/1995

**7.6.01 PURPOSE**

The purpose of this procedure is to establish a standard that shall be followed by lessees in the development of leased property (in construction of improvements).

**7.6.02 POLICY**

It is the policy of the Airports Division that the development of leased airport property shall be aesthetically compatible with existing and planned airport facilities and accomplished in accordance with the applicable rules and procedures of the Department and all other applicable laws, ordinances, rules and regulations of federal, state and county agencies.

**7.6.03 APPLICABILITY**

This procedure applies to persons who lease airport property.

**7.6.04 PROCEDURES**

A. Definitions

1. "Airport" means the areas of land or water set aside by Executive Order of the Governor of the State of Hawaii for public airport purposes.
2. "Buildings" means the main portion of each structure including all projections, extensions, additions, changes, garages, outside platforms and docks, carports, canopies, eaves, and porches. Paving, ground cover, fences, signs and landscaping are specifically excluded from the definition.
3. "Building site" means the land included in the lease agreement.
4. "Corner building site" means a building site which has two or more lease boundary lines abutting a street.
5. "Department" means the Department of Transportation of the State of Hawaii.
6. "Director" means the Director of the Department.
7. "Improvements" means all buildings, structures, and facilities including paving, fencing, signs, and landscaping constructed, installed, or placed on, under, or above any building site by or on the account of a lessee.
8. "Landscaping" means all aesthetic improvement of building sites through the use of lawns, ground cover, trees, and shrubs, as well as walls, screenings, terraces, fountains, pools, and other water arrangements.
9. "Land use plan" means the most recent plan for the future development of airport adopted by the Department, wherein various segments of airport land are reserved for specified uses.
10. "Lease boundary line" means each of the perimeter lines of each building site as leased to each lessee.
11. "Lessee" means any person, firm, corporation, or other entity who has a lease with the Department



for a building site.

12. "Segment" means one of the areas of the airport designated for particular uses (general aviation commercial, general aviation noncommercial, etc.) on the land use plan.
13. "Setback area" means the minimum required area situated between a lease boundary line and a setback line.
  - a. "Front setback area" means the area between the street on which a building site abuts and the front setback line and extends from the side lease boundary line to side lease boundary line. On a corner building site, the front setback area shall apply to each lease boundary line abutting a street, unless otherwise specified in this procedure.
  - b. "Side setback area" means the area between the side lease boundary line and the side setback line and extends from the front setback line to the rear lease boundary line.
  - c. "Rear setback area" means the area between the rear lease boundary line and the rear setback line and extends from side setback line to side setback line.
14. "Setback line" means a line of a building site lying parallel to each lease boundary line and separated from it by the distance required to provide the minimum setback area.
15. "Site coverage" means the portion of the total building site area that may be covered by buildings.
16. "Site width" means the diameter of the largest circle which can be inscribed within the lease boundary lines of a building site.
17. "Street" means the paved portion of a right-of-way maintained by the Department for vehicular access to the building site and used as a thoroughfare by the public.
18. "Taxiway" means a Department-maintained aircraft taxiway, apron, ramp or any other right-of-way for aircraft whose edge is the edge of the right-of-way for all purposes of these standards.

**B. Performance Standards For All Segments**

1. General. No part of the airport or any improvement on it shall be used or allowed to be used at any time for the manufacture, storage, distribution, serving, or sale of any product or the furnishing of any service, in a manner which is unreasonably noxious or offensive or which is an unreasonable annoyance or nuisance to others at the airport because of odors, fumes, smoke, noise, glare, vibration, soot, or dust. No activity which may be dangerous to public health and safety, increases the fire insurance rating for adjoining or adjacent property, or is illegal shall be permitted.
2. Noise.
  - a. The sound pressure levels generated on a building site shall comply with the applicable Hawaii Administrative Rules of the State Department of Health--except for the authorized operation of motor vehicles, aircraft or other transportation equipment.
    - (1) To, from and on a building site.
    - (2) On the public area of the airport.
  - b. The testing of aircraft engines shall be conducted in noise-suppressing test cells so that sound levels do not exceed the levels referenced above.
3. Air Pollution. Atmosphere emissions produced by motor vehicles or aircraft--except for those produced by the authorized operation of motor vehicle and aircraft to, from and on a building site--shall comply with the applicable standards established by the State Department of Health or any other governmental agency.
4. Heat or Glare. Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be perceptible without



instruments at any lease boundary line of a building site.

5. Waste Disposal. All disposal of storm and sanitary sewage and industrial waste shall be in accordance with all applicable laws, rules or regulations of the Departmental and county, state and federal agencies.
6. Electronic and Radio Interference. No tenants shall construct facilities capable of reflecting radio signals or producing electrical, electronic, or radio emissions which will interfere with, obstruct, or adversely affect the operation of air navigation aids and airport radio communications.
7. Stormwater Pollution Prevention. the tenant shall:
  - a. Use all reasonable methods to minimize pollution from fuel spills and use of hazardous materials or hazardous waste;
  - b. Develop a waste minimization plan and coordinate it with the appropriate Airports District Manager; and
  - c. Develop a Stormwater Pollution Prevention Plan under the guidelines of Airports Division SWPPP and have it approved by the Airports District Manager.

C. Building Site Development Standards for all Segments

1. Permitted Uses. The uses permitted shall be those defined in the lease for the building site.
2. Automobile and Truck Parking and Loading Requirements
  - a. Paved off-street parking areas sufficient for all the automobiles and trucks of employees, tenants, and customers and other vehicles used in the conduct of a lessee's business shall be provided on each building site. Parking on the streets and at public areas on airport property shall be permitted only in areas and times specifically designated and posted by the Department.
  - b. Parking in the front setback area shall not exceed 60% of the required minimum front setback area, and shall be appropriately screened from view by landscaping. Parking and maneuvering space shall be provided in accordance with accepted traffic engineering standards.
  - c. Buildings shall be designed and placed upon each building site so that motor vehicles of maximum length permitted by the State of Hawaii at the time of construction of each building may be maneuvered and loaded or unloaded off the street. On-street vehicle maneuvering or loading shall not be permitted.
  - d. On the side of a building facing a street, no truck loading door or loading dock shall be nearer than fifty (50) feet to the lease boundary line. Loading facilities shall be constructed so that no part of the longest legal loading vehicle being loaded or unloaded at any loading dock, loading door, or loading area will extend beyond the lease boundary line.
3. Aircraft Parking and Servicing
  - a. Except for permitted parking and servicing of aircraft on designated areas of the airport, provisions for parking aircraft belonging to tenants and their patrons, invitees, employees, and others shall be on the building sites.
  - b. Whenever hangar doors open onto a lease boundary line abutting a taxiway, they shall be set back a distance which in the opinion of the Department shall provide sufficient clearance for the holding, maneuvering, and parking of aircraft as incidental to the ingress and egress of aircraft from the hangars. No holding, maneuvering, stopping, or parking of aircraft off a building site for purpose of hangaring, parking, or storing of aircraft shall be permitted.
  - c. All aircraft parked or left unattended on any building site shall be entirely within the lease

boundary lines.

4. Building and Construction Materials.

- a. Any building material which has been approved by the Department and which complies with applicable building codes may be used.
- b. All aircraft taxiways and parking areas on the building site shall be paved with materials of sufficient strength to accommodate the heaviest aircraft anticipated to be parked on the building site, or of sufficient strength to accommodate aircraft with gross ramp weights of at least 12,500 pounds, whichever is the greater.
- c. Any connection from a driveway or sidewalk on a building site to the paved surface of an abutting street shall be constructed in accordance with the applicable standards of the Highways Division of the Department. Any connection from a taxiway or apron on a building site to the paved surface of an abutting public use taxiway shall be either:
  - (1) For a distance of twenty-five feet from the connection and of the same material and strength as the taxiway to which it is connected; or
  - (2) Painted in accordance with standards established by the Department to indicate that the connection is non-loading bearing.
- d. All ventilating fans, cooling towers, equipment, etc. placed on roofs of buildings shall be screened from view or enclosed in a manner that is architecturally compatible with the main portion of the building structure.
- e. Accessory buildings, enclosures, and fences shall be consistent in design and quality of materials with the buildings they serve.

5. Building Heights. All building heights shall conform to the rules and regulations of the Department and the Federal Aviation Administration.

6. Dust Control. All ground areas not covered by buildings shall be landscaped or paved, properly drained and graded, and maintained in good condition free of weeds, trash, and other debris.

7. Illumination. The design and location of exterior lighting shall be subject to the approval of the Department and shall comply with the requirements of the Federal Aviation Administration and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around airport.

8. Landscaping.

- a. All areas not paved or covered by buildings shall be landscaped in accordance with plans approved by the Department. In addition to trees, ground cover, and gardens, landscaping shall include, where appropriate, the use of walls, screenings, terraces, fountains, pools, and other water arrangements.
- b. Such landscaping, as approved by the Department, shall be installed within a period not to exceed ninety (90) days after the notice of completion of the initial building. Hose bibs or sprinkler systems shall be provided to serve all landscaped areas.
- c. Plans, specifications, and inspections for landscaping shall be accomplished by a professional landscape architect registered in the State of Hawaii and shall require the written approval of the Department prior to installation.
- d. Plant material shall consist of a balanced mixture of trees shrubs and ground cover.
- e. All trees shall at all times be limited to a height of thirty-five (35) feet above the curb line.

- f. A continuous greenbelt shall be required to be maintained on all building sites abutting streets; the greenbelt shall consist of grass lawns, ground cover, trees, shrubs, or any combination thereof as approved by Department. The greenbelt requirement shall be included in the minimum landscaping requirement for the building sites as set forth in this procedure.
  - g. Any unpaved area between the lease boundary line and the edge of the curb of the abutting street shall be landscaped and maintained to the satisfaction of the Department by the lessee of the building site.
9. Power, Telephone, Utilities, and Sewer. No electric power line, water pipe, gas pipe, sewer pipe, or drainage pipe (other than roof leaders) shall be installed or maintained upon any building site above the surface of the ground, except for meter connections which shall be screened or enclosed in a manner approved by the Department.
10. Setbacks. All front setback areas or side setback areas facing a street, with the exception of driveways, sidewalks, other walkways, and any parking, shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground cover, or material as approved by the Department. If landscaping is not properly maintained by the lessee, the Department may undertake such maintenance as it deems necessary with the resulting expense charged to the lessee.
11. Signs and Advertising. All signs on the airport shall comply with Airports Division Procedure 7.7 "Environmental Preservation Guidelines."
12. Hedges and Fences.
- a. Except as otherwise specified in this procedure, no hedge or fence shall be grown, constructed, or maintained on any lease boundary line or lines or in any setback area or an area which abuts a street.
  - b. No hedge or fence shall be grown, constructed, or maintained on or adjacent to any street setback line that exceeds six (6) feet in height or elsewhere within setback lines that exceeds ten (10) feet in height, without the prior written approval of the Department.
  - c. Fences shall be constructed and gates installed and controlled where necessary to restrict access from the street to the aircraft operations area; the design and placement of the fences and gates shall be subject to the written approval of the Department prior to installation.
13. Outside Storage
- a. No vehicle, equipment, material, supply, or product shall be stored or permitted to remain on any building site outside a permanent building unless such storage is suitably shielded from public view by an appropriate screen compatible in design with the permanent structure; the screen shall require the written approval of the Department prior to installation.
  - b. No aviation fuel shall be stored, except as approved by the Department, on any building site other than on aviation fuel storage areas reserved by the Department for such use, and in accordance with a valid written contract with the Department.
  - c. Activities that involve the dismantling of aircraft or the storage of salvaged aircraft, aircraft engines, air-frames, parts, or accessories shall comply with the provisions of this procedure for storage. Aircraft stored at the airport without a current airworthiness certificate (except for purposes of relicensing) may, at the discretion of the Department, be declared salvage aircraft and shall thereupon be treated as a salvaged aircraft for the purposes specified above.
- D. Design and Construction of Improvements for All Segments.
1. General. No improvements of any kind shall be erected, altered, placed, assembled, or permitted

to remain on a building site unless and until plans showing their type of use, location, size, and architectural and engineering design have been approved in writing by the Department

2. Plans Required. All plans for improvements shall be prepared by registered architects or engineers and shall include:

- a. Topographic, grading, drainage, and utility plans showing one (1) foot contours and spot elevators referenced to airport datum and a plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet and showing the relationship of the proposed improvements on the building site to the improvements on the adjacent sites and to the utilities, streets, and taxiways.
- b. Preliminary plans and specifications of all proposed improvements in sufficient detail to determine compliance with these standards. The plans and specifications may be manufacturer's standard plans if sufficient. Plans shall be a suitable scale, but in no event smaller than 1/16-inch to the foot.
- c. Ground cover plans (including landscaping) which incorporate, at a minimum, the Department's general landscaping and paving requirements.
- d. An accurate architectural perspective of the proposed improvements, including the proposed exterior color schemes, style, materials, and design, working, and placement of all signs proposed.
- e. Any other plans, specifications, or design features requested by the Department.

3. Approval of Plans.

- a. Approval of plans and specifications for compliance with this procedure and for aesthetics shall be at the discretion of the Department .
- b. Approval of plans and specifications may be withheld because of failure to comply with this procedure.

4. Plans for Alterations to Improvements. All plans for alterations to the building site either for the construction of additional improvements or for alterations to existing improvements which are visible from the exterior of any building or which affect the structural system of any building or change any grade or landscaping, shall be prepared, submitted, and approved under the applicable provisions of this procedure.

5. Issuance of Building and Related Permits. Prior to obtaining necessary building and other related permits, lessees shall obtain written approval from the Department stating that the uses and plans for the lessee's building site have been approved by the Department as being in full compliance with this procedure.

E. Special Requirements for Airline Maintenance Hangar Area.

1. Permitted Uses. Any use which involves the operation of a facility for the maintenance and overhaul of air carrier aircraft, engines, parts, accessories, and equipment. The sale of aviation services and the offering of any services, or repairs of any type to the general public shall be specifically prohibited. Permitted activities shall include, but not be limited to, the following:
  - a. The loading and unloading of aircraft.
  - b. The maintaining, storing, and servicing of aircraft, which shall include overhauling, rebuilding, repairing, inspecting and licensing, and the purchasing and selling of parts, equipment, and accessories.
  - c. The right of sale, disposal, and exchange of aircraft, aircraft parts and accessories therefor, and aviation equipment of every description as incident to the conduct of maintaining and overhauling air carrier aircraft, but not as distributor or as a dealer of same.



- d. The training of lessee's personnel but not members of the general public in any art, science, craft, or skill pertaining directly or indirectly to aircraft.
- e. The operation of offices and facilities incident to the conduct of lessee's business.

2. Building Site Requirements.

- a. On-line Maintenance Hangar:
  - (1) Minimum Site Area . . . . . 2 acres
  - (2) Maximum Site Coverage . . . . . 30%
  - (3) Minimum Landscaping Coverage . . . . . 5%
- b. Airline Maintenance Base:
  - (1) Minimum Site Area . . . . . 5 acres
  - (2) Maximum Site Coverage . . . . . 30%
  - (3) Minimum Landscaping Coverage . . . . . 5%

3. Setback Requirements.

- a. Front Setback Line . . . . . 25 ft. minimum
- b. Side Setback Line . . . . . 10 ft minimum on each side
- c. Rear Setback Line . . . . . 10 ft minimum

4. Other Requirements. Engine runups shall be confined to soundproof test cell blocks or equivalent mobile suppressors.

F. Special Requirements for Cargo Mail Area.

1. Permitted Uses. Any use which involves the operation of a facility for the handling and storage of air cargo and mail shall include, but not be limited to, the following:

- a. The loading and unloading of aircraft.
- b. The receiving, delivering, dispatching, processing, handling and storing of air cargo, express, mail, and other property.

2. Building Site Requirements.

- a. Minimum Site Area . . . . . 1 acre
- b. Maximum Site Coverage . . . . . 50%
- c. Minimum Landscaping Coverage . . . . . 5%

3. Setback Requirements.

- a. Front Setback Line . . . . . 2  
5 ft. minimum
- b. Side Setback Line . . . . . 10 ft. minimum on each side
- c. Rear Setback Line . . . . . 10 ft. minimum

G. Special Requirements for Aviation Support Area.

1. Permitted Uses. Any use which involves the operation of a facility to support the authorized businesses and services of others holding valid leases, contracts, or permits in the terminal complex shall include, but not be limited to, the following:
  - a. Inflight kitchens or catering services.
  - b. Airport employee cafeteria.
  - c. Offices and storage areas.
  - d. Ground transportation maintenance and storage areas.
  - e. Communications and meteorological facilities.
  - f. Airline training schools.
2. Building Site Requirements.
  - a. Minimum Site Area . . . . . 1 acre
  - b. Maximum Site Coverage . . . . . 50%
  - c. Minimum Landscaping Coverage . . . . . 5%
3. Setback Requirements.
  - a. Front Setback Line . . . . . 15 ft minimum
  - b. Side Setback Line . . . . . 10 ft minimum on each side
  - c. Rear Setback . . . . . 10 ft minimum

H. Special Requirements for General Aviation Commercial Fixed Base Operator Area.

1. Permitted Uses. Any business or service involving the sale of general aviation commercial services to the general public shall include, but not be limited to, the following as authorized in the lease from the Department to the lessee:
  - a. Aircraft servicing, repair, maintenance and storage.
  - b. Sales of new and used aircraft and aircraft parts, accessories, equipment, and materials at retail and wholesale prices.
  - c. Storage and vending of aircraft fuels, lubricants, and propellants.
  - d. Aerial photography, survey, and mapmaking services.
  - e. Air taxi, ambulance, and sightseeing services.
  - f. Nonscheduled, sightseeing, and charter services for the transportation of passengers, freight, cargo, and mail.
  - g. Flight schools--unless the Department has prohibited flight school activity at the airport and has provided adequate alternate landing facilities for this activity.
  - h. Offices, services, and retail activities complementary to the uses set forth above.
2. Building Site Requirements.
  - a. Minimum Site Area . . . . . 2 acres

- b. Maximum Site Coverage . . . . . 30%
  - c. Minimum Site Coverage . . . . . 5%
  - d. Minimum Improvements:
    - (1) Aircraft shop and maintenance hangar . . . . . 10,000 sq. ft.
    - (2) Office administration building . . . . . 1,000 sq. ft.
    - (3) Paved apron area with access to hangar . . . . . 40,000 sq. ft.
  - e. Minimum Landscaping Coverage . . . . . 5%
3. Setback Requirements.
- a. Front Setback Line . . . . . 25 ft. minimum
  - b. Side Setback Line . . . . . 10 ft. minimum on each side
  - c. Rear Setback Line . . . . . 10 ft. minimum
- I. Special Requirements for General Aviation Non-Commerical Area.
1. Permitted Uses. Any industrial, corporate, or business lessee that desires to hangar or accommodate one or more aircraft it owns or operates solely in connection with the internal conduct of its business for the transporting, not for hiring, of lessee's personnel, patrons, materials, and products shall be permitted to engage in certain activities including the following:
    - a. The loading and unloading of aircraft.
    - b. The maintaining, storing, and servicing of aircraft owned or operated and hangared by each such lessee on its building site by its own full-time employees.
    - c. The right of sale, disposal, and exchange of aircraft and their parts and accessories and of aviation equipment as directly incident to the conduct of maintaining and overhauling aircraft owned or operated and hangared by the lessee, by not as a regular business activity, or as a distributor or as a dealer of same.
    - d. The training of the lessee's personnel but not members of the general public in any art, science, craft, or skill pertaining directly or indirectly to aircraft owned or operated and hangared by the lessee.
    - e. The operation of offices and facilities incidental to the operation of the lessee's business.
  2. Prohibited Uses. No use of noncommercial general aviation areas shall be permitted which, in the opinion of the Department will directly or indirectly compete with, impair, or restrict commercial aviation activities in the commercial aviation areas defined in subsection 7.6.04 H above.
  3. Building Site Requirements.
    - a. Minimum Site Area . . . . . 30,000 sq. ft.
    - b. Minimum Site Width . . . . . 100 ft.
    - c. Maximum Site Coverage . . . . . 60%
    - d. Minimum Landscaping Coverage . . . . . 5%
  4. Setback Requirements.

- a. Front Setback Line . . . . . 25 ft
- b. Side Setback Line . . . . . 10 ft. minimum on each side
- c. Rear Setback Line . . . . . 10 ft. minimum

J. Special Requirements for Fuel Farm Area.

- 1. Permitted Uses. The maintenance and operation of bulk storage facilities for gasoline, oil, grease, lubricants, and other fuels necessary for the operation of aircraft.
- 2. Prohibited Uses. No use of the fuel farm area shall be permitted which in the opinion of the Department will directly or indirectly compete with, impair, and restrict general aviation commercial activities as defined in this procedure. No aviation fuel or propellant may be purchased, stored, sold, or handled in these areas except by an aviation fuel vendor or user authorized under written contract by the Department to provide such fueling service at the airport. The servicing of aircraft in this area shall be specifically excluded.
- 3. Building Site Requirements.
  - a. Minimum Site Area . . . . . 2 acres
  - b. Minimum Landscaping Coverage . . . . . A minimum of two (2) feet inside the fencing abutting or facing a public right-of-way
- 4. Setback Requirements. As specified by the State Fire Marshall, or other governing agency.
- 5. Other Requirements.
  - a. In addition to the requirements in this procedure, the installation of improvements in the fuel farm area shall be subject to the requirements of county, state and federal agencies.
  - b. Each building site shall be completely enclosed by fences, with gate installed where necessary for access. Fences shall be installed on the lease boundary lines, except on the side of the building site that faces the common-use service road.  
  
The fence line shall be consistent with existing fencing, and its location shall be subject to the prior written approval of the Department. The design of fences and gates shall be subject to the written approval of the Department prior to installation.
  - c. All ground areas not covered by fuel storage facilities, paving, or landscaping shall be covered only with gravel the installation and specification of which shall be subject to the written approval of the Department prior to installation.

K. General Provisions.

- 1. Conformance of Existing Improvements. All existing buildings and improvements on the airport shall be exempt from the provisions of this procedure for the duration of their present leasehold terms; provided, however, that no changes, alterations, or extensions shall be made to any existing improvements except in accordance with this procedure.
- 2. Continuity of Procedure.
  - a. This procedure shall apply to all development of airports operated by the Department
  - b. This procedure may be revised as required by the Department to retain flexibility to permit the adoption of new techniques, materials, criteria, etc.
- 3. Variances.
  - a. The provisions of this procedure and any request for variances from them are to be



- interpreted, administered and enforced by the Director;
- b. Any tenant or prospective tenant may request a variance.
  - c. Requests for variances shall be made in writing to the Director.
  - d. The Director shall either approve or disapprove requests for variance within thirty days from filing.
    - (1) If approved, the variance shall be issued immediately.
    - (2) If disapproved, the Director shall provide a written statement setting forth the reasons for disapproval.

**APPENDIX B - TENANT IMPROVEMENT GUIDELINES  
(MANUALS 1 AND 2)**

**May be reviewed and downloaded from the address below:**

<http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines>

# Design and Construction Requirements as required under §103-50, Hawaii Revised Statutes

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## **What types of buildings, facilities, and sites are covered by §103-50, Hawaii Revised Statutes (HRS)?**

§103-50, HRS states that all plans and specifications for the construction of public buildings, facilities, and sites shall be prepared so that the buildings, facilities, and sites are accessible to and usable by persons with disabilities.

The HRS 103-50 states that all plans and specifications for the construction of public buildings, facilities, or sites by the State or any county shall be prepared so that the buildings, facilities, or sites are accessible to and usable by persons with disabilities. "Public buildings, facilities, and sites" means buildings, facilities, sites, and the infrastructure thereof that 1) Are designed, constructed, purchased or leased with the use of any State or county funds or federal funds administered by the State or a county; 2) House State or county programs, services, or activities that are intended to be accessed by the general public; or 3) Are places of public accommodation or commercial facilities under the Americans with Disabilities Act, title 28 Code of Federal Regulations part 36, and are constructed on State or county lands; or 4) Are constructed on lands that will be transferred to the State or county upon completion of construction." The HRS 103-50 states that all agencies of the State and counties shall seek the "advice and recommendations" from the Disability and Communication Access Board on all plans and specifications to ensure conformance with the ADAAG and FHAAG, as well as any supplemental design guidelines established by the Disability and Communication Access Board.

## **Are there specific design standards?**

§103-50, HRS states that public buildings, facilities, and sites shall conform to the 2004 Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG) and the requirements of the Fair Housing Accessibility Guidelines (FHAG) as adopted and amended by the Disability and Communication Access Board.

In addition, the Disability and Communication Access Board has the authority to adopt federal amendments to the 2004 ADAAG or establish guidelines for design specifications not covered in the 2004 ADAAG.

## **Is there a review process for §103-50, HRS projects?**

§103-50, HRS states that all agencies of the State and counties shall seek the "advice and recommendations" from the Disability and Communication Access Board on all plans and specifications prior to commencing with construction to ensure conformance with the 2004 ADAAG and FHAG, as well as any supplemental design guidelines established by the Disability and Communication Access Board.

The Disability and Communication Access Board provides technical assistance in the form of review and recommendations on design documents from conceptual and schematic stages through final construction plans. A written document review is provided on the plans in their final stage of preparation. The Disability and Communication Access Board transmits its

advice and recommendations to the agency overseeing the project and/or the design consultant that originated the submittal. The ultimate decision on any project is made between the oversight agency's project manager and the design or construction personnel. The administrative rules governing the procedures are covered in Hawaii Administrative Rules Chapter 11-216.

### **Who enforces the design requirements of §103-50, HRS?**

Assurances that a building, facility, or site is constructed in accordance with the appropriate design standards rests with the government agency or agencies which oversee the funding of the project.

### **Is there a process to obtain a “variance” or “waiver” from the requirements of §103-50, HRS?**

The Disability and Communication Access Board is authorized to approve a site specific alternate design, not a variance, if the alternative design provides equal or greater access for persons with disabilities. Waivers are not permitted. An application process, followed by a public hearing, will precede the decision on this request. The administrative rules governing the procedures for site specific design alternatives are contained in Hawaii Administrative Rules Chapter 11-216.

### **Is there a process to obtain a clarification of an accessibility guideline adopted under §103-50, HRS?**

The Disability and Communication Access Board is authorized to issue interpretive opinions for the purpose of clarifying accessibility guidelines for State and county construction projects. An application process will precede the decision on this request. The administrative rules governing the procedures for interpretive opinion are contained in Hawaii Administrative Rules Chapter 11-216.

### **Does the law replace existing local building codes?**

The requirements of §103-50, HRS do not supplant or replace State or local laws that impose higher accessibility standards. The governing principle to follow when local codes differ is that the more stringent requirements apply.



**DISABILITY AND COMMUNICATION ACCESS BOARD**  
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Call toll free from:

Big Island: 974-4000, ext. 6-8121# (Voice)  
Molokai & Lanai: 1(800) 468-4644 ext. 6-8121# (Voice)

Kauai: 274-3141, ext. 6-8121# (Voice)  
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June 2016







**Procedure No. 4.9 MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITIES AT PUBLIC AIRPORTS**

Approved by Owen Miyamoto

Effective Date: 05/03/1990

**4.9.01 PURPOSE**

The purpose of this procedure is to establish minimum standards for conducting commercial aeronautical activities at public airports.

**4.9.02 POLICY**

It is the policy of the Airports Division to:

- A. Require all commercial aeronautical activities to be conducted in accordance with the terms and conditions of a lease that includes the minimum standards established by this procedure.
- B. Operate airports and their facilities for the benefit of the public.
- C. Make airports available for commercial aeronautical activities on a fair and reasonable basis without unjust discrimination as long as the activities are conducted in a safe, legal and responsible manner consistent with applicable federal, state and county laws, rules and regulations.

**4.9.03 APPLICABILITY**

This procedure shall apply to commercial aviation operators, Districts and Property Management Staff. Air carriers are exempt from this procedure.

**4.9.04 PROCEDURES**

A. Definitions

Unless the context clearly indicates otherwise, as used in this procedure:

- 1. "Air carrier" means a scheduled air carrier which is a lessee of the department under an airport-airline lease.
- 2. "Aeronautical activity" means any activity which involves, makes possible or is required for the operations of aircraft, or which contributes to or is required for the safety of such operations.
  - a. The following are examples of aeronautical activities:
    - (1) Pilot training
    - (2) Aircraft rental and sightseeing
    - (3) Aerial photography
    - (4) Crop dusting
    - (5) Aerial surveying
    - (6) Aircraft sales and services
    - (7) Sale of aviation petroleum products
    - (8) Repair and maintenance of aircraft
    - (9) Sale of aircraft parts.
  - b. The following examples are not considered to be aeronautical activities:

- (1) Ground transportation (taxis, car rentals)
  - (2) Restaurants
  - (3) Barber shops
  - (4) Auto parking lots.
3. "Airport" means an area of land or water which is used or intended to be used for aircraft landing and takeoff, including facilities on it. (As used in this procedure, the term "airport" refers to public airports owned or operated by the State of Hawaii).
  4. "Commercial aeronautical activity" means an aeronautical activity conducted for the purpose of securing earnings, income, compensation or profit.
  5. "Commercial aviation operator" means a person engaging in a commercial aeronautical activity at an airport.
  6. "Department" means the State Department of Transportation.
  7. "Lease" means a written agreement which conveys real property from the department to a commercial aviation operator, for a specified term and for a specified rent. (As used in this procedure, the term "lease" also includes other written agreements such as permits).
  8. "Minimum standards" means the qualifications established by the department as the minimum requirements to be met as a condition for the right to conduct commercial aeronautical activities at airports.
  9. "Person" means any individual, firm, partnership, corporation, trust, association, company, joint venture, or any other legal entity.
  10. "State" means the State of Hawaii.

B. Commercial Aviation Operator

1. The services provided by commercial aviation operators (hereinafter referred to as "operator") at airports include, but are not limited to, the following:
  - a. Aircraft line services:
    - (1) Fueling, lubricating and miscellaneous service
    - (2) Ramp parking and tie down
    - (3) Crew and passenger lounge facilities
    - (4) Public restrooms, telephone and automobile parking
    - (5) Loading, unloading and towing
    - (6) Hangar storage
    - (7) Cargo handling, receiving and storage facilities; and
    - (8) Flight kitchens.
  - b. Flight instruction and training.
  - c. General aircraft airframe and engine repair, maintenance and overhaul (may also include sale of aircraft parts).
  - d. New and used aircraft sales or rental.
  - e. Specialized aircraft flying services.
  - f. Specialized commercial flying services.
2. The department reserves the right to restrict any operator activity which is not in the best interest of the airport.
3. If written permission is obtained from the department, a prospective operator may become a tenant of an operator under a sublease arrangement approved by the department.

C. Prequalification Requirements

The prospective operator shall submit, in written form, to the department, at the time of his application, the following information and, thereafter, such additional information as may be requested by the department.

1. Intended Scope of Activities

As a prerequisite to the granting of a lease for operating at the airport, the prospective operator shall submit a detailed description of the scope of the intended operation, and the means and methods to be employed to accomplish the contemplated operating standards and requirements, in order to provide high-quality service to the aviation and general public at the airport, including, but not limited to, the following:

- a. The name, address and telephone number of the applicant.
- b. The requested or proposed date for commencement of the activity and the term of conducting, the same.
- c. The services to be offered.
- d. The amount, size and location of land to be leased.
- e. The size and position of the building space to be constructed or leased.
- f. The number of aircraft to be provided (as applicable).
- g. The number of persons to be employed (including the names and qualifications of each person).
- h. The hours of proposed operation.
- i. The type of insurance coverages to be maintained.

2. Financial Responsibility and Capability

The prospective operator must provide a statement, satisfactory to the department, in evidence of his financial responsibility, from an area bank or trust company or from such other source that may be acceptable to the department and readily verified through normal banking channels. The prospective operator must also demonstrate financial capability to initiate operations and for the construction of improvements and appurtenances that may be required commensurate with the concept of the proposed operation, and shall also indicate his ability to provide working capital to start and maintain the contemplated operations.

3. Experience

The prospective operator shall furnish the department with a verifiable statement of his past experience in the specified aviation services to be supplied by him on the airport, together with an operating plan detailing how he will provide the specified services.

4. Bond

The prospective operator shall post a performance bond in the amount equal to the annual rental established and agreed upon, for conducting the services to be provided. Cash may be posted in lieu of performance bond.

D. Lease Requirements

Prior to the commencement of operations, the prospective operator shall be required to enter into a lease with the department. The lease will recite the terms and conditions under which he will operate his business on the airport, including, but not limited to, the following: the term of the lease; fees and charges; the rights, privileges and obligations of the respective parties; and other relevant covenants. It should be understood,

therefore, that neither the conditions therein contained nor those set forth in these minimum standards and requirements represent a complete recitation of the provisions to be included in the lease. Such contract provisions, however, will neither change nor modify the minimum standards and requirements, not be inconsistent therewith.

1. Rates and Charges

Minimum rental rates shall be established by the department and approved by the state Board of Land and Natural Resources.

2. Site Development Standards

All improvements to airport property by the lessee shall be accomplished in accordance with Airports Division Procedure No. 7.6 "Development Standards for Leased Airport Property" (hereinafter referred to as "Procedure No. 7.6").

3. Personnel

- a. The operator shall have in his employ, and on duty during operating hours, trained personnel in such numbers as are required to meet the minimum standards and requirements set forth, in an efficient manner, for each commercial aeronautical activity being performed. The operator shall also provide a responsible person in the office to supervise the operations in authority to represent and act for and on behalf of, the operator during all business hours.
- b. All personnel hereinafter required to hold Federal Aviation Administration (FAA) certificates and rating shall maintain such certificates and ratings.

4. Maintenance

- a. The department shall have responsibility for :
  - (1) Maintenance of pavement constructed by the department outside the leased area.
  - (2) Utility line maintenance outside the operator's leased area.
- b. The operator shall be responsible for:
  - (1) Maintenance of pavement constructed by the operator
  - (2) Maintenance of the operator's building and utility costs
  - (3) Removal of the operator's trash
  - (4) Grass mowing and landscape maintenance within the operator's leased area.

5. Insurance

- a. The operator shall have all the types of insurance (with the specified minimum liability limits) set forth below that apply to the commercial aeronautical activity or activities conducted by the operator.
  - (1) Aircraft liability
    - (a) Bodily injury
      - (i) \$100,000 each person
      - (ii) \$300,000 each accident
    - (b) Passenger liability (each passenger, each accident): \$300,000



- (c) Property damage (each accident): \$100,000
  - (2) Comprehensive general liability
    - (a) Bodily injury
      - (i) \$100,000 each person
      - (ii) \$500,000 each accident
    - (b) Property damage (each accident): \$250,000
  - (3) Hangar keeper's liability (each accident): \$500,000.
  - (4) Student and renter's liability (each accident): \$300,000
  - (5) Comprehensive automobile liability (each accident)
    - Bodily injury and property damage
      - (a) \$5,000,000 at Honolulu International Airport.
      - (b) \$1,000,000 at other airports.
  - (6) Worker's compensation as required by applicable law and employer's liability of \$10,000.
- b. All insurance which the operator is required to carry and keep in force shall include the state as additional-named insured. The operator shall furnish evidence of his compliance with this requirement to the department with proper certification that such insurance is in force and will furnish additional certification as evidence of changes in insurance not less than thirty days prior to any such change. The applicable insurance coverages shall be in force during the period of any construction of the operator's facilities and/or prior to his entry upon the airport for the conduct of his business.
  - c. The operator shall also furnish evidence of his compliance with Hawaii Revised Statutes with respect to Worker's Compensation and Unemployment Insurance as applicable.
  - d. The operator shall also at his expense procure and maintain such fire, extended coverage, vandalism and malicious mischief insurance upon the leasehold improvements, trade fixtures, equipment, furniture and furnishings of the operator in or on the premises as would be procured and maintained by a reasonable and prudent owner thereof.
  - e. The operator shall furnish to the department upon the commencement of the lease and prior to occupancy of the premises, a certificate showing said insurance policies being issued to the operator and to be then in force, and shall furnish a like certificate upon each renewal thereof.
  - f. Any of the indemnity or casualty insurance coverages provided for herein may include provision for a deductible amount of \$1,000 per loss or such higher deductible amount as may be agreed upon, in writing, by the department and the operator.
  - g. Any operator who is self-insured shall furnish evidence of such self-insurance from the state Department of Commerce and Consumer Affairs, Insurance Division and shall hold the department and assigns harmless in the event of any claims or litigation arising out of its operation on the airport.

6. Motor Vehicles on the Airport

The operator will control to a reasonable extent the transportation of pilots and passengers of transient aircraft (using operator's facilities and services and in the conduct of the operator's

business) to and from the operator's office to the operator's aircraft apron tie-down areas. The operator performing this service with motor vehicles driven on the Airport Operations Area shall do so only in strict accordance with applicable Hawaii Administrative Rules, Airports Division procedures, and federal, state and county laws, ordinances, codes, or other similar regulatory measures now in existence or as may be hereinafter modified or amended. The operator shall procure and maintain, for any motor vehicle operated on his leased airport property, all required insurance.

7 General Lease Clauses

No operator may conduct any commercial activity on the airport without a fully executed lease. All lease agreements shall contain the following assurances:

a. Non-discrimination

The lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") to operate the premises leased for the benefit of the public, and:

- (1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (2) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (3) That the lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally assisted programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964", as said Regulations may be amended.
- (4) That said service will be furnished on a fair, equal, and not unjustly discriminatory basis to all users thereof.
- (5) That fair, reasonable, and not unjustly discriminatory prices for each unit or service will be charged; provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

b. Quality of Service

The lessee shall provide airport patrons safe, responsible and adequate service in a prompt and courteous manner.

c. Aircraft service by owner or operator or aircraft.

It is clearly understood and agreed by the lessee that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

d. Non-exclusive rights.

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right.

e. Subordination.

The lease shall be subordinate to the provisions of any existing or future agreement between the lessor and the United States, relative to the operation or maintenance of the airport, 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 airport. This subordination includes, but is not limited to, the right of the lessor, during times of war or national emergency, to lease the landing area, or any part thereof, to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

f. Airport obstructions.

- (1) The lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstructions, together with the right to prevent the lessee from erecting or permitting to be erected, any building or other structure on or adjacent to the airport which, in the opinion of the lessor, would limit the usefulness of the airport or constitute a hazard to aircraft.
- (2) The lessee shall, upon approval by the lessor and prior to any construction of any nature within the boundaries of the airport, prepare and submit to the appropriate office of the Federal Aviation Administration, one executed set (four copies) of FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulation Part 77. This notice must be submitted at least thirty days prior to the date of the proposed construction or the date that an application for a construction permit is filed, whichever is earlier. A copy will be supplied to the Airports Administrator, State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Honolulu, Hawaii 96819.

g. Lessor's rights

- (1) The lessor reserves the right, but shall not be obligated to the lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the lessee in this regard.
- (2) In the event of breach of any of the above nondiscrimination covenants, the lessor shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.
- (3) The lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, and without unreasonable interference or hindrance. If the physical development of the airport requires the relocation of lessee-owned facilities, the lessor agrees to provide a comparable location without any unreasonable interruption to the lessee's activities, and agrees to relocate all lessee-owned buildings or provide similar facilities for the lessee at no cost to the operator.

h. Compliance with laws, etc.

The lessee shall at all times comply with the applicable Hawaii Administrative Rules, Airports Division Procedures, and federal state, and county laws, ordinances, codes, and other regulatory measures now in existence or, as may be hereafter modified or amended, applicable to the specific type of operation contemplated by him. The lessee shall procure and maintain during the term of the agreement all licenses, permits, and other similar authorizations required for the conduct of his business operations.

i. Indemnity

The lessee shall hold the State, the Airports District Manager and all other airport personnel, and the officers, agents and employees of the lessor harmless from any and all suits, claims, demands, actions, and/or causes of action of any kind or nature in any way arising out of, or resulting from his tenancy and activities, and shall pay all expenses in defending any claims against the State and the lessor.

j. Right of entry

The lessor may enter upon the premises leased to the lessee at any reasonable time, and for any purpose necessary, incidental to, or connected with, the performance of the lessee's obligations under the agreement or in the exercise of its legitimate functions.

k. No-sham affidavit

All terms and conditions with respect to the lease are expressly contained herein, and the lessee agrees that no representative or agent of the lessor has made any representation or promise with respect to this lease not expressly contained herein.

l. Termination

Upon the expiration or other termination of any agreement, the lessee's rights to the premises, facilities, other rights, licensed services and privileges granted in the agreement shall cease, and the lessor shall, upon such expiration or termination, immediately and peacefully surrender such.

m. Assignment

All covenants, stipulations and provisions in the agreement to be entered into shall extend to and bind the legal representatives, successors and assigns.

8. Subleases

No lessee shall be afforded the right to sublease or assign an agreement or any portion thereof, between himself and the lessor except upon the express written permission of the lessor. Regarding this permission, the overriding concern of the lessor shall be that the commercial aeronautical activities performed by the lessee, seeking the permission to assign his agreement, will not conceivably be interrupted, abrogated, compromised or diminished in order that good quality services be maintained in the public interest.

9. Airport Security

The lessee shall be responsible for maintaining security of the Airport Operations Area by controlling access through the leased premises where such access would allow entry to the AOA. The lessee shall comply with all applicable provisions of the Federal Aviation Regulations and Hawaii Administrative Rules concerning airport security.

10. Disposal of Waste

The lessee shall provide for the adequate and sanitary handling and disposal, away from the airport of his trash, waste and other materials, including but not limited to used oil, solvents and other waste. The stacking or storage of crates, boxes, barrels, pallets and other materials, equipment or vehicles, shall not be permitted within the leased premises. Aircraft washing shall be permitted only at locations designated by the department.

E. Commercial Aviation Operator Guidelines

The following guidelines are for determining the minimum level of services that shall be provided by operators holding a lease with the department.

1. Aircraft line services

- a. Fueling and lubricating oil sales and service.



- (1) The operator shall demonstrate, to the satisfaction of the department, that satisfactory arrangements or agreements have been made, with a reputable aviation fuel and lubricant distributor who will provide the operator with an enforceable agreement to purchase fuel and oil in such quantities as are necessary to meet the requirements set forth herein.
    - (a) The operator shall:
      - (i) Provide a minimum-sized facility which as suitable space and a convenient location and which meets the applicable standards and requirements specified in Procedure No. 7.6.
      - (ii) Provide fueling and lubricating sale, and into-plane delivery of aviation fuels, lubricants, and other related petroleum products seven days a week.
      - (iii) Maintain an adequate inventory of generally accepted grades of aviation fuel, engine oil and lubricants.
      - (iv) Provide a mobile fuel dispensing equipment with reliable metering devices which are subject to inspection by the State Department of Agriculture, Measurement Standards Division.
      - (v) Be capable of servicing in an efficient and safe manner all types of general aviation aircraft.
    - (b) The operator shall have metered filter-equipped dispensers, fixed or mobile, for dispensing aviation fuel from storage tanks having a minimum capacity of 2,000 gallons each. Mobile dispensing trucks shall have a total of 300 gallons capacity for each grade or type of fuel. Separate dispensing pumps for each grade or type of fuel are required.
    - (c) In conducting refueling operations, the operator shall install and use adequate electrical grounding facilities at fueling locations to eliminate the hazards of static electricity and shall provide approved types of fire extinguishers or other equipment commensurate with the hazard involved with fueling, defueling, and servicing aircraft.

All operator fueling services and systems shall be subject to inspection for fire and other hazards by the Airports District Manager and the appropriate state and local fire agencies. The operator shall meet all applicable fire codes and federal, state, and local laws, statutes, ordinances, rules and regulations pertaining to fire safety. All stationary fuel storage tanks shall be installed underground.
    - (d) Only non-contaminated fuel shall be pumped into the aircraft serviced. Fuel delivered shall be free of microscopic organisms, water or other contaminants. Quality control of the fuel is the responsibility of the operator. The operator shall maintain current fuel reports on file and available for auditing at any time by the department or the Federal Aviation Administration. Fueling service by the operator shall be in full compliance with good safety practices, including proper fire protection and electrical grounding of aircraft during fueling operations.
  - (2) The operator shall provide for servicing of aircraft, such as cleaning of the interior and exterior of aircraft, repairing and inflating aircraft tires, servicing oleo struts, changing engine oil, washing aircraft and aircraft windows and recharging or energizing discharged aircraft batteries and starters.
- b. Ramp parking and tie-down: operator ramp assistance, including the parking, tie-down and storage of only functioning aircraft within the operator's leased area.

- (1) Adequate tie-down facilities and equipment, including ropes, or other types of restraining devices and wheel chocks for a minimum of 10 typical aircraft will be provided.
  - (2) The operator shall provide properly trained line personnel on duty during daylight hours of every calendar day.
  - (3) Equipment for starting and towing aircraft and fire extinguishers shall be provided by the operator.
- c. Crew and passenger lounge facilities: conveniently located, lounge, or waiting rooms, for passengers and crews shall be provided.
  - d. Public restrooms and a telephone: restrooms will be conveniently located, and ventilated and accessible to the passengers and crews, and will be maintained in a clean and sanitary manner. At least one working telephone will be provided for public use.
  - e. Loading, unloading and towing: the operator shall provide adequate loading, unloading and towing equipment to safely and efficiently move aircraft and store them in times of all reasonably expected weather conditions.
  - f. Hangar storage: the operator shall provide, or lease from the department, suitable hard-surfaced hangar storage facilities.

## 2. Flight instruction and training

A flight training operator is a person engaged in instructing student pilots in dual and solo flight training, in fixed and/or rotary wing aircraft, and provides such related ground school instruction as is necessary preparatory to taking a written examination and flight check ride; services and facilities which shall be provided include:

- a. A minimum-sized facility which has sufficient classroom space to adequately conduct flight instruction and training, and which meets the applicable standards and requirements specified in Procedure No. 7.6.
- b. At least one FAA certified flight instructor to instruct student pilots in dual and solo flight in fixed and/or rotary wing aircraft.
- c. Such related ground school instruction as is necessary, preparatory to a student taking a written examination and flight check ride for a private pilot's license or appropriate rating from the FAA.
- d. The ability for such training to meet the continuing requirements for certification by the FAA to conduct such training in a manner that meets all Federal Aviation Regulations, and amendments thereto, for basic ground schools and for primary flying school.
- e. The flight training operator shall have on a full-time basis, currently FAA certified pilots and instructors in sufficient numbers (never less than one) to meet the demands of the number of students expected to be engaged in such flight training. An operator must be able to satisfactorily demonstrate that he has had experience in flight training.
- f. The operator shall own or have on lease, in writing, at least one certified aircraft equipped for flight instruction.
- g. Adequate facilities for storing, parking, servicing and repairing the aircraft in flight training.

## 3. General aircraft airframe and engine repair, maintenance and overhaul

An aircraft airframe and engine maintenance and repair operator is a person engaged in a business capable of providing one or a combination of FAA approved airframe, power plant and accessory overhaul and repair services on general aviation aircraft; the operation must be an FAA certified repair station meeting the requirements of Federal Aviation Regulations Part 145. This

category of commercial aeronautical activities may also include the sale of aircraft parts and accessories.

Activities which shall be provided include:

- a. A facility that meets the applicable standards and requirements specified in Procedure No. 7.6.
- b. Sufficient hangar space to house any aircraft upon which airframe or engine repairs are being performed.
- c. Suitable inside and outside storage space for aircraft before and after repair and maintenance have been accomplished.
- d. Adequate shop space to house the equipment and adequate equipment and machine tools, jacks, lifts and testing equipment to perform overhauls as required for FAA certification and repair of parts not needing replacement on general aviation aircraft.
- e. At least one FAA certified airframe and power plant mechanic available during eight hours of the day, five days per week; all mechanics shall be certified in accordance with Federal Aviation Regulations Part 65.

4. New and used aircraft sales or rental

An aircraft sales operator is a person engaged in the sale of new and/or used aircraft through franchises, or licenses dealership or distributorship (either on a retail or wholesale basis) of an aircraft manufacturer or otherwise; and provides such repair, services, and parts as necessary to meet any guarantee or warranty on new and/or used aircraft sold or rented by him.

Services and facilities which shall be provided include:

- a. Suitable sales and office facilities for conducting sale and rental activities; these and other required facilities must meet the applicable standards and requirements specified in Procedure No. 7.6.
- b. Hangar storage space for at least one aircraft to be used for sales or rentals.
- c. For rental, at least on airworthy aircraft properly maintained and certificated.
- d. For sales activity of a new aircraft, a sales or distributorship franchise from a recognized aircraft manufacturer of new aircraft and at least one demonstrator model of such aircraft.
- e. Adequate facilities for servicing and repairing the aircraft.
- f. An FAA certified pilot capable of demonstrating new aircraft for sale or for checking out other pilots in rental aircraft. He shall be available for eight hours during the working day.
- g. The minimum stock of readily expendable spare parts, or adequate arrangements for securing spare parts required for the type of aircraft and models sold.
- h. Current up-to-date specifications and price lists for types and models of new aircraft sold.
- i. Proper checklists and operating manuals on all aircraft rented and aircraft sold.

5. Specialized aircraft repair service

A specialized aircraft repair services operator is a person engaged in a business capable of providing a shop, or a combination of FAA certificated shops for the repair of aircraft radios, propellers, instruments, and accessories for general aviation aircraft. This category shall include the sale of new and/or used aircraft radios, propellers, instruments and accessories, and the painting of aircraft but such are not exclusive rights.

6. Specialized commercial flying services

- a. A specialized commercial flying services operator is a person engaged in air transportation for hire for the purpose of providing the use of aircraft for the activities listed below:
  - (1) Nonstop sightseeing flights that begin and end at the same airport within a 25-mile radius of the airport.
  - (2) Crop-dusting, seeding, spraying, bird chasing, fish spotting, etc.
  - (3) Aerial photography or survey.
  - (4) Fire fighting.
  - (5) Power line or pipeline patrol.
  - (6) Any other operations specifically excluded from Part 135 of the Federal Aviation Regulations.
  
- b. In the case of crop-dusting or aerial application, the operator shall demonstrate that he will make suitable arrangements to have such space available in his leased area for safe loading and unloading and storage and containment of noxious chemical materials. The operator shall provide a paved area having a single drainage outlet for all aircraft loading or unloading. This area must be built and operated in full compliance with the Environmental Protection Agency regulations governing such activities. The operator shall also provide for the safe storage and containment of all chemical materials. Such facilities will be in a location on the airport which will provide the greatest safeguard to the public.

Aircraft washing and spray tank flushing must be accomplished on a 50' x 50' washdown pad which drains into a 25' x 30' PVC lined evaporation pond located no closer than 450' from the nearest well with no overflow into drainage ditches. The pond will be fenced with a man-proof fence. Tank service water hydrants will be equipped with a check valve to prevent possible "back-siphonage."

F. Responsibilities

- 1. The Districts shall be responsible for:
  - a. Receiving, reviewing and processing applications for leases.
  - b. Negotiating leases with assistance from AIR-PM.
  - c. Ensuring operators are in compliance with terms and conditions of their leases.
  
- 2. The Property Management (AIR-PM) staff shall be responsible for preparing and processing lease documents in accordance with the provisions of this procedure and other applicable Airports Division procedures.



**DEPARTMENT OF TRANSPORTATION  
ASSIGNMENT OF LEASE AND PREMIUM EVALUATION POLICY  
ANNEX I**

**Reference**

Chapter 171-36(a)(5), Hawaii Revised Statutes (HRS)

No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

**Prior Approval**

Any assignment of lease of Department of Transportation (DOT) property must have the prior written approval of DOT. Prior to giving its consent to an assignment, DOT must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the proposed assignment and purchase agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statements of the proposed assignee or any other such statements acceptable to the appropriate division, which statements shall be no older than one year prior to the date of the purchase agreement and audited or certified as correct by a financial officer of the proposed assignee. A consent to assignment by DOT shall not release the lessee (assignor) of any obligation to performed by the lessee or liability for acts or occurrences related to or resulting from the lessee's use or occupancy of the DOT property whether occurring before or after such consent unless the particular division is convinced that the assignee's financial responsibility is equal to or greater than the assignor.

No assignment of lease of DOT property shall be entered into until the Attorney General's Office (LEG) has first reviewed the proposed assignment and purchase agreement and the Director of Transportation (DIR) and the Board of Land and Natural Resources (Land Board) have given their approval. Such an assignment shall be entertained only if it meets one of the criteria set forth in Section 171-36(a)(5), HRS, except that the prerequisite stated in Section 171-36(a)(5)(A), HRS, shall be inapplicable to any DOT property.

**Qualifications of Assignee**

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

If a qualification questionnaire was required to be submitted by a lessee or concessionaire as a precondition of the lease or concession contract, the assignor shall submit a qualification questionnaire filled out by the prospective assignee in order that the appropriate division can evaluate whether the assignee has the required experience and background to assume the lease or concession contract.

**Consideration to be Paid**

Prior to review by LEG and approval by DIR and the Land Board, the lessee (assignor) must present the appropriate division with a written copy of the proposed purchase which includes the total consideration to be paid by the assignee whether by cash, credit or otherwise and any other cost data that the particular division may require.

**Adjustment of Rental**

In those leases wherein the DOT has the right to revise the rent of the demised premises upon an assignment, the lessee (assignor) shall also be required to present its cost data so that the appropriate division may review and analyze that information to determine whether the rent for the premises should be increased. The analysis shall accompany the request for review by LEG and the Land Board submittal.

**Payment to DOT**

All leases shall have an assignment clause that provides that the DOT shall receive from the lessee (assignor) a premium based on the amount by which the net consideration paid for the assignment, whether by cash, credit or otherwise exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee. The Engineering News-Record Construction Cost Index (CCI) (available at [www.enr.com](http://www.enr.com)) and the Consumer Price Index for All Urban Consumers (CPI-U) (available at <http://stats.bls.gov/cpihome.htm>) will be applied to determine the adjusted depreciated costs. The value of the lessee's/assignor's inventory of merchandise should be deducted from the gross consideration paid to determine the net consideration. Intangibles such as goodwill, business name recognition, etc., are not deductible. (See Schedule A.)

To encourage long-term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be the percentage of the excess payment (the selling price less the unamortized purchase price less the adjusted depreciated cost of all improvements, renovations and trade fixtures constructed or installed by the assignor) determined under Schedule A hereto, unless otherwise specifically provided in the lease, in accordance with the following schedule:

<u>Years</u>	<u>Percentage</u>
1 – 5	50%
6 – 10	45%
11 – 15	40%
16 – 20	35%
21 – 25	30%
26 – 30	25%
31 – 35	20%
36 – 40	15%
41 – 45	10%
46 – 50	5%
51 – 55	0%

The premium on subsequent assignments shall also be the percentage of the excess payment in accordance with the above schedule. For the purposes of the foregoing formula, the unamortized purchase price on subsequent assignments is the purchase price paid by the assignor when the lease was assigned to assignor less amortization on a straight line basis over the term of the lease remaining at the time of the assignment to assignor.

In addition to other remedies available to DOT under the lease, including, without limitation, the payment to DOT of the amount of the performance bond posted by lessee, DOT may, if the lessee has not performed lease covenants to improve or use the property for its specific uses, impose a surcharge of at least ten percent (10%) of the greater of the minimum guaranteed annual rental or the percentage rental for the year in which the lessee fails to so perform, provided the minimum guaranteed annual rental shall be no less than the minimum guaranteed annual rental for the second year of the lease term. The lessee may also be required to pay an amount equal to the minimum guaranteed annual rental for the second year of the lease term.

Depreciation of improvements, renovations and trade fixtures will be determined on a straight line basis. The whole term of improvements or renovations shall be defined as the period beginning with the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner and shall be based upon the anticipated life of the trade fixture. (See Schedules B and C)

All lessees shall be required to furnish the appropriate divisions with the actual costs of construction of all improvements and renovations within thirty (30) days after their completion as well as the purchase price and other costs of all fixtures acquired for the lessee's operations on, related to or connected with the premises, within thirty (30) days after such costs are incurred. Lessees shall be required to furnish evidence satisfactory to the divisions of the actual costs including, without limitation, furnishing copies of construction contracts, receipts and/or purchase agreements. Lessees shall also be required to furnish the appropriate division with an inventory of all equipment and personal property placed on the premises. The appropriate division shall maintain records of all costs incurred by the lessee for construction of improvements and renovations as well as installation of trade fixtures, equipment and personal property submitted by the lessee and shall include with said records, a copy of the Engineering News-Record Construction Cost Index (CCI) and Consumer Price Index for All Urban Consumers (CPI-U), as published by the U.S. Department of Labor's Bureau of Labor Statistics, for the year and month that construction and/or installation are completed.

In cases where the lessee has constructed or directed the construction of its own improvements, the lessee may be given the option of paying for an appraiser to determine the valuation of the improvements constructed, provided that the appraiser shall be selected by DOT.

If the lessee is a partnership, limited liability partnership, joint venture, limited liability company or corporation, the sale or transfer of twenty percent (20%) (or a percentage of less than twenty percent (20%) if such percentage represents a controlling interest in the lessee) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to DOT and shall be deemed an assignment subject to the payment of a premium in accordance with the above schedule. However, transfers will not include (i) transfers of ownership among the lessee's shareholders when such transfers involve less than fifty percent (50%) of the ownership interest or (ii) transfers of ownership to persons who are not shareholders of the lessee at the time of the transfer, but who become both shareholders and employees of the lessee, and the transfer is of less than fifty percent (50%) of the ownership interest.

#### **Qualifying Leases**

All leases entered into after July 1, 2004 are subject to the payment of a premium percentage in accordance with the above schedule. The above policy does not apply to leases entered into between May 24, 1989 and June 30, 2004 unless consideration is paid by the lessee to amend the lease to incorporate the above policy. The terms of any existing lease that has been let through public auction cannot be amended.

For all leases entered into or assigned prior to May 24, 1989, the assessment of an assignment premium shall only apply to those leases wherein it has been determined by the Office of the Attorney General that the assessment of the assignment premium is applicable.

#### SCHEDULE A. Assignment of Lease Calculations

1. Subtract the amount, if any, attributable to inventory from the gross consideration for the assignment to obtain the net consideration.
2. Calculate the Adjusted Depreciated Cost of Improvements and Renovations (see Schedule B).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule C).
4. Determine the amount, if any, by which the net consideration for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee by subtracting the amounts derived in Steps 2 and 3 above from the net consideration.
5. Then multiply the excess amount, if any, determined in Step 4 above, by the appropriate premium percentage.
6. The result is the premium due DOT.

#### Example

A lease is being assigned 57 months after completion of the improvements at a gross consideration of \$650,000, \$50,000 of which is attributable to inventory.

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

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

1.	Gross Consideration:	\$650,000
	Inventory:	\$ 50,000
	Net Consideration:	\$600,000
2.	Adj Cost Imp/Ren:	\$591,887
	Depreciation:	<u>- 82,690</u>
	Adj Dep Cost Imp/Ren:	(509,197)
3.	Adj Cost Trade Fixtures:	1,705
	Depreciation:	<u>- 1,012</u>
	Adj Dep Cost Trade Fixtures:	( 693)
4.	Excess:	\$ 90,100
5.	Appropriate Premium Percentage:	x (e.g.) 50%
6.	Premium Due DOT:	<u>\$ 45,055</u>



## SCHEDULE B. Adjusted Depreciated Cost of Improvements and Renovations

### 1. Adjusted Cost of Improvements and Renovations

Multiply the actual cost of the improvements and renovations, if any, by the most recent year/month Engineering News-Record Construction Cost Index (CCI) and divide the result by the CCI of the year/month construction was completed (base year/month) to get the adjusted cost of improvements and renovations.

### 2. Depreciation

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

### 3. Adjusted Depreciated Cost of Improvements and Renovations

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

#### Example

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

### 1. Adjusted Cost of Improvements and Renovations:

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

$$\$500,000 \times 121.1/102.3 = \$591,887$$

### 2. Depreciation:

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

### 3. Adjusted Depreciated Cost of Improvements and Renovations:

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

### SCHEDULE C. Adjusted Depreciated Cost of Trade Fixtures

#### 1. Adjusted Cost of Trade Fixture

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

#### 2. Depreciation

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

#### 3. Adjusted Depreciation Cost of Trade Fixtures

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

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

<b>Example</b>	<b>Refrigerator</b>	
	Actual cost:	\$1510
	CPI (most recent):	118.1
	CPI (base):	104.6
	expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

#### 1. Adjusted Cost of Trade Fixture:

Actual Cost x CPI-U (most recent) / CPI-U (base)

$$\$1510 \times 118.1/104.6 = \$1705$$

#### 2. Depreciation:

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

#### 3. Adjusted Depreciated Cost of Trade Fixture:

$$\$1705 - \$1012 = \underline{\$693}$$

Should the State decide to consent to the sublease but limit the amount of rental charged to the sublessee, the maximum allowable sublease income may be determined by applying the following mathematical equation:

$$M - T - R(M - T) - E = 0$$

whereby,

M = maximum allowable sublease income

T = general excise tax

R = rate for management and vacancy loss (10%)

E = total allowances excluding management and general excise tax\*

\*when applicable

Solving for M:

$$M = \frac{E + T - RT}{1 - R}$$

#### **Effect of Termination or Involuntary Assignment**

In the event that a lease or sublease becomes available to a new lessee or sublessee as a result of the involuntary termination of the lease or sublease by foreclosure of the lien of any mortgagee's interest in the leased or subleased premises (whether by court order or otherwise), the purchaser/assignee thereof and the interest so acquired shall not be subject to the requirements of this DOT Sublease Evaluation Policy. Subsequent subleases shall be subject to the requirements of this DOT Sublease Evaluation Policy