

TSUGAWA BIEHL LAU & MUZZI LLLC
A HAWAII LIMITED LIABILITY LAW COMPANY

CHRISTOPHER J. MUZZI (6939-0)
Bishop Place
1132 Bishop Street, Suite 2400
Honolulu, Hawaii 96813
Telephone No. 531-0490

Attorney for Petitioner
GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of)	
)	
GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION)	PETITION FOR DECLARATORY RELIEF; EXHIBITS A - F
)	
For an order of Declaratory Relief)	
_____)	

COMES NOW, Petitioner GOLDEN EAGLE MARINE CHARTER SERVICES, CORP. ("**Petitioner**" or "**Golden Eagle**"), by and through its attorneys, Tsugawa Biehl Lau & Muzzi LLLC, and pursuant to Hawaii Administrative Rules ("**HAR**") § 15-219-83, seeking an order regarding the applicability of Hawaii Administrative Rules chapter 15-219 and whether (1) the current operator of Kewalo Basin Harbor has the authority to issue or revoke, or otherwise engage in the conduct described herein; (2) whether the current operator of Kewalo Basin Harbor acted in an arbitrary and capricious manner with respect to the conduct described herein; and (3) whether the current operator of Kewalo Basin Harbor engaged in illegal rulemaking when it added factors and otherwise

RECEIVED
JUN 30 2017

Hawaii Community Development Authority
By: *AS*

required Petitioner to perform actions not required under Hawaii Administrative Rules chapter 15-212 or give Petitioner an opportunity to cure, in violation of the said rules.

PETITION

I. PETITIONER'S (AND PETITIONER'S COUNSEL'S) NAME, MAILING ADDRESS, AND TELEPHONE NUMBER

GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.
c/o Laurie A. Bakke
350 Ward Avenue #106
Honolulu, Hawaii 96814

Christopher J. Muzzi, Esq.
Tsugawa Biehl Lau & Muzzi LLLC
1132 Bishop Street Suite 2400
Honolulu, Hawaii 96813

Attorney for Petitioner

GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.

II. DESIGNATION OF SPECIFIC STATUTE, RULE, OR ORDER IN QUESTION

Hawaii Administrative Rules ("HAR") chapter 15-212.

III. PETITIONER'S INTEREST IN THE SUBJECT MATTER AND REASONS FOR SUBMITTING THE PETITION

GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION ("Golden Eagle") is the holder of Commercial Charter Mooring Permit for Berth No. FS (the "Mooring Permit") at Kewalo Basin Harbor ("KBH") and operates the commercial vessel s/v EMERAUDE II and has been for approximately 44 years. The EMERAUDE II is an approximately eighty foot vessel and is allowed by the U.S. Coast Guard to only carry six passengers or less. Berth No. FS is a front row slip in KBH along Ala Moana Boulevard. The EMERAUDE II is currently docked in Berth No. FS.

KBH is a harbor owned by the State of Hawaii. KBH is under the jurisdiction of the Hawaii Community Development Authority ("HCDA"). Pursuant to General Lease

14-1 ("**Lease**"), the HCDA has leased KBH to Kewalo Harbor, LLC. Exhibit A. As part of the Lease, Kewalo Harbor, LLC is required to exclusively follow the HAR applicable to KBH, including chapters § 15-211 and § 15-212. Kewalo Harbor, LLC is owned by The Hughes Corporation, a for profit developer of a number of condominium building projects surrounding KBH. Almar Management, Inc. ("**Almar**"), either directly or indirectly, is managing KBH.

As a custom and practice in KBH, mooring permits at KBH are renewed unless a permittee is in gross violation of the HAR governing KBH, such as nonpayment. Generally, there is no process for application for renewal.

With respect to the last Mooring Permit emailed to Golden Eagle for execution, the period was for May 1, 2016 through April 30, 2017. Exhibit B.

On or about April 10, 2017, Almar indicated to Golden Eagle that it was conducting an audit and sought the following items:

- General Excise Tax returns for 2015, 2016 and January through March of 2017
- Corporate Tax Returns for 2015 and 2016
- Guest Logs for 2015, 2016 and January through March of 2017
- Sales records for 2015, 2016 and 2017
- Checking account statements for 2015, 2016 and 2017
- Credit Card Statements for 2015, 2016 and 2017
- Customer/Client agreements
- Delinquent Gross Receipts Reports for December 2016, January and February of 2017.

On May 10, 2017, Golden Eagle responded with questions and objections. Exhibit D.

Then, on May 31, 2017, Almar sent a letter to Golden Eagle stating that the Mooring Permit had expired and that it would not be renewed, and that Golden Eagle should move the EMERAUDE II no later than June 30, 2017. Exhibit E.

A similar termination of mooring permit was also issued on May 31, 2017 by Almar to S.O.M. LLC ("SOM"), another 100% woman-owned business, which has been in possession of the same slip for about 4 years. Exhibit F. Thus, the only women-owned businesses in the front row slips at KBH, which are the most valuable and sought after, have had their permits terminated or not renewed simultaneously.

Almar purports to refuse to renew the Mooring Permit based on alleged violations of the HAR. However, even assuming that Golden Eagle is in violation of the HAR, which it disputes, many other permittees are in violation of the HAR and have not had their permits terminated or not renewed. Almar is selectively enforcing the HAR. Almar is applying the HARs in an arbitrary and capricious manner by adding requirements that are not in the HARs. KBH is applying and enforcing the HARs favorable to Kewalo Harbor and those permittees that are in its good graces, including those that provide gratuities. Almar is discriminating against women in its application and "enforcement" of the HAR. Almar is discriminating against vessels that can only carry six passengers or less in an attempt to increase their profits at the expense of existing small business permittees.

Golden Eagle is entitled to a contested case hearing as the termination of or refusal to renew the Mooring Permit is a taking of Golden Eagle's property without due process of law.

IV. PETITIONER'S REQUEST FOR DECLARATORY ORDER AND POSITION OR CONTENTION

Pursuant to HAR § 15-219-83, “[a]ny interested person or governmental agency may petition the authority for a declaratory order as to the applicability of any statutory provision or rule or order of the authority.” See also HRS § 91-8 (“Any interested person may petition an agency for a declaratory order as to the applicability of . . . any rule or order of the agency.”). See Citizens Against Reckless Development v. Zoning Bd. of Appeals, 114 Hawaii 184, 197, 159 P.3d 143, 156 (2007). Declaratory orders from administrative agencies can “remove uncertainty from legal relations and clarify, quiet and stabilize them before irretrievable acts have been undertaken, to enable an issue of questioned status or fact, on which a whole complex of rights may depend, to be expeditiously determined.” Id.

Pursuant to this provision, Petitioner seeks a declaratory order regarding the actions of Almar, as described above. Specifically, Petitioner seeks a declaratory order from the HCDA stating whether Almar, as an operator of KBH, (1) has authority under HAR Chapter 15-219 to issue then apparently un-issue and/or revoke mooring permits when it is not the “HCDA” and there has been no apparent delegation to KBR or to Almar to act on behalf of the HCDA with respect to these matters, or (2) may disregard the HARs related to KBH and/or act in an arbitrary or capricious manner in applying the HARs related to KBH with respect to first issuing a mooring permit and then claiming that no such permit had ever been issued, and otherwise either ignoring rules regarding permits or (3) usurps the HCDA authority to adopt rules by arbitrarily and capriciously creating new requirements for permit issuance, renewal, or revocation, without proper authority or without following the rulemaking requirements set forth in HRS chapter 91.

1. Neither KBH Nor Almar Have the Authority to Issue Regulatory Rulings Or Act on Behalf of the HCDA With Respect to Any Permits at Kewalo Basin

Section 6.1 of the Lease states as follows:

6.1. Operation of Kewalo Basin Harbor. Commencing as of 12:00 pm Hawaii Time on September 1, 2014, LESSEE shall be (and LESSOR shall have taken any actions necessary to make LESSEE) the exclusive manager and operator of all aspects (including but not limited to delegating to LESSEE full fiscal and physical harbor operations and management services) of Kewalo Basin Harbor as a marina, together with the parcels referred to in subsection (c) below (referred to as the "Harbor Facilities"), in accordance with the terms and conditions of this Lease and all Applicable Laws, including but not limited to, the Kewalo Basin Rules, as they may be amended from time to time and in such role, shall be the "harbor manager" referred to in the Kewalo Basin Rules; provided that where the Kewalo Basin Rules require a regulatory determination to be made by "HCDA", then LESSOR shall make such determination, not LESSEE, except as to any day-to-day management or operational decisions relating to the Harbor Facilities.

(a) LESSEE's operational and management responsibilities as harbor manager of Kewalo Basin Harbor shall include, but are not limited to: (i) timely collecting any rent or fees due and owing from any of the boat tenants or sublessees of the Harbor Facilities, (ii) timely and adequately responding to any complaints lodged or concerns noted by boat tenants or members of the public who utilize Kewalo Basin Harbor, (iii) disposing or ensuring the removal or disposal of any vessels which are not permitted to berth at Kewalo Basin Harbor in accordance with all applicable Governmental Requirements, (iv) managing the harbor, slip, ticket booth, and office facilities and tenants, and (v) enforcing harbor rules and regulations (including but not limited to parking rules), including, in LESSEE'S discretion, the right to run the regularly scheduled stakeholder meeting. Prior to the Commencement Date, LESSOR shall assign to LESSEE all of LESSOR's rights and interests in all rents, revenues and reimbursements, security deposits and pre-paid rents and LESSEE shall assume all rights and obligations related thereto.

(b) During the Term, LESSEE shall be entitled to collect all revenues, income, or other receipts from the Harbor Facilities, which shall be included in LESSEE's Gross Receipts.

...

(Emphases added.) Thus, the Lease delegates authority to KBH to be the harbor manager to perform certain acts described in Section 6.1(a) of the Lease. These responsibilities do not include permit termination or revocation. Nor do they authorize KBH to adopt administrative rules.

The HCDA and the HARs related to KBH also do not provide KBH authority to perform these acts. HAR § 15-211-2 provides the general definitions that are to be used in chapters 212, 213, and 214. This section defines “harbormaster” and “harbor manager”, and “harbor agent” as “any person appointed to that office by the executive director and vested with the operational control of Kewalo Basin.” “The responsibilities of a harbormaster, harbor manager or harbor agent include, but are not limited to, enforcing rules, mooring and berthing of ships, control of water and air pollution in the harbor, allocation of storage space, and the movement of vessels into, out of, and within Kewalo Basin[.]” Id. This section also separately defines “HCDA” as the “Hawaii community development authority, a body corporate and public instrumentality of the State of Hawaii, its harbor manager, agent or entity vested with operational control of Kewalo Basin[.]”

The use of these definitions in HAR chapter 212 is clear – the harbormaster is in charge of the physical movement of vessels and the physical operation of the Harbor, but the rules specify that the HCDA makes the regulatory determinations regarding the permits. For example, HAR § 15-212-1(b) states that “[t]he berthing of vessels at Kewalo Basin shall be in conformity with this part and where not covered by this part at the discretion of the harbormaster in a reasonable manner such as to protect the public interest.” The rules in HAR subchapter 1 giving the harbormaster authority relate primarily to physical operation of the Kewalo harbor, including such provisions as

requiring a master or person in charge of any vessel to obey the orders of the harbormaster regarding method and manner of bringing vessels to anchorage, forbidding trying the engines of any vessel except by permission of the harbormaster, requiring masters or owners of a vessel to give notice to the harbormaster of arrival or departure. These provisions relate to actual operation of the harbor.

By contrast, subchapter 2 relates to berths and moorings, and the provisions in this subchapter 2 delegate some authority to the harbormaster, but other provisions, including renewal of revocable permit, HAR § 15-212-43 ("The HCDA may issue or renew a revocable permit"), and revocation of a revocable permit, HAR § 15-212-48 ("If the permittee fails to remedy any breach of any of the duties, covenants, or conditions of the permit or to desist from violating these rules, the HCDA may revoke the permittee's revocable permit"), retain authority to the HCDA specifically and do not delegate such authority to the harbormaster or to anyone else. The fact that the harbormaster's powers are particularly set forth in parts of chapter 212, and that the HCDA's authority is specifically identified in other parts of chapter 212 is critical. In re Water Use Permit Applications, 94 Hawaii 97, 151, 9 P.3d 409, 463 (2000) (explaining that "where the legislature includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that the legislature acts intentionally and purposely in the disparate inclusion or exclusion" (brackets and internal quotations omitted)). As explained above, the authority to act in the shoes of the HCDA must be specifically granted in order for an individual or entity to fall within the definition of "HCDA". This was not done under the Lease, because the Lease did not delegate to KBH the authority to deal with permits, including revoking or terminating them. In fact, the Lease specifically reserved unto the HCDA the power to make

regulatory determinations. Lease, Section 6.1. Nor is there anything that states that the HCDA or the executive director of the HCDA authorized Almar to act as “harbor manager.”

Accordingly, neither the Lease nor HAR chapter 15-219 authorize Almar to act in the place of the HCDA. Thus, any regulatory determinations regarding Golden Eagle’s permit are beyond the authority of Almar and accordingly ultra vires.

2. Actions by Almar In Applying the HARs Related to KBH Are Also Arbitrary and Capricious

As explained in the concurrently filed Petition for Contested Case Hearing, which is incorporated by reference, the actions that Almar took with respect to Golden Eagle’s permit were not authorized by the HARs related to KBH, and in fact, were confusingly contradictory.

Generally, an agency is given certain deference in making determinations. “[A] determination made by an administrative agency acting within the boundaries of its delegated authority will not be overturned unless ‘arbitrary, or capricious, or characterized by . . . [a] clearly unwarranted exercise of discretion.’” Paul’s Elec. Serv. Inc. v. Befitel, 104 Hawaii 412, 419, 91 P.3d 494, 501 (2004) (citing HRS § 91-14(g)(6)). However, here, Almar is not an “agency”, and it is not clear that Almar even has the delegated authority to act. But at minimum, these actions are arbitrary and capricious, because Almar did not follow the HARs related to KBH. Nor did it logically follow its own prior actions.

3. Almar, Without Authority and in Violation of HRS chapter 91, Engaged in Illegal Rulemaking When It Made Its Own Rules Regarding Permits.

By requesting that Golden Eagle perform actions that Almar was not authorized to request, and to seemingly base its determinations regarding Golden Eagle’s permit

on these factors that were not included in the HARs related to KBH, Almar in effect was engaged in illegal rulemaking. See Nuuanu Valley Ass'n v. City & County of Honolulu, 119 Hawaii 90, 194 P.3d 531 (2008) (agency policy that was inconsistent with administrative rules was improper administrative rulemaking under HRS § 91-1(4), 91-2(a)(3), (b)).

Under HAR § 15-219-5, the HCDA may delegate power or authority to the HCDA executive director, except the authority to adopt, amend, or repeal rules, and any power or authority expressly reserved to the HCDA by statute or rule. Thus, Almar's policies which added additional factors to its permit issuance and renewal evaluations constituted improper rulemaking that is not permissible not only under law, but also under the HCDA's own administrative rules/


V. HEARING

Petitioner is requesting a hearing on this Petition.

VI. CONCLUSION

Based on all of the reasons asserted herein and any reasons appearing of record, Petitioner respectfully requests that the HCDA issue a declaratory order consistent with the foregoing.

DATED: Honolulu, Hawaii, June 30, 2017.



CHRISTOPHER J. MUZZI
Attorney for Petitioner
GOLDEN EAGLE MARINE CHARTER
SERVICES, CORP.

EXECUTION COPY

GENERAL LEASE NO. 14-1

between

**STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

and

KEWALO HARBOR, LLC

covering

KEWALO BASIN HARBOR

situated at

Kakaako, Oahu, Hawaii

Lot 1 as described on Exhibit A-1

34.877 Acres

[Being a Portion of Tax Map Key No. (1) 2-1-58: portion 128]

EXHIBIT A

deliver to LESSOR two copies of the "as-built" plans and specifications for such part, portion, or phase.

**ARTICLE VI
OPERATION OF KEWALO BASIN HARBOR**

6.1. Operation of Kewalo Basin Harbor. Commencing as of 12:00 pm Hawaii Time on September 1, 2014, LESSEE shall be (and LESSOR shall have taken any actions necessary to make LESSEE) the exclusive manager and operator of all aspects (including but not limited to delegating to LESSEE full fiscal and physical harbor operations and management services) of Kewalo Basin Harbor as a marina, together with the parcels referred to in subsection (c) below (referred to as the "Harbor Facilities"), in accordance with the terms and conditions of this Lease and all Applicable Laws, including but not limited to, the Kewalo Basin Rules, as they may be amended from time to time and in such role, shall be the "harbor manager" referred to in the Kewalo Basin Rules; provided that where the Kewalo Basin Rules require a regulatory determination to be made by "HCDA", then LESSOR shall make such determination, not LESSEE, except as to any day-to-day management or operational decisions relating to the Harbor Facilities.

(a) LESSEE's operational and management responsibilities as harbor manager of Kewalo Basin Harbor shall include, but are not limited to: (i) timely collecting any rent or fees due and owing from any of the boat tenants or sublessees of the Harbor Facilities, (ii) timely and adequately responding to any complaints lodged or concerns noted by boat tenants or members of the public who utilize Kewalo Basin Harbor, (iii) disposing or ensuring the removal or disposal of any vessels which are not permitted to berth at Kewalo Basin Harbor in accordance with all applicable Governmental Requirements, (iv) managing the harbor, slip, ticket booth, and office facilities and tenants, and (v) enforcing harbor rules and regulations (including but not limited to parking rules), including, in LESSEE'S discretion, the right to run the regularly scheduled stakeholder meeting. Prior to the Commencement Date, LESSOR shall assign to LESSEE all of LESSOR'S rights and interests in all rents, revenues and reimbursements, security deposits and pre-paid rents and LESSEE shall assume all rights and obligations related thereto.

(b) During the Term, LESSEE shall be entitled to collect all revenues, income, or other receipts from the Harbor Facilities, which shall be included in LESSEE'S Gross Receipts.

(c) The Harbor Facilities comprise the real and personal property at and located on the Premises.

(d) On or before September 1, 2014 and for the duration of the Term and at no cost to LESSEE, LESSOR shall grant, license, convey, assign, or otherwise transfer, provide, or make available (or shall cause to be granted, licensed, conveyed, assigned, or otherwise transferred, provided, or made available) to LESSEE any and all rights necessary or appropriate for LESSEE to have in connection with managing and operating the Harbor Facilities, including without limitation, intellectual and intangible property rights. Any intellectual property created by or at the direction of LESSEE,

including but not limited to naming of portions or all of the Premises, naming and branding and all protected rights or trade-marks associated with activities, events, personalities, or services offered at the Premises or related in any way to the Premises (the "Protected IP") shall remain the exclusive property of LESSEE during the term of the Lease and neither LESSOR nor any other parties shall have a right to use such Protected IP without LESSEE's prior written consent.

6.2. Operation of Kewalo Basin Harbor Not Assignable. Except to an Affiliated Entity, LESSEE shall not enter into any agreement or contract that would assign the operation or management of Kewalo Basin Harbor or any portion thereof without LESSOR's prior written approval, which approval shall not be unreasonably withheld. LESSOR's approval of an assignment or sublease of this Lease pursuant to Section 4.13 or 4.14 shall also constitute LESSOR's approval under this Section 6.2. Unless provided pursuant to Section 4.13 or 4.14, LESSEE shall furnish LESSOR with all reasonably requested information regarding the proposed assignment and assignee or sublease and sublessee in order to allow LESSOR to adequately evaluate the proposed assignment or sublease and determine whether to approve the proposed assignment or sublease. Any consent by LESSOR under this Section 6.2 shall apply only to the specific transaction thereby authorized and shall not relieve LESSEE of LESSEE's obligation to operate and maintain the Harbor Facilities pursuant to this Lease. LESSOR hereby acknowledges and agrees that LESSEE may enter into a new operating agreement with Almar Management Inc. to perform certain operational and maintenance obligations set forth in this Article 6. In the event that an Approved Mortgagee, as defined in Section 7.1 becomes the lessee pursuant to Section 7.2(c)(v) or (vi), then LESSOR may either approve Approved Mortgagee to operate and manage the Kewalo Basin Harbor or may require that Approved Mortgagee select an Experienced Operator to operate and manage the same. For purposes of this Section, an Experienced Operator shall mean a person or entity possessing the experience in the operation of high quality harbor operations, qualifications, good reputation, financial resources and adequate personnel necessary for the proper performance of all the harbor management and harbor operations as set forth under this Lease, in a manner consistent with the quality, character, reputation and viability of the Kewalo Basin Harbor.

6.3. Delivery of Operational Materials.

(a) On or before the Effective Date, LESSOR shall deliver to LESSEE all plans, surveys, contracts, materials, keys, manuals, maintenance log-books, and records pertaining to the operation of Kewalo Basin Harbor within the possession or control of LESSOR, and LESSOR agree to use its best efforts to obtain such materials not in its possession, and deliver such materials to LESSEE. LESSOR shall also furnish (or cause to be furnished) all such information, take (or cause to be taken) all such other action, and shall cooperate with LESSEE as LESSEE shall reasonably require in order to effectuate an orderly and systematic termination of the duties and activities of LESSEE's predecessor as harbor manager of the Kewalo Basin Harbor and orderly and systematic transfer of duties to LESSEE. LESSOR shall provide a copy of all rent rolls and shall provide financial records to identify all amounts due and owing and all payment and other obligations.



From: Kewalo Basin Harbor <slips@kewaloharbor.com>
Date: February 7, 2017 at 7:12:44 PM CST
To: "'laurie@regattasail.com'" <laurie@regattasail.com>
Cc: John Eveleth <jeveleth@kewaloharbor.com>
Subject: **MOORING PERMIT and INSURANCE - EMERAUDE II - FS**

ATTACHED MOORING PERMIT FOR YOUR SIGNATURE. PLEASE SIGN AND RETURN VIA EMAIL

AS A FRIENDLY REMINDER YOUR VESSEL INSURANCE IS EXPIRING FEBRUARY 25, 2017, AND YOUR DOCUMENTATION IS EXPIRING APRIL 30, 2017.

ALSO OUR RECORDS INDICATE WE HAVE NOT RECEIVED YOUR DECEMBER 2016 MONTHLY GROSS RECEIPTS REPORT.

PLEASE SUBMIT THE SIGNED MOORING PERMIT AND THE GROSS RECEIPTS REPORTS AT YOUR EARLIEST CONVENIENCE

Thank you,

Sandy
Customer Service

From: Kewalo Harbor Scanner [<mailto:KBH@citserver.com>]
Sent: Saturday, January 07, 2017 4:46 AM
To: Kewalo Basin Harbor
Subject: Emeraude MP

EXHIBIT B

KEWALO BASIN HARBOR, HONOLULU, HAWAII

Date Permit Commences: 05/01/2016
Date Permit Ends: 04/30/2017

Permittee: GOLDEN EAGLE MARINE CHARTER
Contact: Laurie Bakke
Address: 350 Ward Avenue, Ste. 106-107
City/State/Zip: Honolulu, HI 96814
Phone: (206) 396-3867
Alt Phone: (808) 430-7041
E-mail: laurie@regattasail.com

Vessel Name: EMERAUDE II
Berth No.: FS
LOA: 80'
Reg./Doc. No.: 1097127
GE License No.: W20412686-01
Insurance Exp.: 2/25/2017
Letter of Good Standing:
Customer No.: 10199

Type of Permit:

- Commercial Fishing
 Commercial Charter
 Regular
 Temporary

Intended Use: Charters

Harbor Rates

Mooring: 1,087.00
Utilities (Water): 13.00
Performance Fee: 2,174.00
Ticket Booth: 128.00
Other:
TOTAL: 1,228.00

MOORING PERMIT

IT IS HEREBY AGREED BY AND BETWEEN:

ALMAR MANAGEMENT INC., a California corporation, on behalf of KEWALO HARBOR, LLC, a Hawaii limited liability company, hereafter called "Permitter", as Harbor Master pursuant to the Rules as defined below, and GOLDEN EAGLE MARINE CHARTER hereinafter called "Permittee", subject to all the terms and conditions set forth herein, agree as follows:

This Permit is for a mooring berth in Kewalo Basin Harbor at Berth No. FS for the vessel EMERAUDE II (the "Vessel"), Document No. 1097127 for the purpose of Charters.

1. Permittee agrees to abide by all existing and future Hawaii Administrative Rules, Chapters 15-211 to 15-214, State of Hawaii, which are incorporated herein by reference, in addition to any other rules adopted by Permitter or the Hawaii Community Development Authority, as the same may be amended ("Rules") and to the full performance of the following terms, conditions, and charges.
2. Living aboard the Vessel is prohibited.
3. Permitter, in consideration for the compliance with Rules, fees, and charges to be paid by Permittee to it, and the terms and conditions hereinafter contained and to be observed and performed by Permittee, does hereby grant to Permittee permission to moor the Vessel, and only the Vessel registered herein with Permitter. Permitter may require Permittee to move the Vessel to another berth. Permitter reserves the right to use the berth when not in use by the Permittee, without any reduction or rebate of the Mooring Fees (as defined below).
4. Permittee agrees to pay the Permitter all fees and charges for use of the berth as set forth in the Hawaii Administrative Rules, Chapters 15-211 to 15-214, State of Hawaii, plus metered utilities, if applicable (collectively "Mooring Fees"). The current Mooring Fees as set forth under the Rules are reflected on Exhibit A attached hereto and incorporated herein. Mooring Fees shall be paid monthly in advance by Permittee, without notice, and the metered utilities shall be paid within fifteen (15) days after billed following the monthly reading of such meters. Should the Mooring Fees change, Permittee shall be given written notice once, at least thirty (30) days in advance of the date when such

new Mooring Fees are due and payable. Thereafter, Permittee shall pay for the new Mooring Fees monthly in advance, without further notice. Permittee shall be deemed "delinquent" when the Mooring Fees and/or utility payments, if applicable, remain unpaid five (5) days after the date such payment is due.

5. Permittee covenants and agrees to at all times maintain in full force and effect commercial general liability insurance for bodily injury and property damage in the amounts and as set forth in the Rules and to cause the State of Hawaii, the Hawaii Community Development Authority, Permitter, Kewalo Harbor Management Company, LLC, Kewalo Harbor, LLC and all affiliated entities, successors and assigns and managing agents (collectively, "Permitter Insureds") to be named as additional insureds and to be provided written notice of cancellation from the insurance carrier at least 30 days prior to the proposed cancellation date, if any. Permittee shall also carry such property insurance as it deems prudent, and any risk of loss, whether insured or not, is solely Permittee's responsibility. Permittee's insurance shall be primary. Permitter and Permittee waive, and shall cause their insurers to waive, all subrogation rights against each other and the Permitter Insureds. Permittee further agrees that satisfactory proof of insurance shall be delivered to Permitter upon the execution of this permit and thereafter annually on the anniversary date of this permit.

6. IN ADDITION TO WHAT IS PROVIDED BY THE RULES AND ELSEWHERE IN THIS PERMIT, THE PARTIES HERETO AGREE THAT NEITHER THE PERMITTOR NOR ANY AGENT, PROPERTY MANAGER, LAND LEASEHOLDER, LAND OWNER, SERVANT, OR EACH OF THEIR EMPLOYEES, AND ALL AFFILIATED ENTITIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY WITH PERMITTOR, THE "PERMITTOR PARTIES") SHALL BE LIABLE FOR ANY LOSS, DAMAGE OR PERSONAL INJURY TO THE PERSON OR PROPERTY OF THE PERMITTEE OR ITS AGENTS, EMPLOYEES, OR INVITEES, INCLUDING, BUT NOT LIMITED TO, THE VESSEL, ITS INVENTORY AND EQUIPMENT, WHETHER SUCH LOSS, DAMAGE, OR PERSONAL INJURY BE OCCASIONED BY FIRE, THEFT, ACT OF GOD, OR ANY OTHER CAUSE (INCLUDING THE NEGLIGENCE OF THE PERMITTOR PARTIES, BUT EXCLUDING WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE PERMITTOR PARTIES). PERMITTEE HEREBY AGREES TO INDEMNIFY AND SAVE HARMLESS THE PERMITTOR PARTIES FROM OR AGAINST ANY CLAIM ARISING FROM THE MAINTENANCE, USE, AND OPERATION OF PERMITTEE'S VESSEL IN THE HARBOR AREAS OR THE USE BY THE PERMITTEE OF THE HARBOR FACILITIES. PERMITTEE HEREBY AGREES TO ASSUME FULL RESPONSIBILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE ARISING OUT OF THE MAINTENANCE, USE, AND OPERATION OF PERMITTEE'S VESSEL AND PERMITTEE'S USE OF THE HARBOR FACILITIES. ACCORDINGLY, PERMITTEE BEARS 100% RISK OF LOSS TO THE VESSEL AND ALL OTHER PROPERTY OF THE PERMITTEE (OTHER THAN THE PERMITTOR PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT). THIS SECTION RELEASES THE PERMITTOR PARTIES OF THEIR OWN NEGLIGENCE. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS PERMIT.

7. The Permitter Parties shall not be liable for the care or protection of the vessel, its gear, equipment, or contents, or for any loss or damage of whatever kind or nature to the vessel, its contents, gear, or equipment howsoever occasioned. Permitter makes no warranty of any kind as to the condition of the piers, walks, wharfs, gangways, or mooring gear and equipment, nor shall Permitter be liable for injuries to the person or property of Permittee, its agents, employees or guests from any cause or circumstance, **EVEN IF ATTRIBUTABLE TO THE NEGLIGENCE OF THE PERMITTOR PARTIES.** The Permitter Parties shall be third party beneficiaries of this section.

8. In addition to what is provided by the Rules, Permittee shall not store or use hazardous materials (including any substance, pollutant, or contaminant regulated under any applicable

environmental laws) in any manner not sanctioned by law nor bring onto the harbor any such hazardous materials except in the ordinary course of Permittee's business, but only if pre-approved in writing by Permitter, within Permitter's sole and absolute discretion and in such instance, only if handled by Permittee in accordance with all applicable laws. Permittee shall be solely responsible for and shall indemnify, defend, and hold harmless the Permitter Parties from and against any loss, damage, cost, expense, or liability arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials within the harbor or elsewhere caused by Permittee or persons acting under or on behalf of Permittee, including the related costs of any required or necessary removal, repair, cleanup, or remediation of the Harbor, and the preparation and implementation of any closure, removal, remedial, or other required plans, and all reasonable costs and expenses incurred by Permitter in connection therewith, including without limitation reasonable attorneys' fees. This section shall survive the expiration or earlier termination of this Permit.

9. Use of the berth by Permittee pursuant to this permit does not grant Permittee any right to retain the use of the berth or any other space in the Harbor. Permitter may terminate this Permit, with or without cause, upon lapse of 48-hours' notice from Permitter to vacate the berth. Such termination right shall expressly apply in the event that Permittee has violated any provisions of this Permit or the Rules. Upon expiration of this Permit or upon its earlier termination, Permittee shall remove its vessel from the berth and the Harbor.

10. Failure of Permittee to vacate the berth and the Harbor, upon expiration of this permit or upon earlier termination pursuant to section 9 of this Permit, shall subject Permittee to liability for any damages incurred by the returning permittee or newly-assigned regular permittee resulting from Permittee's failure to vacate, and entitles Permitter to remove Permittee's vessel to an impounding area. Permittee shall indemnify and hold harmless Permitter from any liability for damages arising from the failure of Permittee to vacate the berth and the Harbor, and from the removal of the vessel to an impounding area by Permitter in accordance with the terms and conditions of this permit.

11. Permittee accepts the slip assigned to Permittee, the Harbor and all property of Permitter "as is" and accepts same as suitable for Permittee's purposes and expressly waives any defects therein and agrees to hold the Permitter Parties harmless from any loss or damage or injury to property or person resulting from any defect or improper construction or maintenance of the Harbor or property.

12. All notices (a "Notice") under this Permit shall be delivered or sent by: (i) first class, registered or certified mail, postage prepaid, return receipt requested, (ii) nationally recognized overnight carrier, or (iii) facsimile with original Notice sent via overnight delivery addressed to the address of the party in question set forth below or to such other address as either party may designate by Notice. Notices shall be deemed given (x) three business days after being mailed as provided in clause (i) above, (y) one business day after delivery to the overnight carrier as provided in clause (ii) above, or (z) on the day of the transmission of the facsimile so long as it is received in its entirety by 4:00 p.m. (Hawaii time) on such day and the original of such Notice is received the next business day via overnight mail as provided in clause (iii) above.

Permitter: Almar Management Inc.
1125-B1 Alamoana Blvd
Honolulu, HI 96814
Phone: (808)-594-0849
Fax: (808)-594-0848

Permittee: GOLDEN EAGLE MARINE CHARTER
350 Ward Avenue, Ste. 106-107
Honolulu, HI 96814
(206) 396-3867
(808) 430-7041
laurie@regattasail.com

13. This Permit does not create a landlord-tenant relationship between the parties, and shall only constitute a license subject to the terms of this Permit, including the Rules as incorporated herein. This Permit shall not be assigned or transferred without the prior written consent of Permittor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED this ____ day of _____, 201__.

PERMITTOR:

ALMAR MANAGEMENT INC.,
a California corporation

By: _____
Name: John Eveleth
Title: Harbor Manager

PERMITTEE:

GOLDEN EAGLE MARINE CO.
a _____

By: _____
Name: Laurie Bakke
Title: _____

EXHIBIT A
MOORING FEES AND CHARGES

Mooring Fees and other charges shall be as set forth in Hawaii Administrative Rules, Chapters 15-211 to 15-214, State of Hawaii, as the same may be amended. Such rates are currently set as follows and, pursuant to the Rules, may be adjusted in accordance with CPI and for improvements made in accordance with Rules:

MOORING	\$ 1,087.00
UTILITIES (WATER)	\$ 13.00
PERFORMANCE FEE	\$ 2,174.00
TICKET BOOTH, IF ANY	\$ 128.00
OTHER	\$
TOTAL	\$ 1,228.00

[ALMAR TO COMPLETE WITH EXISTING FEES AND CHARGES]



KEWALO BASIN HARBOR

1125-B1 Ala Moana Blvd.
Honolulu, HI 96814
(808) 594-0849

4/10/17

Golden Eagle Marine Charter Services Corporation
Ms. Laurie Bakke
350 Ward Avenue #106-107
Honolulu, Hawaii 96814

Sent via email and USPS regular mail

RE: Audit of Business Records
Request for Documents

Dear Ms. Bakke,

Pursuant to HAR §15-212-54, we are conducting an audit of Golden Eagle Marine Charter Services Corporation and its business records to verify your Monthly Gross Receipt Reports submitted for Emerald II.

Please submit the following business records to this office by May 10, 2017.

1. General Excise Tax returns for 2015, 2016 and January through March 2017.
2. Corporate Tax Returns for 2015 and 2016.
3. Guest Logs for 2015, 2016 and January through March 2017.
4. Sales records for 2015, 2016 and 2017.
5. Checking account statements for Golden Eagle Marine Charter Services Corp. 2015, 2016 and 2017.
6. Credit Card statements for 2015, 2016 and 2017.
7. Customer/Client agreements
8. Delinquent Gross Receipt Reports for December 2016, January and February 2017.

Thank you in advance for your attention to this request.

Sincerely,

John Eveleth
Kewalo Harbor LLC
(808) 594-0849 office | (808) 630-1711 mobile
jeveleth@kewaloharbor.com

EXHIBIT C

From: Laurie Bakke
Sent: Wednesday, May 10, 2017 7:57 AM
To: 'jeveleth@kewaloharbor.com'
Cc: Laurie; Laurie Bakke
Subject: RE: Letter from Kewalo Harbor LLC

Dear John,

Thank you for your April letter referencing an audit pursuant to HAR 15-212-54. It appears there may be some confusion.

For over 44 years, Golden Eagle Marine Charter Services Corp. has always operated a single vessel documented by the United States Coast Guard to carry six passengers or less and has maintained the same vessel classification with the Harbor office. The Harbor office has always been, and is today, in possession of documentation from the U.S. Coast Guard that provides evidence of these facts. Surely the audit is not being conducted to determine the validity of maintaining the vessel classification.

Over the last 44 years, Golden Eagle has always paid the appropriate monthly dockage rate indicated by the Harbor office. The Harbor office has never assessed Golden Eagle an additional two per cent of the vessel's monthly gross receipts as the monthly dockage rate has always been the greatest of the two amounts. Only operating a single vessel documented by the U.S. Coast Guard to carry six passengers or less, you may wish to consider that it is virtually impossible for Golden Eagle to generate a level of monthly gross receipts where two percent of monthly gross receipts could even begin to exceed the monthly dockage rate. In point of fact, in order for Golden Eagle to pay the greater amount of two percent, Golden Eagle would have to generate more gross receipts every month than it has ever generated in an entire year for the last 44 years! Surely the audit isn't to determine if there are any additional fees owing to the HCDA.

Likely in recognition of the facts above, previous harbor managers with the State of Hawaii Department of Transportation, Almar and/or Hughes have never deemed it necessary or proper to conduct an audit of Golden Eagle. In fact, I have never heard of an audit being conducted by the Harbor office for any commercial permittee. Are you conducting an audit of all commercial permits in Kewalo Basin Harbor this year?

As you may be aware, I am employed full-time on the mainland in North Dakota. An audit would be a significant impact upon me both professionally and personally. Accordingly, in the event of an audit, I would retain both an attorney and an accountant on behalf of Golden Eagle Marine Charter Services Corp. This would be a significant financial impact to a small business such as Golden Eagle. Am I to understand that Almar, HCDA and/or Hughes will be promptly reimbursing Golden Eagle for any and all

EXHIBIT "D"

expenses associated with an audit?

Thank you,

Laurie A. Bakke

Begin forwarded message:

From: John Eveleth <jeveleth@kewaloharbor.com>
Date: April 11, 2017 at 11:40:53 AM PDT
To: "'laurie@regattasail.com'" <laurie@regattasail.com>
Cc: Kewalo Basin Harbor <slips@kewaloharbor.com>
Subject: Letter from Kewalo Harbor LLC

Hello Ms. Bakke,

Please find attached a letter from Kewalo Harbor LLC sent via this email and USPS.

Regards,

John Eveleth | Harbor Master | Kewalo Harbor
1125-B1 Ala Moana Blvd. | Honolulu, HI 96814
O: 808.594.0849 | F: 808.594.0848
www.KewaloHarbor.com

Laurie Bakke
President
Western Equipment Finance
Direct: 701-665-1615
Cell: 206-369-3867
Toll-free Phone: 800-451-7087
Email: Laurie.Bakke@WesternEquipmentFinance.com
Web: www.WesternEquipmentFinance.com

A subsidiary of Western State Bank





KEWALO BASIN HARBOR

1125-B1 Ala Moana Blvd.
Honolulu, HI 96814
808.594.0849

5/31/17

Golden Eagle Marine Charter Services Corporation
Ms. Laurie Bakke
350 Ward Avenue #106-107
Honolulu, Hawaii 96814

Sent via email and USPS mail

RE: Expired mooring permit for EMERAUDE II, slip FS

Dear Ms. Bakke,

We acknowledge receipt of your email dated 5/10/17.

This letter is notice to GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION that the mooring permit for s/v EMERAUDE II slip FS at Kewalo Basin Harbor is expired. This permit will not be renewed. Subsequently, the s/v EMERAUDE II with official number 1097127 is no longer authorized to be moored in slip FS at Kewalo Basin Harbor and must vacate.

GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION has 30 days to remove the s/v EMERAUDE II, as referenced above, from Kewalo Basin Harbor.

Sincerely,

John Eveleth
Kewalo Harbor LLC
(808) 594-0849 office | (808) 630-1711 mobile
jeveleth@kewaloharbor.com

EXHIBIT E



KEWALO BASIN HARBOR

1125-B1 Ala Moana Blvd.
Honolulu, HI 96814
808.594.0849

5/31/17

Mr. Christopher J. Muzzi
Attorney/Contact for S.O.M. LLC
1132 Bishop Street Suite 2400
Honolulu, Hawaii 96813

Ms. Joan Joyce
S.O.M. LLC
350 Ward Avenue #106-250
Honolulu, Hawaii 96814

Sent via email and USPS mail

RE: Mooring Permit for m/v QUEEN OF THE RING, O.N. 611194

Dear Mr. Muzzi and Ms. Joyce,

We acknowledge receipt of your letter dated 5/8/17.

This letter is notice to S.O.M. LLC that the mooring permit for m/v QUEEN OF THE RING in slip FU at Kewalo Basin Harbor is expired. This permit will not be renewed. Subsequently, the m/v QUEEN OF THE RING with official number 611194 is no longer authorized to be moored in slip FU at Kewalo Basin Harbor and must vacate.

S.O.M. LLC has 30 days to remove the m/v QUEEN OF THE RING, as referenced above, from Kewalo Basin Harbor.

Sincerely,

John Eveleth | Manager
Kewalo Harbor
(808) 594-0849
jeveleth@kewaloharbor.com

EXHIBIT F



I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

T. Soar JUL 11 2017
Secretary, Hawaii Community Development Authority
Tommylyn K. Soar

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of)	
)	Docket No. DR-PET-2017-01
)	HAWAII COMMUNITY DEVELOPMENT
GOLDEN EAGLE MARINE CHARTER)	AUTHORITY'S REQUEST FOR
SERVICES CORPORATION)	SUBMISSION OF AN AMENDED
)	PETITION FOR DECLARATORY
For an order of Declaratory Relief)	RELIEF; CERTIFICATE OF SERVICE
)	
_____)	

HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S REQUEST FOR SUBMISSION OF AN AMENDED PETITION FOR DECLARATORY RELIEF

On June 30, 2017, the Hawaii Community Development Authority (HCDA) received Petitioner's petition entitled, PETITION FOR DECLARATORY RELIEF (hereinafter, Petition).

Hawaii Administrative Rule (HAR) § 15-219-83(b)(6) requires that a petition for declaratory relief shall set forth "whether a hearing is required, and if so, the reasons why the matters alleged in the petition, together with supporting legal memoranda, will not permit the fair and expeditious disposition of the petition."

The Petition provides no explanation relating to whether a hearing is required, and if so, the reasons why the matters alleged in the petition, together with supporting legal memoranda, will not permit the fair and expeditious disposition of the petition.

The Petition does not substantially comply with HAR § 15-219-83(b). Therefore, pursuant to HAR § 15-219-83(c), HCDA is requesting that Petitioner submit an amended petition by July 21, 2017 at 4:00 p.m.

Dated, Honolulu, Hawaii JUL 11 2017.

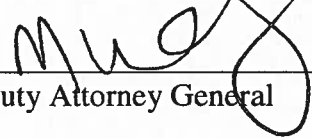
HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

STATE OF HAWAII

By 

JESSE K. SOUKI
Executive Director

APPROVED AS TO FORM



Deputy Attorney General



BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of) CERTIFICATE OF SERVICE
)
)
GOLDEN EAGLE MARINE CHARTER)
SERVICES CORPORATION)
)
For an order of Declaratory Relief)
_____)


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served on following party at their last known address as indicated below via U.S. Mail.

Christopher J. Muzzi
Bishop Place
1132 Bishop Street, Suite 2400
Honolulu, Hawaii 96813

Attorney for Petitioner
GOLDEN EAGLE MARINE
CHARTER SERVICES CORPORATION

Dated, Honolulu, Hawaii JUL 11 2017.


Tommilyn Soares
HAWAII COMMUNITY
DEVELOPMENT AUTHORITY

TSUGAWA BIEHL LAU & MUZZI LLLC
A HAWAII LIMITED LIABILITY LAW COMPANY

CHRISTOPHER J. MUZZI (6939-0)
Bishop Place
1132 Bishop Street, Suite 2400
Honolulu, Hawaii 96813
Telephone No. 531-0490

Attorney for Petitioner
GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION
also known as GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of)	
)	
GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION also known as GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.)	FIRST AMENDED PETITION FOR DECLARATORY RELIEF;
)	EXHIBITS A - F
)	
For an order of Declaratory Relief)	
_____)	

COMES NOW, Petitioner GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION also known as GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.¹ ("**Petitioner**" or "**Golden Eagle**"), by and through its attorneys, Tsugawa Biehl Lau & Muzzi LLLC, and pursuant to Hawaii Administrative Rules ("**HAR**") § 15-219-83, and hereby submits this First Amended Petition for Declaratory Relief ("**Petition**") seeking an order regarding the applicability of Hawaii Administrative Rules chapters 15-212 and 15-219 and whether (1) the current operator of Kewalo Basin Harbor has the authority to issue or revoke, or otherwise engage in the conduct described herein; (2)

¹ The original Petition filed herein on June 30, 2017 stated that the Petitioner's name was only "Golden Eagle Marine Charter Services Corporation".
99999/5/89450

RECEIVED
2017 JUL 21 AM 10 52
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

whether the current operator of Kewalo Basin Harbor acted in an arbitrary and capricious manner with respect to the conduct described herein; and (3) whether the current operator of Kewalo Basin Harbor engaged in illegal rulemaking when it added factors and otherwise required Petitioner to perform actions not required under Hawaii Administrative Rules chapter 15-212 or give Petitioner an opportunity to cure, in violation of the said rules.

PETITION

I. PETITIONER'S (AND PETITIONER'S COUNSEL'S) NAME, MAILING ADDRESS, AND TELEPHONE NUMBER

GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION also known as GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.
c/o Laurie A. Bakke
350 Ward Avenue #106
Honolulu, Hawaii 96814

Christopher J. Muzzi, Esq.
Tsugawa Biehl Lau & Muzzi LLLC
1132 Bishop Street Suite 2400
Honolulu, Hawaii 96813
Attorney for Petitioner

GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION also known as GOLDEN EAGLE MARINE CHARTER SERVICES, CORP.

II. DESIGNATION OF SPECIFIC STATUTE, RULE, OR ORDER IN QUESTION

Hawaii Administrative Rules ("HAR") chapter 15-212.

III. PETITIONER'S INTEREST IN THE SUBJECT MATTER AND REASONS FOR SUBMITTING THE PETITION

GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION also known as GOLDEN EAGLE MARINE CHARTER SERVICES, CORP. ("Golden Eagle") is the holder of Commercial Charter Mooring Permit for Berth No. FS (the "Mooring Permit") at Kewalo Basin Harbor ("KBH") and operates the commercial vessel s/v EMERAUDE II

and has been for approximately 44 years. The EMERAUDE II is an approximately eighty foot vessel and is allowed by the U.S. Coast Guard to only carry six passengers or less. Berth No. FS is a front row slip in KBH along Ala Moana Boulevard. The EMERAUDE II is currently docked in Berth No. FS.

KBH is a harbor owned by the State of Hawaii. KBH is under the jurisdiction of the Hawaii Community Development Authority (“HCDA”). Pursuant to General Lease 14-1 (“Lease”), the HCDA has leased KBH to Kewalo Harbor, LLC. Exhibit A. As part of the Lease, Kewalo Harbor, LLC (“KH, LLC”) is required to exclusively follow the HAR applicable to KBH, including chapters § 15-211 and § 15-212. KH, LLC is owned by The Hughes Corporation, a for profit developer of a number of condominium building projects surrounding KBH. Almar Management, Inc. (“Almar”), either directly or indirectly, is managing KBH.

As a custom and practice in KBH, mooring permits at KBH are renewed unless a permittee is in gross violation of the HAR governing KBH, such as nonpayment. Generally, there is no process for application for renewal.

With respect to the last Mooring Permit emailed to Golden Eagle for execution, the period was for May 1, 2016 through April 30, 2017. Exhibit B.

On or about April 10, 2017, Almar indicated to Golden Eagle that it was conducting an audit and sought the following items:

- General Excise Tax returns for 2015, 2016 and January through March of 2017
- Corporate Tax Returns for 2015 and 2016
- Guest Logs for 2015, 2016 and January through March of 2017
- Sales records for 2015, 2016 and 2017

- Checking account statements for 2015, 2016 and 2017
- Credit Card Statements for 2015, 2016 and 2017
- Customer/Client agreements
- Delinquent Gross Receipts Reports for December 2016, January and February of 2017.

Exhibit C.

On May 10, 2017, Golden Eagle responded with questions and objections.

Exhibit D.

Then, on May 31, 2017, Almar sent a letter to Golden Eagle stating that the Mooring Permit had expired and that it would not be renewed, and that Golden Eagle should move the EMERAUDE II no later than June 30, 2017. Exhibit E.

A similar termination of mooring permit was also issued on May 31, 2017 by Almar to S.O.M. LLC ("**SOM**"), another 100% woman-owned business, which has been in possession of the same slip for about 4 years. Exhibit F. Thus, the only women-owned businesses in the front row slips at KBH, which are the most valuable and sought after, have had their permits terminated or not renewed simultaneously.

Almar purports to refuse to renew the Mooring Permit based on alleged violations of the HAR. However, even assuming that Golden Eagle is in violation of the HAR, which it disputes, many other permittees are in violation of the HAR and have not had their permits terminated or not renewed. Almar is selectively enforcing the HAR. Almar is applying the HARs in an arbitrary and capricious manner by adding requirements that are not in the HARs. Almar is applying and enforcing the HARs favorable to Kewalo Harbor and those permittees that are in its good graces, including those that provide gratuities. Almar is discriminating against women in its application and "enforcement" of

the HAR. Almar is discriminating against vessels that can only carry six passengers or less in an attempt to increase their profits at the expense of existing small business permittees.

Golden Eagle believes that it is entitled to a contested case hearing as the termination of or refusal to renew the Mooring Permit is a taking of Golden Eagle's property without due process of law. However, inasmuch as it is not clear that the HCDA has actually delegated the authority to KH, LLC and/or Almar to act in the manner described above, in the alternative as provided in this Petition, Golden Eagle seeks an order regarding the applicability of Hawaii Administrative Rules chapters 15-212 and 15-219 to KH, LLC and/or Almar and whether KH, LLC and/or Almar have authority under said rules to perform and conduct and make the purported determinations as set forth above.

IV. PETITIONER'S REQUEST FOR DECLARATORY ORDER AND POSITION OR CONTENTION

Pursuant to HAR § 15-219-83, "[a]ny interested person or governmental agency may petition the authority for a declaratory order as to the applicability of any statutory provision or rule or order of the authority." See also HRS § 91-8 ("Any interested person may petition an agency for a declaratory order as to the applicability of . . . any rule or order of the agency."). See Citizens Against Reckless Development v. Zoning Bd. of Appeals, 114 Hawaii 184, 197, 159 P.3d 143, 156 (2007). Declaratory orders from administrative agencies can "remove uncertainty from legal relations and clarify, quiet and stabilize them before irretrievable acts have been undertaken, to enable an issue of questioned status or fact, on which a whole complex of rights may depend, to be expeditiously determined." Id.

Pursuant to this provision, Petitioner seeks a declaratory order regarding the actions of KH, LLC and/or Almar, as described above. Specifically, Petitioner seeks a declaratory order from the HCDA stating whether Almar, as an operator of KBH, (1) has authority under HAR chapter 15-212 and/or 15-219 to issue then apparently un-issue and/or revoke mooring permits when it is not the "HCDA" and there has been no apparent delegation to KBR or to Almar to act on behalf of the HCDA with respect to these matters, or (2) may disregard the HARs related to KBH and/or act in an arbitrary or capricious manner in applying the HARs related to KBH with respect to first issuing a mooring permit and then claiming that no such permit had ever been issued, and otherwise either ignoring rules regarding permits or (3) usurps the HCDA authority to adopt rules by arbitrarily and capriciously creating new requirements for permit issuance, renewal, or revocation, without proper authority or without following the rulemaking requirements set forth in HRS chapter 91.

1. Neither KBH Nor Almar Have the Authority to Issue Regulatory Rulings Or Act on Behalf of the HCDA With Respect to Any Permits at Kewalo Basin

Section 6.1 of the Lease states as follows:

6.1. Operation of Kewalo Basin Harbor. Commencing as of 12:00 pm Hawaii Time on September 1, 2014, LESSEE shall be (and LESSOR shall have taken any actions necessary to make LESSEE) the exclusive manager and operator of all aspects (including but not limited to delegating to LESSEE full fiscal and physical harbor operations and management services) of Kewalo Basin Harbor as a marina, together with the parcels referred to in subsection (c) below (referred to as the "Harbor Facilities"), in accordance with the terms and conditions of this Lease and all Applicable Laws, including but not limited to, the Kewalo Basin Rules, as they may be amended from time to time and in such role, shall be the "harbor manager" referred to in the Kewalo Basin Rules; provided that where the Kewalo Basin Rules require a regulatory determination to be made by "HCDA", then LESSOR shall make such determination, not LESSEE, except as to any day-to-day management or operational decisions relating to the Harbor Facilities.

(a) LESSEE's operational and management responsibilities as harbor manager of Kewalo Basin Harbor shall include, but are not limited to: (i) timely collecting any rent or fees due and owing from any of the boat tenants or sublessees of the Harbor Facilities, (ii) timely and adequately responding to any complaints lodged or concerns noted by boat tenants or members of the public who utilize Kewalo Basin Harbor, (iii) disposing or ensuring the removal or disposal of any vessels which are not permitted to berth at Kewalo Basin Harbor in accordance with all applicable Governmental Requirements, (iv) managing the harbor, slip, ticket booth, and office facilities and tenants, and (v) enforcing harbor rules and regulations (including but not limited to parking rules), including, in LESSEE'S discretion, the right to run the regularly scheduled stakeholder meeting. Prior to the Commencement Date, LESSOR shall assign to LESSEE all of LESSOR's rights and interests in all rents, revenues and reimbursements, security deposits and pre-paid rents and LESSEE shall assume all rights and obligations related thereto.

(b) During the Term, LESSEE shall be entitled to collect all revenues, income, or other receipts from the Harbor Facilities, which shall be included in LESSEE's Gross Receipts.

...

(Emphases added.) Thus, the Lease delegates authority to KH, LLC to be the harbor manager to perform certain acts described in Section 6.1(a) of the Lease. These responsibilities do not include permit termination or revocation. Nor do they authorize KH, LLC (or Almar) to adopt administrative rules.

The HCDA and the HARs related to KBH also do not provide KH, LLC or Almar authority to perform these acts. HAR § 15-211-2 provides the general definitions that are to be used in chapters 212, 213, and 214. This section defines "harbormaster" and "harbor manager", and "harbor agent" as "any person appointed to that office by the executive director and vested with the operational control of Kewalo Basin." "The responsibilities of a harbormaster, harbor manager or harbor agent include, but are not limited to, enforcing rules, mooring and berthing of ships, control of water and air pollution in the harbor, allocation of storage space, and the movement of vessels into,

out of, and within Kewalo Basin[.]” Id. This section also separately defines “HCDA” as the “Hawaii community development authority, a body corporate and public instrumentality of the State of Hawaii, its harbor manager, agent or entity vested with operational control of Kewalo Basin[.]”

The use of these definitions in HAR chapter 212 is clear – the harbormaster is in charge of the physical movement of vessels and the physical operation of KBH, but the rules specify that the HCDA makes the regulatory determinations regarding the permits. For example, HAR § 15-212-1(b) states that “[t]he berthing of vessels at Kewalo Basin shall be in conformity with this part and where not covered by this part at the discretion of the harbormaster in a reasonable manner such as to protect the public interest.” The rules in HAR subchapter 1 giving the harbormaster authority relate primarily to physical operation of KBH, including such provisions as requiring a master or person in charge of any vessel to obey the orders of the harbormaster regarding method and manner of bringing vessels to anchorage, forbidding trying the engines of any vessel except by permission of the harbormaster, requiring masters or owners of a vessel to give notice to the harbormaster of arrival or departure. These provisions relate to actual operation of the harbor.

By contrast, subchapter 2 relates to berths and moorings, and the provisions in this subchapter 2 delegate some authority to the harbormaster, but other provisions, including renewal of revocable permit, HAR § 15-212-43 (“The HCDA may issue or renew a revocable permit . . .”), and revocation of a revocable permit, HAR § 15-212-48 (“If the permittee fails to remedy any breach of any of the duties, covenants, or conditions of the permit or to desist from violating these rules, the HCDA may revoke the permittee’s revocable permit . . .”), retain authority to the HCDA specifically and do

not delegate such authority to the harbormaster or to anyone else. The fact that the harbormaster's powers are particularly set forth in parts of chapter 212, and that the HCDA's authority is specifically identified in other parts of chapter 212 is critical. In re Water Use Permit Applications, 94 Hawaii 97, 151, 9 P.3d 409, 463 (2000) (explaining that "where the legislature includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that the legislature acts intentionally and purposely in the disparate inclusion or exclusion" (brackets and internal quotations omitted)). As explained above, the authority to act in the shoes of the HCDA must be specifically granted in order for an individual or entity to fall within the definition of "HCDA". This was not done under the Lease, because the Lease did not delegate to KH, LLC the authority to deal with permits, including revoking or terminating them. In fact, the Lease specifically reserved unto the HCDA the power to make regulatory determinations. Lease, Section 6.1. Nor is there anything that states that the HCDA or the executive director of the HCDA authorized Almar to act as "harbor manager."

Accordingly, neither the Lease nor HAR chapter 15-219 authorizes Almar to act in the place of the HCDA. Thus, any regulatory determinations regarding Golden Eagle's permit are beyond the authority of Almar and accordingly ultra vires.

2. Actions by Almar In Applying the HARs Related to KBH Are Also Arbitrary and Capricious

As explained in the concurrently filed Petition for Contested Case Hearing, which is incorporated by reference, the actions that Almar took with respect to Golden Eagle's permit were not authorized by the HARs related to KBH, and in fact, were confusingly contradictory.

Generally, an agency is given certain deference in making determinations. "[A] determination made by an administrative agency acting within the boundaries of its delegated authority will not be overturned unless 'arbitrary, or capricious, or characterized by . . . [a] clearly unwarranted exercise of discretion.'" Paul's Elec. Serv. Inc. v. Befitel, 104 Hawaii 412, 419, 91 P.3d 494, 501 (2004) (citing HRS § 91-14(g)(6)). However, here, Almar is not an "agency", and it is not clear that Almar even has the delegated authority to act. But at minimum, these actions are arbitrary and capricious, because Almar did not follow the HARs related to KBH. Nor did it logically follow its own prior actions.

3. Almar, Without Authority and in Violation of HRS chapter 91, Engaged in Illegal Rulemaking When It Made Its Own Rules Regarding Permits.

By requesting that Golden Eagle perform actions that Almar was not authorized to request, and to seemingly base its determinations regarding Golden Eagle's permit on these factors that were not included in the HARs related to KBH, Almar in effect was engaged in illegal rulemaking. See Nuuanu Valley Ass'n v. City & County of Honolulu, 119 Hawaii 90, 194 P.3d 531 (2008) (agency policy that was inconsistent with administrative rules was improper administrative rulemaking under HRS § 91-1(4), 91-2(a)(3), (b)).

Under HAR § 15-219-5, the HCDA may delegate power or authority to the HCDA executive director, except the authority to adopt, amend, or repeal rules, and any power or authority expressly reserved to the HCDA by statute or rule. Thus, Almar's policies which added additional factors to its permit issuance and renewal evaluations constituted improper rulemaking that is not permissible not only under law, but also under the HCDA's own administrative rules.

V. HEARING

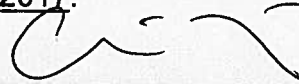
Although Petitioner acknowledges that a hearing is discretionary, Petitioner is requesting a hearing on this Petition, as provided in HAR § 15-219-83(b)(6). The matters alleged in the Petition, together with supporting legal memorandum above, will not permit the fair and expeditious disposition of the Petition due to the fact-intensive nature of the Petition and that neither the HCDA nor the Petitioner may know all of the underlying facts. For example, because the HCDA delegated some of its authority to KH, LLC, a third party, and KH, LLC presumably delegated some of its authority to Almar, the HCDA may not have full knowledge of the actions of KH, LLC and Almar relating to the exercise of that authority. Further, Petitioner does not know the full scope of the delegation of the HCDA's authority. A hearing will allow all parties to present evidence regarding these issues.

Although generally, a petition for a declaratory ruling from an administrative agency will be a straightforward application of the underlying facts to the applicable statute, rule, or order in question, here, important components are not yet developed sufficiently for the HCDA to dispose of the Petition in a fair and expeditious manner.

VI. CONCLUSION

Based on all of the reasons asserted herein and any reasons appearing of record, Petitioner respectfully requests that the HCDA issue a declaratory order consistent with the foregoing.

DATED: Honolulu, Hawaii, July 21, 2017.



CHRISTOPHER J. MUZZI
Attorney for Petitioner
GOLDEN EAGLE MARINE CHARTER
SERVICES CORPORATION also known as
GOLDEN EAGLE MARINE CHARTER
SERVICES, CORP.

EXECUTION COPY

GENERAL LEASE NO. 14-1

between

**STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

and

KEWALO HARBOR, LLC

covering

KEWALO BASIN HARBOR

situated at

Kakaako, Oahu, Hawaii

Lot 1 as described on Exhibit A-1

34.877 Acres

[Being a Portion of Tax Map Key No. (1) 2-1-58: portion 128]

EXHIBIT A

deliver to LESSOR two copies of the "as-built" plans and specifications for such part, portion, or phase.

**ARTICLE VI
OPERATION OF KEWALO BASIN HARBOR**

6.1. **Operation of Kewalo Basin Harbor.** Commencing as of 12:00 pm Hawaii Time on September 1, 2014, LESSEE shall be (and LESSOR shall have taken any actions necessary to make LESSEE) the exclusive manager and operator of all aspects (including but not limited to delegating to LESSEE full fiscal and physical harbor operations and management services) of Kewalo Basin Harbor as a marina, together with the parcels referred to in subsection (c) below (referred to as the "Harbor Facilities"), in accordance with the terms and conditions of this Lease and all Applicable Laws, including but not limited to, the Kewalo Basin Rules, as they may be amended from time to time and in such role, shall be the "harbor manager" referred to in the Kewalo Basin Rules; provided that where the Kewalo Basin Rules require a regulatory determination to be made by "HCDA", then LESSOR shall make such determination, not LESSEE, except as to any day-to-day management or operational decisions relating to the Harbor Facilities.

(a) LESSEE's operational and management responsibilities as harbor manager of Kewalo Basin Harbor shall include, but are not limited to: (i) timely collecting any rent or fees due and owing from any of the boat tenants or sublessees of the Harbor Facilities, (ii) timely and adequately responding to any complaints lodged or concerns noted by boat tenants or members of the public who utilize Kewalo Basin Harbor, (iii) disposing or ensuring the removal or disposal of any vessels which are not permitted to berth at Kewalo Basin Harbor in accordance with all applicable Governmental Requirements, (iv) managing the harbor, slip, ticket booth, and office facilities and tenants, and (v) enforcing harbor rules and regulations (including but not limited to parking rules), including, in LESSEE'S discretion, the right to run the regularly scheduled stakeholder meeting. Prior to the Commencement Date, LESSOR shall assign to LESSEE all of LESSOR's rights and interests in all rents, revenues and reimbursements, security deposits and pre-paid rents and LESSEE shall assume all rights and obligations related thereto.

(b) During the Term, LESSEE shall be entitled to collect all revenues, income, or other receipts from the Harbor Facilities, which shall be included in LESSEE's Gross Receipts.

(c) The Harbor Facilities comprise the real and personal property at and located on the Premises.

(d) On or before September 1, 2014 and for the duration of the Term and at no cost to LESSEE, LESSOR shall grant, license, convey, assign, or otherwise transfer, provide, or make available (or shall cause to be granted, licensed, conveyed, assigned, or otherwise transferred, provided, or made available) to LESSEE any and all rights necessary or appropriate for LESSEE to have in connection with managing and operating the Harbor Facilities, including without limitation, intellectual and intangible property rights. Any intellectual property created by or at the direction of LESSEE,

including but not limited to naming of portions or all of the Premises, naming and branding and all protected rights or trade-marks associated with activities, events, personalities, or services offered at the Premises or related in any way to the Premises (the "Protected IP") shall remain the exclusive property of LESSEE during the term of the Lease and neither LESSOR nor any other parties shall have a right to use such Protected IP without LESSEE's prior written consent.

6.2. Operation of Kewalo Basin Harbor Not Assignable. Except to an Affiliated Entity, LESSEE shall not enter into any agreement or contract that would assign the operation or management of Kewalo Basin Harbor or any portion thereof without LESSOR's prior written approval, which approval shall not be unreasonably withheld. LESSOR's approval of an assignment or sublease of this Lease pursuant to Section 4.13 or 4.14 shall also constitute LESSOR's approval under this Section 6.2. Unless provided pursuant to Section 4.13 or 4.14, LESSEE shall furnish LESSOR with all reasonably requested information regarding the proposed assignment and assignee or sublease and sublessee in order to allow LESSOR to adequately evaluate the proposed assignment or sublease and determine whether to approve the proposed assignment or sublease. Any consent by LESSOR under this Section 6.2 shall apply only to the specific transaction thereby authorized and shall not relieve LESSEE of LESSEE's obligation to operate and maintain the Harbor Facilities pursuant to this Lease. LESSOR hereby acknowledges and agrees that LESSEE may enter into a new operating agreement with Almar Management Inc. to perform certain operational and maintenance obligations set forth in this Article 6. In the event that an Approved Mortgagee, as defined in Section 7.1 becomes the lessee pursuant to Section 7.2(c)(v) or (vi), then LESSOR may either approve Approved Mortgagee to operate and manage the Kewalo Basin Harbor or may require that Approved Mortgagee select an Experienced Operator to operate and manage the same. For purposes of this Section, an Experienced Operator shall mean a person or entity possessing the experience in the operation of high quality harbor operations, qualifications, good reputation, financial resources and adequate personnel necessary for the proper performance of all the harbor management and harbor operations as set forth under this Lease, in a manner consistent with the quality, character, reputation and viability of the Kewalo Basin Harbor.

6.3. Delivery of Operational Materials.

(a) On or before the Effective Date, LESSOR shall deliver to LESSEE all plans, surveys, contracts, materials, keys, manuals, maintenance log-books, and records pertaining to the operation of Kewalo Basin Harbor within the possession or control of LESSOR, and LESSOR agree to use its best efforts to obtain such materials not in its possession, and deliver such materials to LESSEE. LESSOR shall also furnish (or cause to be furnished) all such information, take (or cause to be taken) all such other action, and shall cooperate with LESSEE as LESSEE shall reasonably require in order to effectuate an orderly and systematic termination of the duties and activities of LESSEE's predecessor as harbor manager of the Kewalo Basin Harbor and orderly and systematic transfer of duties to LESSEE. LESSOR shall provide a copy of all rent rolls and shall provide financial records to identify all amounts due and owing and all payment and other obligations.



From: Kewalo Basin Harbor <slips@kewaloharbor.com>
Date: February 7, 2017 at 7:12:44 PM CST
To: "'laurie@regattasail.com'" <laurie@regattasail.com>
Cc: John Eveleth <jeveleth@kewaloharbor.com>
Subject: MOORING PERMIT and INSURANCE - EMERAUDE II - FS

ATTACHED MOORING PERMIT FOR YOUR SIGNATURE. PLEASE SIGN AND RETURN VIA EMAIL

AS A FRIENDLY REMINDER YOUR VESSEL INSURANCE IS EXPIRING FEBRUARY 25, 2017, AND YOUR DOCUMENTATION IS EXPIRING APRIL 30, 2017.

ALSO OUR RECORDS INDICATE WE HAVE NOT RECEIVED YOUR DECEMBER 2016 MONTHLY GROSS RECEIPTS REPORT.

PLEASE SUBMIT THE SIGNED MOORING PERMIT AND THE GROSS RECEIPTS REPORTS AT YOUR EARLIEST CONVENIENCE

Thank you,

Sandy
Customer Service

From: Kewalo Harbor Scanner [<mailto:KBH@citiserver.com>]
Sent: Saturday, January 07, 2017 4:46 AM
To: Kewalo Basin Harbor
Subject: Emeraude MP

EXHIBIT B

KEWALO BASIN HARBOR, HONOLULU, HAWAII

Date Permit Commences: 05/01/2016
Date Permit Ends: 04/30/2017

Permittee: GOLDEN EAGLE MARINE CHARTER
Contact: Laurie Bakke
Address: 350 Ward Avenue, Ste. 106-107
City/State/Zip: Honolulu, HI 96814
Phone: (206) 396-3867
Alt Phone: (808) 430-7041
E-mail: laurie@regattasail.com

Vessel Name: EMERAUDE II
Berth No.: FS
LOA: 80'
Reg./Doc. No.: 1097127
GE License No.: W20412686-01
Insurance Exp.: 2/25/2017
Letter of Good Standing:
Customer No.: 10199

Harbor Rates

Mooring: 1,087.00
Utilities (Water): 13.00
Performance Fee: 2,174.00
Ticket Booth: 128.00
Other:
TOTAL: 1,228.00

Type of Permit:

- Commercial Fishing
- Commercial Charter
- Regular
- Temporary

Intended Use: Charters

MOORING PERMIT

IT IS HEREBY AGREED BY AND BETWEEN:

ALMAR MANAGEMENT INC., a California corporation, on behalf of KEWALO HARBOR, LLC, a Hawaii limited liability company, hereafter called "Permitter", as Harbor Master pursuant to the Rules as defined below, and GOLDEN EAGLE MARINE CHARTER hereinafter called "Permittee", subject to all the terms and conditions set forth herein, agree as follows:

This Permit is for a mooring berth in Kewalo Basin Harbor at Berth No. FS for the vessel EMERAUDE II (the "Vessel"), Document No. 1097127 for the purpose of Charters.

1. Permittee agrees to abide by all existing and future Hawaii Administrative Rules, Chapters 15-211 to 15-214, State of Hawaii, which are incorporated herein by reference, in addition to any other rules adopted by Permitter or the Hawaii Community Development Authority, as the same may be amended ("Rules") and to the full performance of the following terms, conditions, and charges.
2. Living aboard the Vessel is prohibited.
3. Permitter, in consideration for the compliance with Rules, fees, and charges to be paid by Permittee to it, and the terms and conditions hereinafter contained and to be observed and performed by Permittee, does hereby grant to Permittee permission to moor the Vessel, and only the Vessel registered herein with Permitter. Permitter may require Permittee to move the Vessel to another berth. Permitter reserves the right to use the berth when not in use by the Permittee, without any reduction or rebate of the Mooring Fees (as defined below).
4. Permittee agrees to pay the Permitter all fees and charges for use of the berth as set forth in the Hawaii Administrative Rules, Chapters 15-211 to 15-214, State of Hawaii, plus metered utilities, if applicable (collectively "Mooring Fees"). The current Mooring Fees as set forth under the Rules are reflected on Exhibit A attached hereto and incorporated herein. Mooring Fees shall be paid monthly in advance by Permittee, without notice, and the metered utilities shall be paid within fifteen (15) days after billed following the monthly reading of such meters. Should the Mooring Fees change, Permittee shall be given written notice once, at least thirty (30) days in advance of the date when such

new Mooring Fees are due and payable. Thereafter, Permittee shall pay for the new Mooring Fees monthly in advance, without further notice. Permittee shall be deemed "delinquent" when the Mooring Fees and/or utility payments, if applicable, remain unpaid five (5) days after the date such payment is due.

5. Permittee covenants and agrees to at all times maintain in full force and effect commercial general liability insurance for bodily injury and property damage in the amounts and as set forth in the Rules and to cause the State of Hawaii, the Hawaii Community Development Authority, Permitter, Kewalo Harbor Management Company, LLC, Kewalo Harbor, LLC and all affiliated entities, successors and assigns and managing agents (collectively, "Permitter Insureds") to be named as additional insureds and to be provided written notice of cancellation from the insurance carrier at least 30 days prior to the proposed cancellation date, if any. Permittee shall also carry such property insurance as it deems prudent, and any risk of loss, whether insured or not, is solely Permittee's responsibility. Permittee's insurance shall be primary. Permitter and Permittee waive, and shall cause their insurers to waive, all subrogation rights against each other and the Permitter Insureds. Permittee further agrees that satisfactory proof of insurance shall be delivered to Permitter upon the execution of this permit and thereafter annually on the anniversary date of this permit.

6. **IN ADDITION TO WHAT IS PROVIDED BY THE RULES AND ELSEWHERE IN THIS PERMIT, THE PARTIES HERETO AGREE THAT NEITHER THE PERMITTOR NOR ANY AGENT, PROPERTY MANAGER, LAND LEASEHOLDER, LAND OWNER, SERVANT, OR EACH OF THEIR EMPLOYEES, AND ALL AFFILIATED ENTITIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY WITH PERMITTOR, THE "PERMITTOR PARTIES") SHALL BE LIABLE FOR ANY LOSS, DAMAGE OR PERSONAL INJURY TO THE PERSON OR PROPERTY OF THE PERMITTEE OR ITS AGENTS, EMPLOYEES, OR INVITEES, INCLUDING, BUT NOT LIMITED TO, THE VESSEL, ITS INVENTORY AND EQUIPMENT, WHETHER SUCH LOSS, DAMAGE, OR PERSONAL INJURY BE OCCASIONED BY FIRE, THEFT, ACT OF GOD, OR ANY OTHER CAUSE (INCLUDING THE NEGLIGENCE OF THE PERMITTOR PARTIES, BUT EXCLUDING WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE PERMITTOR PARTIES). PERMITTEE HEREBY AGREES TO INDEMNIFY AND SAVE HARMLESS THE PERMITTOR PARTIES FROM OR AGAINST ANY CLAIM ARISING FROM THE MAINTENANCE, USE, AND OPERATION OF PERMITTEE'S VESSEL IN THE HARBOR AREAS OR THE USE BY THE PERMITTEE OF THE HARBOR FACILITIES. PERMITTEE HEREBY AGREES TO ASSUME FULL RESPONSIBILITY FOR PERSONAL INJURY AND PROPERTY DAMAGE ARISING OUT OF THE MAINTENANCE, USE, AND OPERATION OF PERMITTEE'S VESSEL AND PERMITTEE'S USE OF THE HARBOR FACILITIES. ACCORDINGLY, PERMITTEE BEARS 100% RISK OF LOSS TO THE VESSEL AND ALL OTHER PROPERTY OF THE PERMITTEE (OTHER THAN THE PERMITTOR PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT). THIS SECTION RELEASES THE PERMITTOR PARTIES OF THEIR OWN NEGLIGENCE. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS PERMIT.**

7. The Permitter Parties shall not be liable for the care or protection of the vessel, its gear, equipment, or contents, or for any loss or damage of whatever kind or nature to the vessel, its contents, gear, or equipment howsoever occasioned. Permitter makes no warranty of any kind as to the condition of the piers, walks, wharfs, gangways, or mooring gear and equipment, nor shall Permitter be liable for injuries to the person or property of Permittee, its agents, employees or guests from any cause or circumstance, **EVEN IF ATTRIBUTABLE TO THE NEGLIGENCE OF THE PERMITTOR PARTIES.** The Permitter Parties shall be third party beneficiaries of this section.

8. In addition to what is provided by the Rules, Permittee shall not store or use hazardous materials (including any substance, pollutant, or contaminant regulated under any applicable

environmental laws) in any manner not sanctioned by law nor bring onto the harbor any such hazardous materials except in the ordinary course of Permittee's business, but only if pre-approved in writing by Permittor, within Permittor's sole and absolute discretion and in such instance, only if handled by Permittee in accordance with all applicable laws. Permittee shall be solely responsible for and shall indemnify, defend, and hold harmless the Permittor Parties from and against any loss, damage, cost, expense, or liability arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials within the harbor or elsewhere caused by Permittee or persons acting under or on behalf of Permittee, including the related costs of any required or necessary removal, repair, cleanup, or remediation of the Harbor, and the preparation and implementation of any closure, removal, remedial, or other required plans, and all reasonable costs and expenses incurred by Permittor in connection therewith, including without limitation reasonable attorneys' fees. This section shall survive the expiration or earlier termination of this Permit.

9. Use of the berth by Permittee pursuant to this permit does not grant Permittee any right to retain the use of the berth or any other space in the Harbor. Permittor may terminate this Permit, with or without cause, upon lapse of 48-hours' notice from Permittor to vacate the berth. Such termination right shall expressly apply in the event that Permittee has violated any provisions of this Permit or the Rules. Upon expiration of this Permit or upon its earlier termination, Permittee shall remove its vessel from the berth and the Harbor.

10. Failure of Permittee to vacate the berth and the Harbor, upon expiration of this permit or upon earlier termination pursuant to section 9 of this Permit, shall subject Permittee to liability for any damages incurred by the returning permittee or newly-assigned regular permittee resulting from Permittee's failure to vacate, and entitles Permittor to remove Permittee's vessel to an impounding area. Permittee shall indemnify and hold harmless Permittor from any liability for damages arising from the failure of Permittee to vacate the berth and the Harbor, and from the removal of the vessel to an impounding area by Permittor in accordance with the terms and conditions of this permit.

11. Permittee accepts the slip assigned to Permittee, the Harbor and all property of Permittor "as is" and accepts same as suitable for Permittee's purposes and expressly waives any defects therein and agrees to hold the Permittor Parties harmless from any loss or damage or injury to property or person resulting from any defect or improper construction or maintenance of the Harbor or property.

12. All notices (a "Notice") under this Permit shall be delivered or sent by: (i) first class, registered or certified mail, postage prepaid, return receipt requested; (ii) nationally recognized overnight carrier, or (iii) facsimile with original Notice sent via overnight delivery addressed to the address of the party in question set forth below or to such other address as either party may designate by Notice. Notices shall be deemed given (x) three business days after being mailed as provided in clause (i) above, (y) one business day after delivery to the overnight carrier as provided in clause (ii) above, or (z) on the day of the transmission of the facsimile so long as it is received in its entirety by 4:00 p.m. (Hawaii time) on such day and the original of such Notice is received the next business day via overnight mail as provided in clause (iii) above.

Permittor: Almar Management Inc.
1125-BI Alamoana Blvd
Honolulu, HI 96814
Phone: (808)-594-0849
Fax: (808)-594-0848

Permittee: GOLDEN EAGLE MARINE CHARTER
350 Ward Avenue, Ste. 106-107
Honolulu, HI 96814
(206) 396-3867
(808) 430-7041
laurie@regattasail.com

13. This Permit does not create a landlord-tenant relationship between the parties, and shall only constitute a license subject to the terms of this Permit, including the Rules as incorporated herein. This Permit shall not be assigned or transferred without the prior written consent of Permittor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED this ___ day of _____, 201__.

PERMITTOR:

ALMAR MANAGEMENT INC.,
a California corporation

By: _____
Name: John Eveleth
Title: Harbor Manager

PERMITTEE:

GOLDEN EAGLE MARINE CF,
a _____

By: _____
Name: Laurie Bakke
Title: _____

EXHIBIT A
MOORING FEES AND CHARGES

Mooring Fees and other charges shall be as set forth in Hawaii Administrative Rules, Chapters 15-211 to 15-214, State of Hawaii, as the same may be amended. Such rates are currently set as follows and, pursuant to the Rules, may be adjusted in accordance with CPI and for improvements made in accordance with Rules:

MOORING	\$ 1,087.00
UTILITIES (WATER)	\$ 13.00
PERFORMANCE FEE	\$ 2,174.00
TICKET BOOTH, IF ANY	\$ 128.00
OTHER	\$
TOTAL	\$ 1,228.00

[ALMAR TO COMPLETE WITH EXISTING FEES AND CHARGES]



KEWALO BASIN HARBOR

1125-B1 Ala Moana Blvd,
Honolulu, HI 96814
808.594.0849

4/10/17

Golden Eagle Marine Charter Services Corporation
Ms. Laurie Bakke
350 Ward Avenue #106-107
Honolulu, Hawaii 96814

Sent via email and USPS regular mail

RE: Audit of Business Records
Request for Documents

Dear Ms. Bakke,

Pursuant to HAR §15-212-54, we are conducting an audit of Golden Eagle Marine Charter Services Corporation and its business records to verify your Monthly Gross Receipt Reports submitted for Emeraude II.

Please submit the following business records to this office by May 10, 2017.

1. General Excise Tax returns for 2015, 2016 and January through March 2017.
2. Corporate Tax Returns for 2015 and 2016.
3. Guest Logs for 2015, 2016 and January through March 2017.
4. Sales records for 2015, 2016 and 2017.
5. Checking account statements for Golden Eagle Marine Charter Services Corp. 2015, 2016 and 2017.
6. Credit Card statements for 2015, 2016 and 2017.
7. Customer/Client agreements
8. Delinquent Gross Receipt Reports for December 2016, January and February 2017.

Thank you in advance for your attention to this request.

Sincerely,

John Eveleth
Kewalo Harbor LLC
(808) 594-0849 office | (808) 630-1711 mobile
jeveleth@kewaloharbor.com

EXHIBIT C

From: Laurie Bakke
Sent: Wednesday, May 10, 2017 7:57 AM
To: 'jeveleth@kewaloharbor.com'
Cc: Laurie; Laurie Bakke
Subject: RE: Letter from Kewalo Harbor LLC

Dear John,

Thank you for your April letter referencing an audit pursuant to HAR 15-212-54. It appears there may be some confusion.

For over 44 years, Golden Eagle Marine Charter Services Corp. has always operated a single vessel documented by the United States Coast Guard to carry six passengers or less and has maintained the same vessel classification with the Harbor office. The Harbor office has always been, and is today, in possession of documentation from the U.S. Coast Guard that provides evidence of these facts. Surely the audit is not being conducted to determine the validity of maintaining the vessel classification.

Over the last 44 years, Golden Eagle has always paid the appropriate monthly dockage rate indicated by the Harbor office. The Harbor office has never assessed Golden Eagle an additional two per cent of the vessel's monthly gross receipts as the monthly dockage rate has always been the greatest of the two amounts. Only operating a single vessel documented by the U.S. Coast Guard to carry six passengers or less, you may wish to consider that it is virtually impossible for Golden Eagle to generate a level of monthly gross receipts where two percent of monthly gross receipts could even begin to exceed the monthly dockage rate. In point of fact, in order for Golden Eagle to pay the greater amount of two percent, Golden Eagle would have to generate more gross receipts every month than it has ever generated in an entire year for the last 44 years! Surely the audit isn't to determine if there are any additional fees owing to the HCDA.

Likely in recognition of the facts above, previous harbor managers with the State of Hawaii Department of Transportation, Almar and/or Hughes have never deemed it necessary or proper to conduct an audit of Golden Eagle. In fact, I have never heard of an audit being conducted by the Harbor office for any commercial permittee. Are you conducting an audit of all commercial permits in Kewalo Basin Harbor this year?

As you may be aware, I am employed full-time on the mainland in North Dakota. An audit would be a significant impact upon me both professionally and personally. Accordingly, in the event of an audit, I would retain both an attorney and an accountant on behalf of Golden Eagle Marine Charter Services Corp. This would be a significant financial impact to a small business such as Golden Eagle. Am I to understand that Almar, HCDA and/or Hughes will be promptly reimbursing Golden Eagle for any and all

EXHIBIT "D"

expenses associated with an audit?

Thank you,

Laurie A. Bakke

Begin forwarded message:

From: John Eveleth <jeveleth@kewaloharbor.com>
Date: April 11, 2017 at 11:40:53 AM PDT
To: "'laurie@regattasail.com'" <laurie@regattasail.com>
Cc: Kewalo Basin Harbor <slips@kewaloharbor.com>
Subject: Letter from Kewalo Harbor LLC

Hello Ms. Bakke,

Please find attached a letter from Kewalo Harbor LLC sent via this email and USPS.

Regards,
John Eveleth | Harbor Master | Kewalo Harbor
1125-B1 Ala Moana Blvd. | Honolulu, HI 96814
O: 808.594.0849 | F: 808.594.0848
www.KewaloHarbor.com

Laurie Bakke
President
Western Equipment Finance
Direct: 701-665-1615
Cell: 206-369-3867
Toll-free Phone: 800-451-7087
Email: Laurie.Bakke@WesternEquipmentFinance.com
Web: www.WesternEquipmentFinance.com

A subsidiary of Western State Bank





KEWALO BASIN HARBOR

1125-B1 Ala Moana Blvd.
Honolulu, HI 96814
808.594.0849

5/31/17

Golden Eagle Marine Charter Services Corporation
Ms. Laurie Bakke
350 Ward Avenue #106-107
Honolulu, Hawaii 96814

Sent via email and USPS mail

RE: Expired mooring permit for EMERAUDE II, slip FS

Dear Ms. Bakke,

We acknowledge receipt of your email dated 5/10/17.

This letter is notice to GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION that the mooring permit for s/v EMERAUDE II slip FS at Kewalo Basin Harbor is expired. This permit will not be renewed. Subsequently, the s/v EMERAUDE II with official number 1097127 is no longer authorized to be moored in slip FS at Kewalo Basin Harbor and must vacate.

GOLDEN EAGLE MARINE CHARTER SERVICES CORPORATION has 30 days to remove the s/v EMERAUDE II, as referenced above, from Kewalo Basin Harbor.

Sincerely,

John Eveleth
Kewalo Harbor LLC
(808) 594-0849 office | (808) 630-1711 mobile
jeveleth@kewaloharbor.com

EXHIBIT E





KEWALO BASIN HARBOR

1125-B1 Ala Moana Blvd.
Honolulu, HI 96814
808.594.0849

5/31/17

Mr. Christopher J. Muzzi
Attorney/Contact for S.O.M. LLC
1132 Bishop Street Suite 2400
Honolulu, Hawaii 96813

Ms. Joan Joyce
S.O.M. LLC
350 Ward Avenue #106-250
Honolulu, Hawaii 96814

Sent via email and USPS mail

RE: Mooring Permit for m/v QUEEN OF THE RING, O.N. 611194

Dear Mr. Muzzi and Ms. Joyce,

We acknowledge receipt of your letter dated 5/8/17.

This letter is notice to S.O.M. LLC that the mooring permit for m/v QUEEN OF THE RING in slip FU at Kewalo Basin Harbor is expired. This permit will not be renewed. Subsequently, the m/v QUEEN OF THE RING with official number 611194 is no longer authorized to be moored in slip FU at Kewalo Basin Harbor and must vacate.

S.O.M. LLC has 30 days to remove the m/v QUEEN OF THE RING, as referenced above, from Kewalo Basin Harbor.

Sincerely,

John Eveleth | Manager
Kewalo Harbor
(808) 594-0849
jeveleth@kewaloharbor.com

EXHIBIT F