

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

May 23, 2014

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

LANA'I

**AUTHORIZE A CONSENT TO MORTGAGE AND AMENDMENT OF BOATING LEASE  
NO. B-93-02, TRILOGY CORPORATION, FOR EXTENSION OF LEASE TERM,  
MANELE SMALL BOAT HARBOR, LANA'I, TAX MAP KEY: 4-9-017-006-0002**

**APPLICANT AND REQUEST:**

Applicant Trilogy Corporation is the lessee under the above-referenced boating lease which fixed an initial term of 35 years commencing October 1, 1993 (hereinafter the "Lease").

Trilogy Corporation requests a 20-year extension of the lease term to September 30, 2048. Applicant requires the extension to qualify for mortgage lending and to amortize the cost of bank and self-financed improvements totaling more than \$200,000. With approval of the requested extension, the aggregate term of the lease will be 55 years.

**LEGAL REFERENCE: HRS § 171-36**

**LOCATION:**

Portion of lands set aside by Governor's Executive Order No. 2141, and further identified as a portion of Tax Map Key: (4) 4-9-17:06, situated at Manele Small Boat Harbor, Island of Lana'i, County of Maui, Hawai'i, as shown on the attached map labeled Exhibit A

**AREA:**

18,436 square feet, more or less.

**ZONING:**

State Land Use District: Conservation  
County of Maui CZO: Open, Lana'i Project District 1 (Manele)

**TRUST LAND STATUS:**

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

**LEASE CHARACTER OF USE:**

Commercial maintenance and operation of a 2400 square foot pavilion and  
appurtenant marine facilities.

**TERM OF LEASE:**

Current term: Thirty-five (35) years, commencing October 1, 1993 and expiring  
September 30, 2028.

Requested term extension: Twenty (20) years, commencing October 1, 2028 and  
expiring September 30, 2048.

**LEASE ANNUAL RENTAL:**

Current annual rental is \$9,532.00, payable in quarterly installments on January 1,  
April 1, July 1, and October 1 of each year.

**RENTAL REOPENING:**

Annual rental was subject to re-opening and re-determination on or after  
September 30, 2008, and again on or after September 30, 2018.

For the extended twenty year term, the rent shall be reopened and redetermination on or  
after September 30, 2028 for the ensuing ten year period and again on September 30,  
2038 for the last ten year period.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

Extension of Boating Lease No. B-93-02 will not change existing use of the  
leased premises. Accordingly, the requested extension is subject to Exemption  
Class No. 1, which exempts from environmental assessment “[operations, repairs  
or maintenance of existing structures, facilities, equipment or topographical  
features, involving negligible or no expansion or change of use beyond that  
previously existing.” See HAR § 11-200-B(a)(1).

As authorized by the Lease, Lessee constructed an open pavilion structure on the  
leased premises and has limited activities conducted therein to those necessary  
and incidental to the operation of a passenger rest stop and harbor services center  
serving tour boat operators, sea transit passengers and the recreational boating

community using harbor facilities. The renovations and improvements underlying this request are within and will not enlarge the scope of uses expressly contemplated by the Lease.

**DCCA VERIFICATION:**

Business registration and name confirmed:

YES X

Applicant in good standing confirmed:

YES X

**FINANCING OF PROPOSED IMPROVEMENTS:**

Trilogy has submitted a conceptual plan and corresponding budget for the renovation and improvement of the pavilion, copies of which are attached as Exhibits B, C, D, E & F respectively.

Staff has reviewed the plan and finds that conceptually the proposed renovations and improvements will better serve resident harbor users and visitors arriving by sea. The projected cost and requested amortization period are reasonable given the nature of the improvements, and appear within the financial means of Lessee.

**DISCUSSION:**

HRS § 171-36 provides in relevant part:

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

\* \* \*

(3) Extend the term of the lease, to the extent necessary to qualify the lease for mortgage lending or . . . to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser; provided that the approval of any extension shall be subject to the following:

(1) The demised premises have been used substantially for the purpose for which they were originally leased;

(2) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;

(3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening<sup>1</sup> ;

\* \* \*

(6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled;

\* \* \*

Applicant meets all statutory conditions to an extension of the lease. Applicant proposes substantial improvements to the demised premises which will be necessary to accommodate the growth of Lana'i as a visitor destination. The Division of Boating and Ocean Recreation has constructed a 150 foot floating dock that will be leased to Lana'i Resorts, LLC ("Pulama"). The new loading dock will service the ferry and Applicant's vessels during construction of a new dock serving the inter-island and a new dock serving Applicant's vessels, and, longer-term, the several additional commercial vessels Pulama plans to place in service.

Renovation of the pavilion and the other improvements planned by the Applicant will ensure its ability to meet the needs of transient visitors while providing desirable enhancement of facilities available to resident harbor users and community groups. An important goal of the improvements is to ensure convenient access between new loading docks and the pavilion.

Applicant has secured a preliminary loan commitment by Bank of Hawaii to finance \$200,000 to be used in renovating and improving the leased premises. The commitment letter dated May 6, 2014, is attached as Exhibit G. The loan would be secured by a mortgage of Trilogy Corporation's interest in the lease but is expressly conditioned on Board approval of the requested 20 year extension. Alternatively, Applicant is prepared to self-finance the budgeted improvements. Either alternative to financing would meet the statutory test for extending the lease term. Kawahara+Co., Certified Public Accountants, LLC, submitted a letter justifying the amortization period and is shown as Exhibit H.

Applicant is compliant with the Lease. Its principal business is the water transportation of passengers between the islands of Maui and Lana'i, and providing them with an array of activities once on the island. The pavilion has been used as a passenger rest stop where tour and hotel groups, Lana'i community groups, Lessee's charter groups assemble to be served meals, engage in recreational activities, entertainment activities, and as a venue or staging area for

---

<sup>1</sup> Applicant shall be required to pay for an appraisal for the immediate rental reopening.

other excursions. Lanai community groups use the harbor facilities, sea transit passengers from the ferry and other vessels. Applicant designed the pavilion with input from the Lana'i community seniors to ensure easy access for them and others with disabilities.

Applicant understands that any extension for amortization purposes will be conditioned on actual performance of the planned renovations and documentation of their final cost. The planned improvements would be completed within twenty-four months of approval. Their life expectancy is expected to be at least 40 to 50 years. As a result, the value of the improved premises will be significantly greater on reversion of the leased premises to the State on expiration of the extended lease in 2038.

The leased premises has been utilized and maintained by the Lessee substantially for the purpose for which they were leased.

Staff has not solicited agency comments on this matter because it involves the extension of an existing lease and not a new disposition. All plans will be submitted to the Department for approval prior to commencement of construction.

On March 22, 2013 the Board approved a 35 year lease of the loading dock used by Applicant in accordance with Senate Concurrent Resolution 158 S.D.2. Extension of the Lease will promote administration of the two leases because they will run concurrently.

**RECOMMENDATION:**

1. That the Board find that the subject request is exempt from the requirement of an environmental assessment as explained above.
2. Consent to the Mortgage between Trilogy Corporation, Mortgagor, and Bank of Hawaii, Mortgagee, Subject to the following:
  - A. The Loan Proceeds shall be used solely for the improvements of the leased premises as described and identified herein. The lessee shall maintain records of the loan expenditures, which may be inspected by the Department.
  - B. Standard terms and conditions of the most current Consent to Mortgage form, as may be amended from time to time.
  - C. Review and approval of the Department of the Attorney General.
3. Authorize the Amendment of Boating Lease No. B-93-02 for an extension of lease, under the terms and conditions cited above, and subject to the following:

- A. That the Board find that a twenty year extension is necessary to allow Applicant to qualify for bank financing and amortize the costs of renovation of the pavilion.
- B. That the scope and specifications of the proposed renovations be subject to the approval of the Board pursuant to paragraph 8 of the Lease.
- C. That lease rental be reopened as described above, and re-set in accordance with section B of the Lease, and the applications provisions of chapters 171 and 658, Hawaii Revised Statutes
- D. The standard terms and conditions of the most current lease extension form as may be amended from time to time.
- E. Review and approval by the Department of the Attorney General.
- F. That the requested extension be subject to such other terms and conditions as prescribed by the Chairperson to serve the best interests of the State shall be applicable.

RESPECTFULLY SUBMITTED,



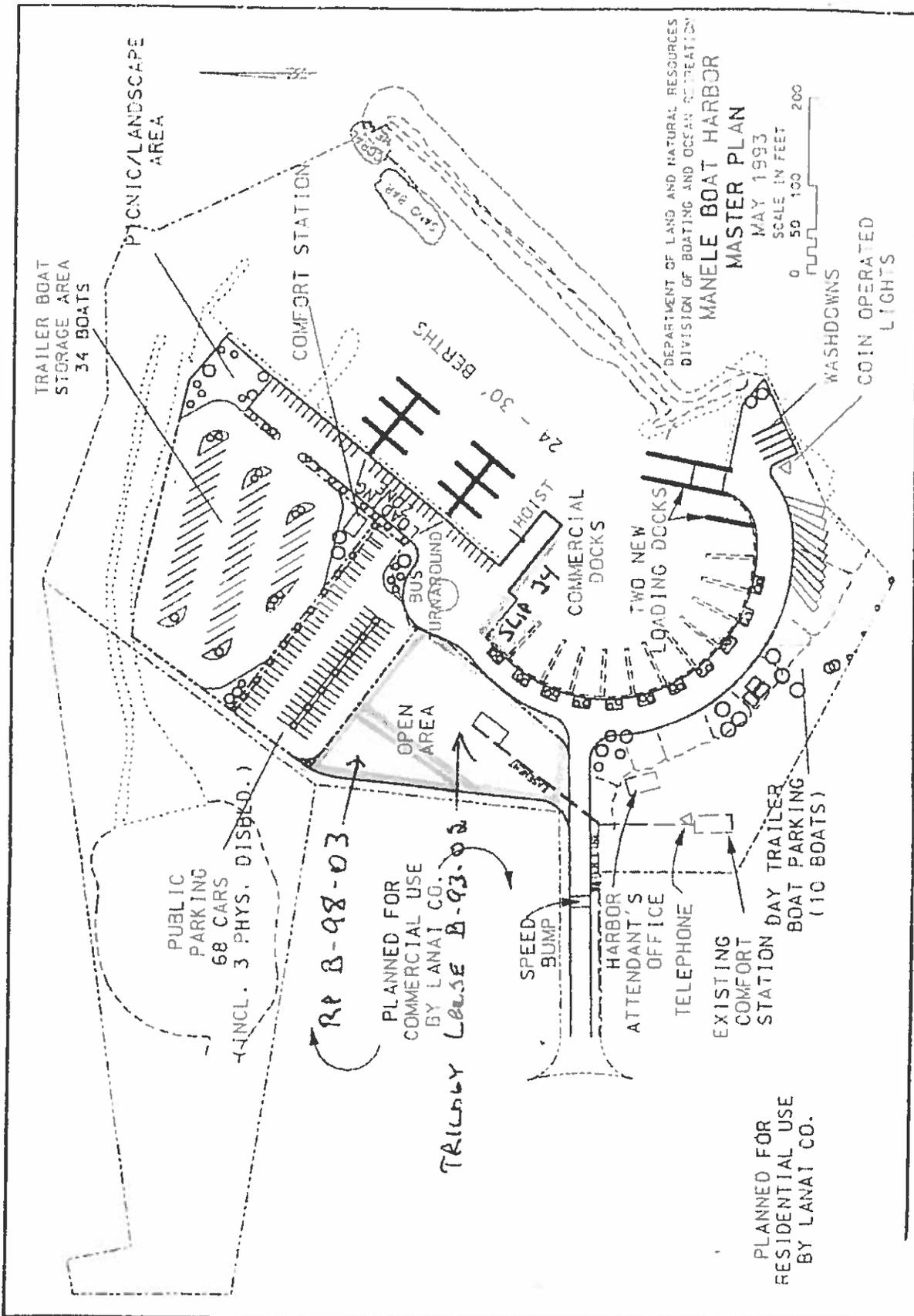
Ed Underwood  
Administrator

Attachments: Exhibit A – Manele Site Plan  
Exhibit B – Manele Pavilion Site Plan  
Exhibit C – Hale o Manele Pavilion & Harbor Store  
Exhibit D – Store Layout  
Exhibit E – Store Quote  
Exhibit F – Riedel Quote  
Exhibit G – BOH Loan  
Exhibit H – Kawahara Letter

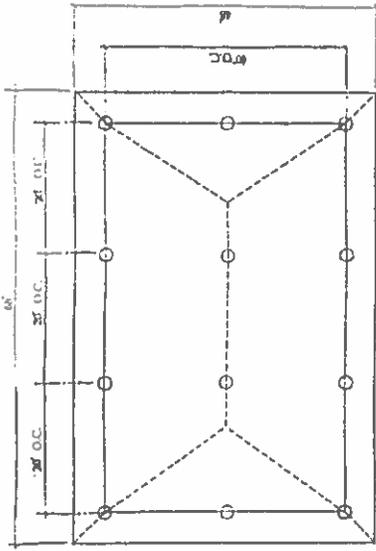
APPROVED:



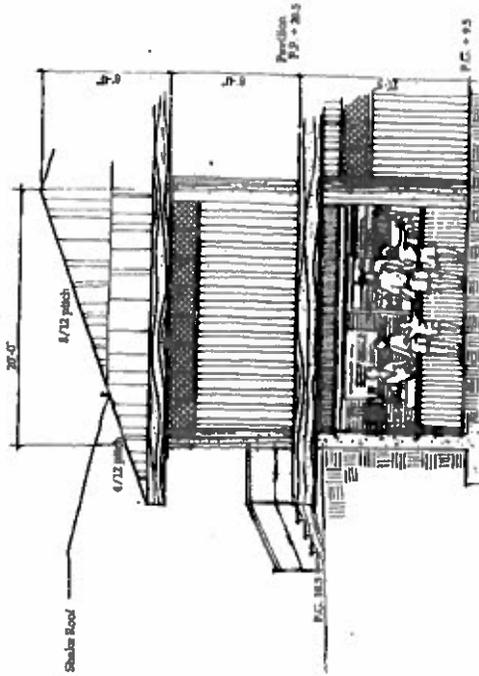
William J. Aila, Jr.  
Chairperson



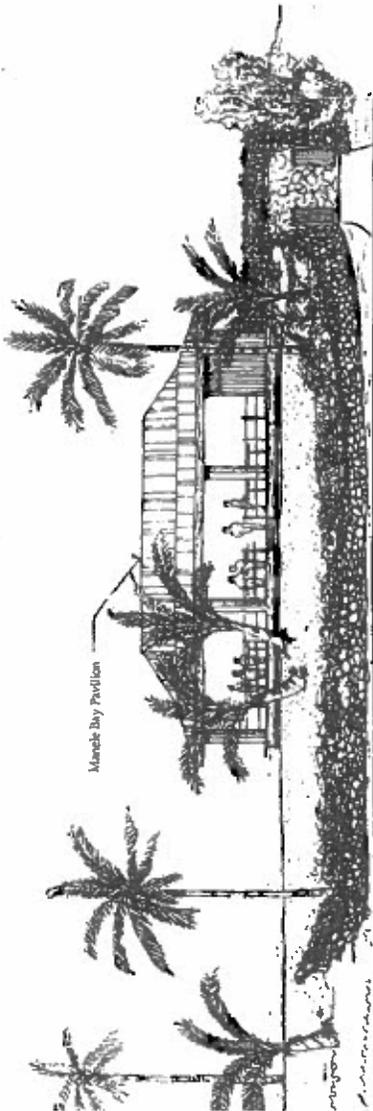
**EXHIBIT A**



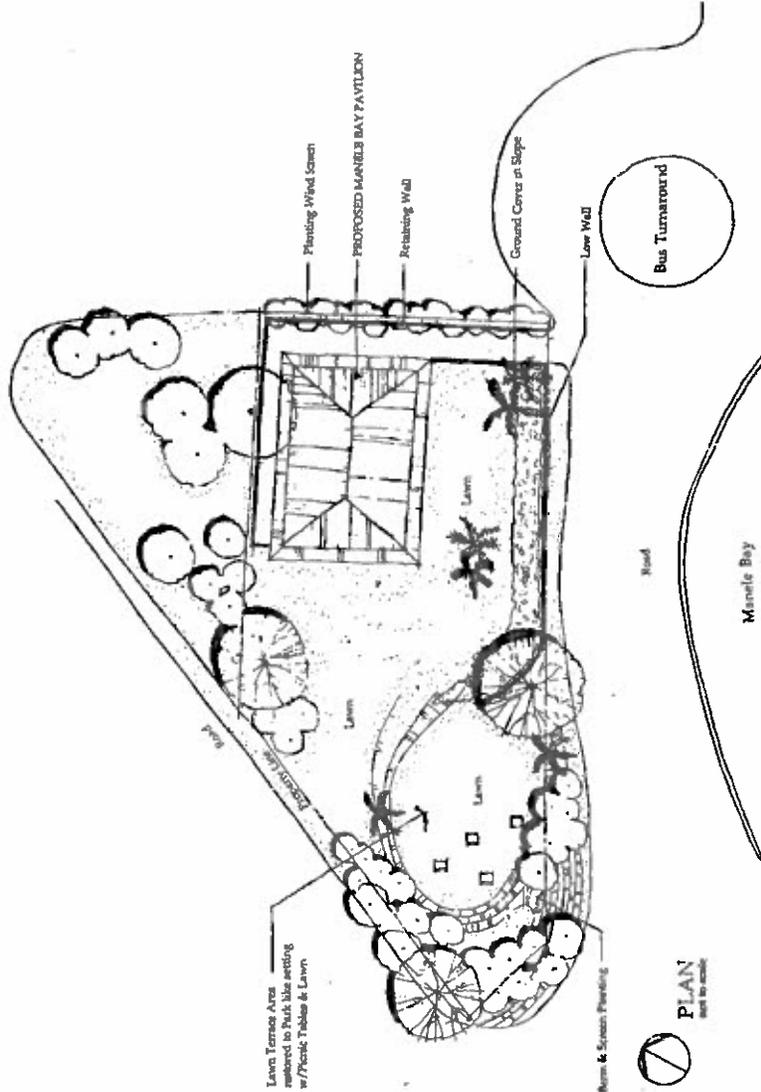
Roof Plan  
not to scale



North End Elevation  
not to scale



South Elevation  
not to scale



PLAN  
not to scale



**MANELE BAY PAVILION CONCEPT**  
for TRIOLOGY

Harbor Service Center & Passenger Rest Stop

4-13-94

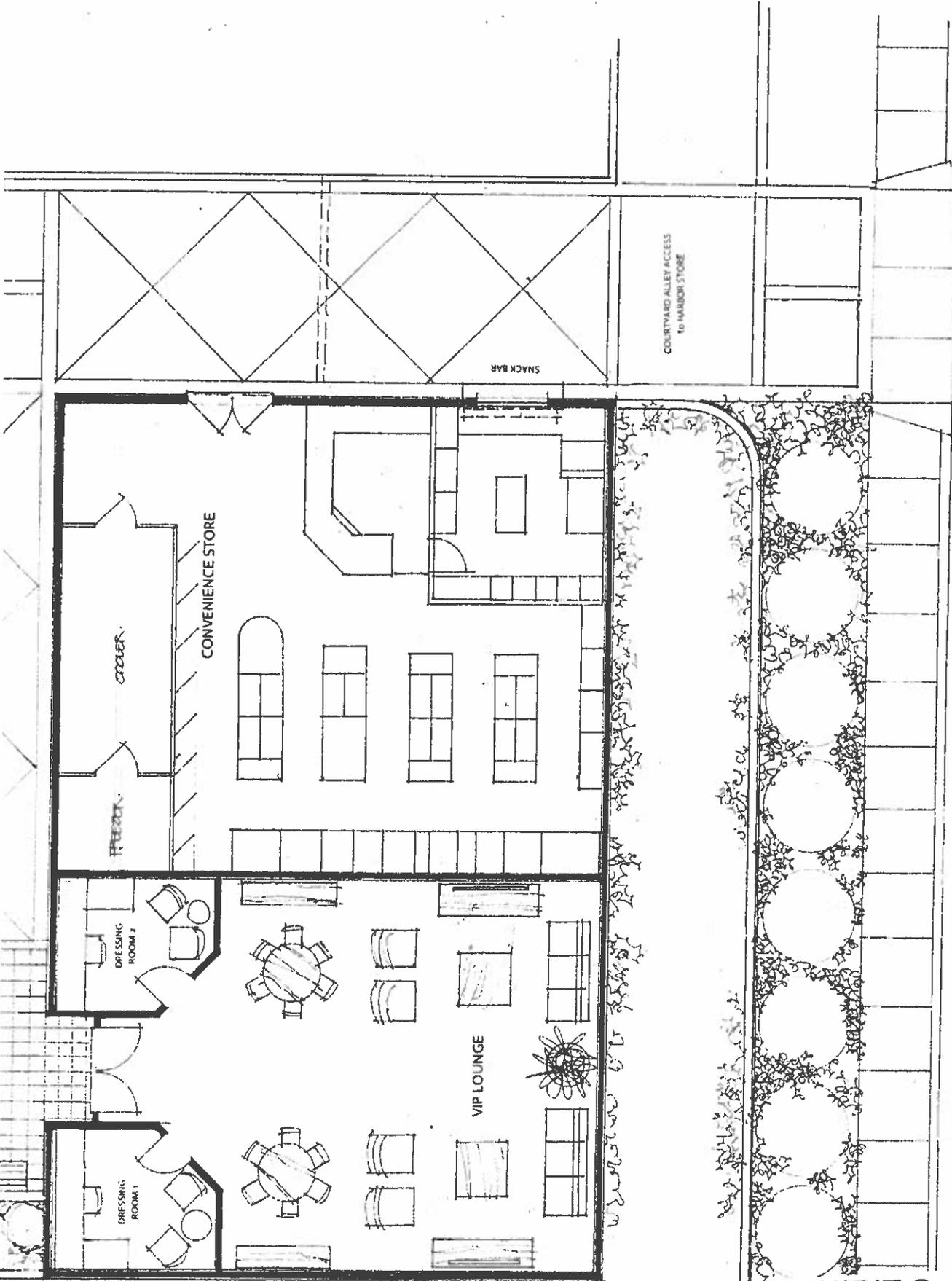
Revised 4-21-94 as per Manele Advisory Committee Minutes

HALEO MANELE PAVILION  
& HARBOR STORE

PROPOSED EXPANSION / REMODEL AND ENHANCEMENT / UPGRADE

SHEET

OF



COURTYARD ALLEY ACCESS  
TO HARBOR STORE

SNACK BAR

CONVENIENCE STORE

Cooler

Freezer

DRESSING ROOM 2

DRESSING ROOM 1

VIP LOUNGE

EXHIBIT C

HALEO MANELE PAVILION & HARBOR STORE

SCALE 1/4" = 1'-0"

PROPOSED EXPANSION / REMODEL AND ENHANCEMENT UPGRADE

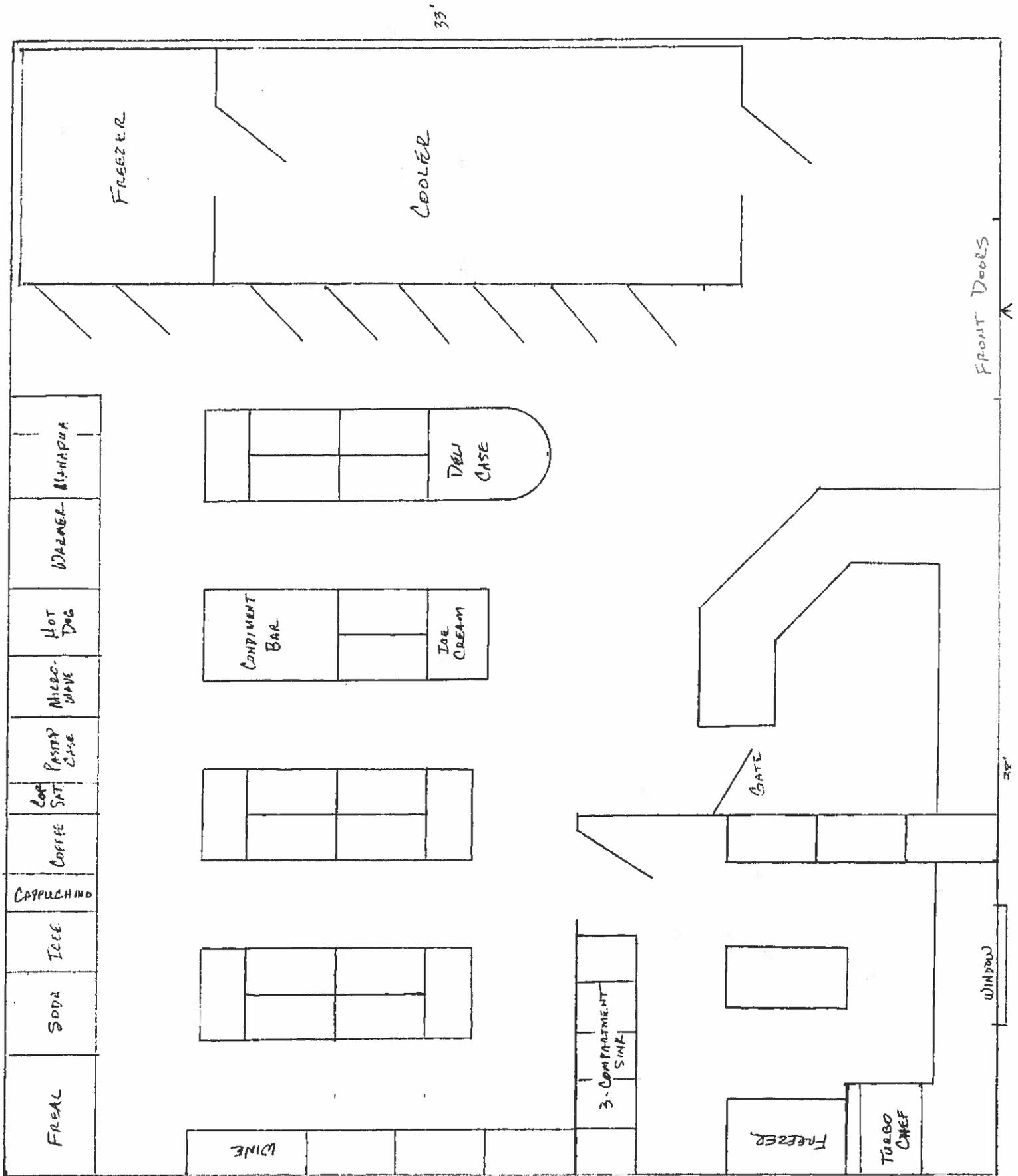


EXHIBIT D



# Quote

Date

5/6/2014

**Project:**  
Trilogy Manele Pavilion Convenience  
Store

**From:**  
RGS Sales - Bill Spere  
6770 Hawaii Kai Drive, #402  
Honolulu, Hawaii 96825  
p. (808) 218-8533  
f. (877) 614-0892  
e. bill.spere@rgssales.com

Project Code: TRILOGY\_

Item	Qty	Description	Sell	Sell Total
1	1 ea	<b>EQUIPMENT AND LABOR</b> Custom Model No. E & L Packed: ea Equipment for the Trilogy Manele Pavilion Convenience Store. Equipment per drawing (excluding soda machine, Icee machine, ice cream case and coffee equipment all provided by vendors, nor wine rack, reach in freezer or F'real machine).	\$147,290.00	\$147,290.00
2	1 ea	<b>LABOR</b> Custom Model No. L Packed: ea Labor to install all provided equipment.	\$38,000.00	\$38,000.00
3	1 ea	<b>TAX</b> Custom Model No. T Packed: ea Applicable taxes are not included.		
<b>Total</b>				<b>\$185,290.00</b>

Acceptance: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_



# Bank of Hawaii

---

May 6, 2014

James Coon, CEO  
Trilogy  
207 Kupuohi Street  
Lahaina, HI 96761

Dear Jim,

We would be able to pursue a commercial real estate loan, using your Lanai pavilion property, leased from DLNR, structured with a 10 year term, and a 25 year amortization, if you are able to extend your land lease to the 34 years, as we discussed. Your loan structure based on a potential loan of \$200,000 would be as follows:

\$200,000 Loan  
10 year term – subject to negotiation after the term period  
5% fixed rate (indicative rate as of 5/6/14)  
25 year amortization  
\$1,169.18 – monthly payment.

If you have any questions, please call me at 856-2601.

Sincerely,



Greg Knue  
Vice President and  
Commercial Banking Officer



May 12, 2014

Mr. Jim Coon  
Trilogy Corporation  
P.O. Box 1119  
Lahaina, HI 96767

RE: Depreciation Period – Hale O Manele Pavilion & Harbor Store Manele Bay, Lanai

Dear Mr. Coon:

Thank you for your telephone call on Monday, May 12, 2014 regarding the depreciation period for planned leasehold improvements to the Pavilion at Manele Bay, Lanai.

IRS Section 168(c) states that the applicable recovery period for nonresidential real property is 39 years. Therefore, any improvements that you make will be depreciated over 39 years.

Currently, should you make any improvements to the Pavilion, your recovery period would exceed your current lease by 25 years. In other words, you would only have depreciated 14 years of improvements before your current lease expired.

Ideally, you would like your lease to either exceed or match your recovery period. Therefore, to fully utilize your improvements over its expected life, you would need an additional 25 year extension on your current lease.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Kawahara', is written over a horizontal line.

Robert Kawahara, CPA  
Managing Member

**EXHIBIT H**