

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

March 13, 2015

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

Oahu

Termination of Boating Lease No. BO-13120 dated December 6, 2013 between the State of Hawaii, Lessor, and Honey Bee USA, Inc., Lessee; Cancellation of BLNR Approval of Non-Exclusive Term Easement to Honey Bee USA, Inc.; Honolulu, Oahu, Hawaii. Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-037:012 (por.) & 020

APPLICANT:

Department of Land and Natural Resources, Division of Boating and Ocean Recreation
("DOBOR").

REQUEST:

1. Termination of Boating Lease No. BO-13120 dated December 6, 2013 (**the "Lease"**) between the State of Hawaii, Lessor, and Honey Bee USA, Inc. (**"Honey Bee"**), Lessee
2. Cancellation of Approval for Non-Exclusive Term Easement (**the "Easement"**) to Honey Bee approved by BLNR on November 9, 2012 as Agenda Item J-1

LEGAL REFERENCE:

Section 171-20, 21, 39, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands, fast and submerged, situated at the Ala Wai Small Boat Harbor (**"AWSBH"**), Kalia, Honolulu, Oahu, Hawaii, identified by Tax Map Key Nos: (1) 2-6-010:003 (por.), 005 & 016; 2-3-037:012 (por.) & 020. The fast lands consist of the **"Boatyard Repair Site"**, the **"Fuel Dock Site"** and the **"Easement Area"**, which are shown on the attached Exhibits **"A"** and **"B"**.

AREA:

Fast Lands:	1.260 acres, more or less (.973 acres at Boatyard Repair Site; .287 acres at Fuel Dock Site)
Submerged Lands:	1.035 acres, more or less (.50 acres adjacent to Boatyard Repair Site; .54 acres adjacent to Fuel Dock Site)
Easement (Fast):	0.121 acres, more or less

TRUST LAND STATUS:

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

CHARACTER OF USE:

Fast lands: Fuel dock facility, vessel haul-out/repair facility, commercial uses, wedding facilities, vessel storage facilities, training and support facilities, office space for DOBOR, parking, and any uses permitted under applicable laws, ordinances, rules.

Submerged lands: Mooring purposes

Easement: To be incorporated as part of the redevelopment of the adjacent Boatyard Repair Site.

TERMS OF LEASE AND EASEMENT:

Lease: 65 years, commencing on January 1, 2014 and expiring on December 31, 2078.

Easement: Not yet commenced, but approved for up to 65 years, to be co-terminus with the Lease

ANNUAL RENTAL:

Lease: \$821,652.49 (fast lands: \$551,130.49; submerged lands \$270,522.00)¹

Easement: \$55,494.11

REMARKS:

A. Background.

On December 17, 2009, DOBOR entered into a development agreement with Honey Bee for the redevelopment of two parcels at the AWSBH (the “Development Agreement”).² The Development Agreement granted Honey Bee the right to conduct predevelopment activities in pursuit of its proposed redevelopment project known as “Waikiki Landing”. In exchange, Honey Bee agreed to pay DOBOR a development fee of \$150,000 per year for the first year, and thereafter \$15,000 per month.

The Development Agreement also provided for DOBOR to issue Honey Bee a long-term lease upon Honey Bee’s satisfaction of all the Development Agreement conditions.

On November 9, 2012, as Agenda Item J-1, the Board approved: (1) a 65-year ground lease from DOBOR to Honey Bee for the redevelopment of the AWSBH’s “Boatyard Repair Site”, “Fuel Dock

¹ This figure represents the annual lease rent from years two through six. The annual lease rent for the first year is \$682,614.35

² The Development Agreement resulted from DOBOR’s selection of Honey Bee pursuant to a Request for Qualifications / Request for Proposals issued on November 25, 2008, and a subsequent Development Agreement between DOBOR and Honey Bee dated December 17, 2009.

Site”, and the submerged lands adjacent to the two sites (Lease); and (2) a 65-year term easement to Honey Bee for an adjacent parcel of fast lands (Easement).

The Lease was executed on December 6, 2013 (effective January 1, 2014) and requires Honey Bee to pay an annual minimum base rent of \$821,652.49 per year (\$68,471.04 per month), with periodic rent increases through the first 30 years of the lease. The Easement has been drafted, but has not yet been executed.

Honey Bee encountered unexpected financial difficulties in the third quarter of 2014 when it lost its source of funding. Honey Bee fell delinquent on its October 2014 lease rent payment.

In October 2014, DOBOR met with Honey Bee and Honey Bee’s general contractor, Hawaiian Dredging Construction Company, Inc., at which time, Hawaiian Dredging provided DOBOR with its updated construction schedule and confirmed its commitment to Honey Bee and to the construction of the Waikiki Landing project. However, after Honey Bee failed to make its November 2014 lease rent payment, DOBOR issued a Notice of Default to Honey Bee dated November 26, 2014. A copy of the Notice of Default is attached as **Exhibit “C”**. The Notice of Default demanded that Honey Bee cure all defaults or face termination of the Lease. To date, Honey Bee has failed to cure the defaults, which are discussed below

DOBOR has met with Honey Bee on a regular basis to discuss and monitor Honey Bee’s efforts to secure a new source of funding, which included potential equity investors, lenders, and a combination of both. Honey Bee has, on numerous occasions, informed DOBOR that it had potential investors and/or lenders and would be submitting a proposal for DOBOR’s review. Many of the proposals contemplated an equity investor(s), which would be deemed an assignment of the Lease and require the Board’s consent. However, Honey Bee has failed to provide a proposal that included firm written commitments between the investor and/or lender and Honey Bee, and firm written commitment to funding by a specified date.

Most recently, DOBOR met with Honey Bee on January 7, 2015, and had a follow-up telephone conversation on January 13, 2015, at which time, Honey Bee indicated it would be submitting a new funding proposal for DOBOR’s review and consideration. However, no such proposal was received by DOBOR. On February 11, 2015, Honey Bee informed DOBOR that it would pay all delinquent lease rents, plus the March 2015 rent, by February 18, 2015, and would also have a loan commitment secured that would cure all of the defaults and finance the construction of the project. Those payments and loan commitment failed to materialize.

As of February 26, 2015, Honey Bee has paid to DOBOR \$690,000.00 in development agreement fees and \$470,515.00 in lease rent.

B. Defaults.

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources and the breach provision contained in the Lease, Honey Bee was served a Notice of Default by certified mail dated November 26, 2014 for:

1. Failure to keep lease rental payments current.
2. Failure to post required performance bond.

3. Failure to remain free of encumbrances.

Said notice, accepted by the Lessee on December 1, 2014, offered the Lessee a 30-day cure period to cure the lease rental default and a 60-day cure period to cure the performance bond and encumbrances defaults. The 30-day cure period expired on December 31, 2014 and the 60-day cure period expired on January 30, 2015. As of February 26, 2015, none of the defaults have been cured.

As of February 26, 2015, the current status of all lease compliance items is as follows:

1. Lease Rental. The Lessee has not brought the lease rental payments current. The Lessee has a rental delinquency of \$349,190.73 for the time period from October 1, 2014 to February 28, 2015. If the Lessee does not make any payments prior to the date of the Board meeting, the March 2015 payment of \$68,471.04 will also be past due (plus applicable service charges and interest).
2. Performance Bond. The Lessee has not posted the required performance bond.
3. Encumbrances. A preliminary title report dated October 28, 2014 prepared by Old Republic Title & Escrow of Hawaii lists several encumbrances. The Lessee has not provided any evidence that any of these encumbrances have been satisfied and/or removed from title. Relevant excerpts from the title report are attached as **Exhibit “D”**.

RECOMMENDATION: That the Board:

1. Authorize the termination of Boating Lease No. BO-13120 in the manner specified by law;
2. Cancel the Board’s prior approval of, and terminate Honey Bee’s rights to, the Easement;
3. Authorize the retention of all sums heretofore paid or pledged under Boating Lease No. BO-13120 to be applied to any past due amounts;
4. Terminate the Lease and all rights of Lessee and all obligations of the Lessor effective as of March 13, 2015, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law;
5. Require Honey Bee to deliver copies of all reports, studies, files, due diligence materials, permits and approvals, related to the Waikiki Landing project to DOBOR within thirty (30) days of the date of this Board meeting; and
6. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Boating Lease No. BO-13120 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Cary S. Chang, Interim Chairperson
Board of Land and Natural Resources

- Attachments: Exhibit A – Boatyard Repair Site and Fuel Dock Site
Exhibit B – Location Map
Exhibit C – Honey Bee Notice of Default
Exhibit D – Old Republic Preliminary Report

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 26, 2014

WILLIAM J. AILA, JR.
CHAIRMAN
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND CATCHER REGULATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIROHAWAISI AND RESERVE COMMISSION
LAND
STATE PARKS

BOR-PM 060.15

HONEY BEE USA, INC., a Hawaii corporation
c/o Keith M. Kiuchi, a Law Corporation
1001 Bishop Street, ASB Tower, Suite 985
Honolulu, Hawaii 96813

Certified Mail
Return Receipt Requested

Mr. Nobuaki Yoshino, Vice President
HONEY BEE USA, INC., a Hawaii corporation
1001 Bishop Street, ASB Tower, Suite 985
Honolulu, Hawaii 96813
Attn: Keith M. Kiuchi

Dear Messrs. Kiuchi and Yoshino,

NOTICE OF DEFAULT

This correspondence is to inform you that you are in material breach of your obligations under Boating Lease No. BO-13120 (the "Lease") dated December 6, 2013, by and between the State of Hawaii ("Lessor") and Honey Bee USA, Inc., A Hawaii Corporation ("Lessee").

Pursuant to the authority granted me by the Board of Land and Natural Resources, under Haw. Rev. Stat. sections 171-20 and 171-21, and the breach provision contained in the Lease, you are hereby served this Notice of Default and Demand for Cure for failure to do the following:

- X Keep lease rental payments current
- X Post required Performance Bond
- ___ Post required Fire Insurance Policy
- ___ Post required Liability Insurance Policy
- X Cure Mechanic's and Materialman's Lien, Choate Construction Services, LLC
- X Cure County tax liens, Ala Wai Fuel Services, Inc. and Ala Wai Marine Ltd
- X Satisfy Circuit Court Judgment, Maruhan Corporation

I. Failure to pay rent:

Pursuant to section A of the Lease, the Lessee is liable for rent as follows: "Annual minimum base rent shall be payable on a monthly basis, in advance, on the first day of each month of each and every year"

Our Fiscal Office informs us that as the Lessee, Honey Bee USA, Inc. is in arrears in the following amount:

October 2014 Rent:	\$70,699.55
October 2014 Interest (1%):	\$706.99
October 2014 Late Service Fee:	\$50.00
November 2014 Rent:	\$70,699.55
November 2014 Interest (1%):	\$1,413.99
November 2014 Late Service Fee:	\$50.00
Total Amount Past Due:	\$143,620.08

The Total amount past due is **\$143,620.08** including interest charges and service fee. Demand is hereby made for full and complete payment of foregoing amount within 30 days of the date of this letter.

Please see attached copy of pages 23 (Section 18) and 24-25 (Section 21).

II. Failure to Remit Performance Bond:

Additionally, Honeybee has failed to remit the performance bond required under Section 18 of the Lease which states that: "The Lessee shall, at its own cost and expense, within thirty (30) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond or equivalent acceptable to the Lessor, in an amount no less than NINE HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED FIVE AND 15/100 DOLLARS (\$938,605.15) for the first ten years of this lease"

At this time, the Lessor, through the Department, has not received a surety bond or other evidence of the required Performance Bond in the amount to be not less than \$938,605.15.

III. Failure to remain free of encumbrances:

Pursuant to section 11 of the Lease, Lessee is required to operate free of liens and encumbrances: "The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate or the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses."

A. At this time the Department has been notified that there has been a Notice of Pendency Action recorded on April 16, 2014 in the Bureau of the Conveyances, State of Hawaii, as Document No. A-52190666 for Lienor/Plaintiff CHOATE CONSTRUCTION SERVICES, LLC against the STATE OF HAWAII; HONEY BEE USA, INC., JOHN DOES 1-10, JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and DOE ENTITIES 1-10 (collectively, as "respondents"). The object of the action is for the Lienor to obtain a Mechanic's and Materialman's Lien against the respondents in the amount of \$529,730.36, plus any additional amounts accrued as a result of this action.

The Lienor recorded an "Order Granting in Part and Denying in Part Lienor Choate Construction Services, LLC's Application for Mechanic's and Materialman's Lien, filed August 28, 2014 in the First Circuit Court with M.L. No. 14-1-0010 (KKS), recorded November 10, 2014 in the Bureau of Conveyances, State of Hawaii as Document No. A-54270930.

B. Further, the Department has also been notified of the following County Tax Liens:

1) recorded on June 16, 1998 in the Bureau of Conveyances, State of Hawaii, as Document No. 98-086222, against ALA WAI FUEL SERVICES[SIC] INC. aka ALA WAI HARBOR FUEL SERVICES regarding Tax Map Key No. 1-2-3-037-020-0000 in the amount of \$1,344.31; and

2) recorded on April 23, 2010, in the Bureau of Conveyances, State of Hawaii, as Document No. 2010-055939, against ALA WAI MARINE LTD regarding Tax Map Key No. (1) 2-6-010-016-0000 in the amount of \$70,753.43; and

3) recorded on April 23, 2010, in the Bureau of Conveyances, State of Hawaii, as Document No. 2010-055940, against ALA WAI MARINE LTD regarding Tax Map Key No. (1) 2-6-010-005-0000 in the amount of \$348,571.16

C. Also, the Department has been notified that there is a Circuit Court Judgment in the First Circuit Court, State of Hawaii in favor of MARUHAN CORPORATION, a Japan corporation, against HONEY BEE USA, INC., a Hawaii corporation; HIDEAKI SHIMAKURA; MUNEYOSHI NAKANISHI; NOBUAKI YOSHINO; KEITH KIUCHI; DERON AKIONA; and Doe Defendants 1-20 under Civil No. 13-1-1626-06 (KKS), recorded September 12, 2013 in the Bureau of Conveyances, State of Hawaii, as Document No. A-50030633.

Furthermore, a mortgage in the amount of \$1,450,000.00 by Mortgagor HONEY BEE USA, INC., a Hawaii corporation; to MELVIN AND JEAN NAKAGAWA FAMILY LIMITED PARTNERSHIP dated May 21, 2014; as recorded on May 23, 2014 in the Bureau of Conveyances, State of Hawaii, as Document No. A-52560900. Please see Section 20. Mortgage, re: obtaining prior consent to mortgage. Unless prior written consent is obtained from the Chairperson of the Board of Land and Natural Resources, such mortgage shall be considered null and void.

You are hereby given **Thirty (30) days** from the date of receipt of this letter to cure the above-described breach, to bring all rent current, and Sixty (60) days to provide the required

Performance Bond, as well as provide evidence and immediate progress of resolution of the Notice of Pendency of Action dated April 16, 2014 and recorded with the State of Hawaii, Bureau of Conveyances.

Your failure to act on the above matter may result in the following:

1. Cancellation of Boating Lease No. BO-13120 (the "Lease").
2. Retention of all sums heretofore paid or pledged under the Lease as liquidated damages.
3. Termination of the Lease and all rights of Lessee and obligations of Lessor effective as of the date of the Board of Land and Natural Resources' action, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law.
4. Initiation of legal action to collect the delinquent rental amounts owed to the State of Hawaii under the Lease.
5. The State of Hawaii to collect all monies due the State of Hawaii under the Lease and to pursue all other rights and remedies as appropriate.

We, therefore, urge your fullest cooperation. Should you have any questions, please contact the Division of Boating and Ocean Recreation at (808) 587-1966.

Sincerely,



William J. Aila, Jr.
Chairperson

Attachment

c: BOR-PM
DOBOR Fiscal Office

(vii) Automobile liability insurance.

Hawaii no-fault automobile liability insurance, covering any auto (all owned, hired, and non-owned autos), with a combined single limit not less than \$2,000,000.00 (bodily injury and property damage combined); or a bodily injury limit of not less than \$1,000,000.00 per person and \$2,000,000.00 per accident, and property damage limits of not less than \$1,000,000.00 per accident.

(viii) Protection and indemnity. Protection and indemnity (P & I) of \$1,000,000.00 shall extend to the liabilities of any watercraft operation, naming the State of Hawaii as additional insured.

(ix) Marine comprehensive legal liability (MCL) policy and bumbershoot coverage. In the event that any marine operations are to be conducted on or in the water, a Marine Comprehensive Legal Liability (MCL) policy including primary coverage of a minimum of \$2,000,000.00 aggregate shall be obtained for general liability, auto liability, and marine miscellaneous liability. For ocean activities which in the opinion of the Lessor pose additional risks, the Lessor may impose Marine Bumbershoot policy limits up to \$50,000,000.00 as excess coverage over and above the primary limits of P&I, MCL, auto, and pollution policies.

(x) Liquor liability. If the Lessee or any sublessee (including any premises under sublease) intends to manufacture, distribute, sell, serve or furnish alcoholic beverages on or from the Premises: \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate.

18. Bond, performance. The Lessee shall, at its own cost and expense, within thirty (30) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond or equivalent acceptable to the Lessor, in an amount no less than NINE HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED FIVE AND 15/100 DOLLARS (\$938,605.15) for the first ten years of this lease, and thereafter a good and sufficient surety bond or equivalent acceptable to the Lessor, in an amount equivalent to the annual rent then payable for the remaining term of this lease, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease. This bond or acceptable equivalent shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as

liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all the Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in the Lease. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days

after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, the Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by the Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the



OLD REPUBLIC
TITLE & ESCROW OF HAWAII

900 Fort Street Mall, Suite 1900
Honolulu, HI 96813
808-566-0100 Fax: 808-522-1375

PRELIMINARY REPORT

KEITH M. KIUCHI, A LAW CORPORATION
1001 Bishop Street, Suite 985
96813, HI

Our Order Number 6707001942

Customer Reference Honey Bee U.S.A., Inc.

Property Address:

Ala Wai Small Boat Harbor, Honolulu, HI 96815

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE & ESCROW OF HAWAII, as Issuing Agent of Old Republic National Title Insurance Company, hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit I attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit I of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of October 28, 2014, at 8:00 AM

OLD REPUBLIC TITLE & ESCROW OF HAWAII
For Exceptions Shown or Referred to, See Attached

Page 1 of 7 Pages

**OLD REPUBLIC TITLE & ESCROW OF HAWAII
ORDER NO. 6707001942**

The form of policy of title insurance contemplated by this report is:

ALTA Loan Policy - 2006. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Leasehold

Title to said estate or interest at the date hereof is vested in:

HONEY BEE USA, INC., a Hawaii corporation

The land referred to in this Report is situated in the State of Hawaii, and described as follows:

See Legal Description Exhibit.

OLD REPUBLIC TITLE & ESCROW OF HAWAII
ORDER NO. 6707001942

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1.

- A. Taxes and assessments, general and special, for the fiscal year 2014 - 2015, County of Honolulu, a lien, but not yet due or payable.

Tax Map Key : (1) 2-3-037-012

- B. Taxes and assessments, general and special, for the fiscal year 2014 - 2015, County of Honolulu, a lien, but not yet due or payable.

Tax Map Key : (1) 2-3-037-020

- C. Taxes and assessments, general and special, for the fiscal year 2014 - 2015, County of Honolulu, a lien, but not yet due or payable.

Tax Map Key : (1) 2-6-010-003

- D. Taxes and assessments, general and special, for the fiscal year 2014 - 2015, County of Honolulu, a lien, but not yet due or payable.

Tax Map Key : (1) 2-6-010-005

- E. Taxes and assessments, general and special, for the fiscal year 2014 - 2015, County of Honolulu, a lien, but not yet due or payable.

Tax Map Key : (1) 2-6-010-016

2. Any adverse claim based on the location of the seaward boundary and/or shoreline setback line of the herein described property, as may be established under the laws of the State of Hawaii.

3. AS TO PARCEL FIRST:

- A. Easement A for access purposes, as described in Boating Lease No. BO-13120 dated December 6, 2013.

OLD REPUBLIC TITLE & ESCROW OF HAWAII
ORDER NO. 6707001942

4. AS TO PARCELS THIRD AND FOURTH:

A. Any adverse claim based on the herein described property being submerged land, as may be established under the laws of the State of Hawaii.

5. Terms and provisions of that certain Boating Lease No. BO-13120 dated December 6, 2013.

6. COUNTY TAX LIEN

Recorded : June 16, 1998 in the Bureau of Conveyances, State of Hawaii, as Document No. 98-086222
Against : ALA WAI FUEL SERVICES INC. aka ALA WAI HARBOR FUEL SERVICES
In Favor of : Real Property Tax Collection Section
Real Property Tax Division - County of Honolulu
Real Property Tax, TMK : 1-2-3-037-020-0000
Amount : \$1,344.31

7. COUNTY TAX LIEN

Recorded : April 23, 2010 in the Bureau of Conveyances, State of Hawaii, as Document No. 2010-055939
Against : ALA WAI MARINE LTD
Real Property Tax Division - County of Honolulu
Real Property Tax, TMK : 2-6-010-016-0000
Amount : \$70,753.43

8. COUNTY TAX LIEN

Recorded : April 23, 2010 in the Bureau of Conveyances, State of Hawaii, as Document No. 2010-055940
Against : ALA WAI MARINE LTD
Real Property Tax Division - County of Honolulu
Real Property Tax, TMK : 2-6-010-005-0000
Amount : \$348,571.16

OLD REPUBLIC TITLE & ESCROW OF HAWAII
ORDER NO. 6707001942

9. CIRCUIT COURT JUDGMENT filed in the Circuit Court of the First Circuit, State of Hawaii

In Favor of : MARUHAN CORPORATION, a Japan corporation
Against : HONEY BEE USA, INC., a Hawaii corporation; HIDEAKI SHIMAKURA;
MUNEYOSHI NAKANISHI; NOBUAKI YOSHINO; KEITH KIUCHI;
DERON AKIONA; and DOE DEFENDANTS 1-20
Case No. : Civil No. 13-1-1626-06 (KKS)
Amount : \$157,830.00
Recorded : September 12, 2013 in the Bureau of Conveyances, State of Hawaii,
as Document No. A-50030633
Attorney : JOHN P. MANAUT 3989

10. Action as follows:

Plaintiff : CHOATE CONSTRUCTION SERVICES, LLC
Defendant : STATE OF HAWAII; HONEY BEE USA, INC.; JOHN DOES 1-10; JANE
DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10;
DOE ENTITIES 1-10
Circuit Court : First Circuit
Case No. : M.L. No. 14-1-0010 KKS
Commenced : April 15, 2014
Purpose : Lienor to obtain a Mechanic's and Materialman's Lien against
Respondents in the amount of \$529,730.36

As Disclosed by or Notice of Which is

Dated : April 15, 2014
Recorded : April 16, 2014 in the Bureau of Conveyances, State of Hawaii, as
Document No. A-52190666
Attorney : KARIN L. HOLMA 5207-0
CHAD M. KUMAGAI 9563-0
For : Lienor

ORDER GRANTING IN PART AND DENYING IN PART LIENOR CHOATE CONSTRUCTION SERVICES, LLC'S APPLICATION FOR MECHANIC'S AND MATERIALMAN'S LIEN, filed August 28, 2014 in the Circuit Court of the First Circuit, State of Hawaii with M.L. No. 14-1-0010 (KKS), recorded November 10, 2014 in the Bureau of Conveyances, State of Hawaii as Document No. A-54270930.

OLD REPUBLIC TITLE & ESCROW OF HAWAII
ORDER NO. 6707001942

11. Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof, with power of sale and assignment of rents.

Amount : \$1,450,000.00
Mortgagor : HONEY BEE USA, INC., a Hawaii corporation
Mortgagee : MELVIN AND JEAN NAKAGAWA FAMILY LIMITED PARTNERSHIP
Dated : May 21, 2014
Recorded : May 23, 2014 in the Bureau of Conveyances, State of Hawaii, as Document No. A-52560900

Old Republic Title and Escrow of Hawaii, Ltd. will require that a properly executed and valid Release of the Mortgage shown herein as exception no. 9 be recorded prior to or concurrently with any documents pertaining to the sale or mortgage of the property described herein unless said Mortgage is intended to be assumed.

12. Any unrecorded and subsisting leases.
13. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
14. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
15. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
16. Any encroachment, encumbrance, violation, variation, question of location, boundary and/or area, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
17. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

18. Any lien or right to a lien for services, labor or material not shown by the public records.
19. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.
20. Satisfactory evidence furnished to this Company:
 - a) as to the due formation and continued existence of HONEY BEE USA, INC. as a legal entity under the laws of Hawaii; and
 - b) documents from its board of directors authorizing this transaction and specifying the officers who shall to execute on behalf of the corporation.

----- **Informational Notes** -----

- A. NOTE: Recorded transfers or agreements to transfer the land described herein within the last three years prior to the date hereof are as follows:

UNRECORDED BOATING LEASE NO. BO-13120

Dated : December 6, 2013
Lessor : STATE OF HAWAII, by its Board of Land and Natural Resources
Lessee : HONEY BEE USA, INC., a Hawaii corporation
Term : For the term of sixty-five (65) years, commencing on the 1st day of January, 2014, up to and including the 31st day of December , 2078, unless sooner terminated

- B. If This Transaction Involves A Construction Loan, we must inspect the subject property immediately prior to recordation to determine priority over potential mechanic's liens.

In the event of a loss of priority signed Indemnity Agreements and Financial Statements from all owners, developers and contractors must be submitted to the Title Department at least 3 days prior to the close of the escrow.

- C. Short Term Rate ("STR") does not apply.

LEGAL DESCRIPTION EXHIBIT

The land referred to in this Report is situated in the State of Hawaii, and described as follows:

All that certain leasehold estate created by the following:

UNRECORDED BOATING LEASE NO. BO-13120

Dated : December 6, 2013
Lessor : STATE OF HAWAII, by its Board of Land and Natural Resources
Lessee : HONEY BEE USA, INC., a Hawaii corporation
Term : For the term of sixty-five (65) years, commencing on the 1st day of January, 2014, up to and including the 31st day of December , 2078, unless sooner terminated