

June 5, 2024

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Amend the Non-Exclusive Temporary Revocable License No. 21-01 Dated June 22, 2021, with Kewalo Makai LLC, a Hawaii Limited Liability Company, for the Use of the Kewalo Charter Building and a Portion of the NOAA Lot at Kewalo Basin Harbor, Located at 1125 Ala Moana Boulevard, Honolulu, Hawaii, Tax Map Key Nos. (1) 2-1-058:133 and (1) 2-1-058:135 (por.) Respectively, for Commercial Retail and Office Purposes, to Extend the Term for One Additional Year Until June 30, 2025 and Increase the Rent.

II. BACKGROUND

The Kewalo Charter Building and NOAA Lot are located on the “fastlands” surrounding Kewalo Basin Harbor. Both sites were originally intended for future redevelopment to provide spaces for both commercial and community-based facilities.

On June 22, 2021, the Hawaii Community Development Authority (HCDA) entered into a one-year non-exclusive temporary revocable license (RL 21-01) with Kewalo Makai LLC to utilize the Charter Building and NOAA Lot as commercial retail and office space.

RL 21-01 was subsequently amended in June 2022 to clarify the premises, extend the term for an additional two years, and add a mutual termination clause that would allow either Kewalo Makai LLC or the HCDA to terminate RL 21-01 at any time with 60-days written notice. RL 21-01, as amended, is attached hereto as Exhibit 1.

For the past three years under RL 21-01, Kewalo Makai LLC successfully leased most of the previously vacant Charter Building to Kewalo Basin Harbor tenants as overflow office and retail space. Kewalo Makai LLC also continued to operate the Kewalo Basin Harbormaster Office from the NOAA lot. This use has both activated the Charter Building area off Ala Moana Boulevard and provided Kewalo Basin Harbor tenants with much-needed office and retail space.

RL 21-01 was intended as an interim use while the Kewalo Harbor Development Company, LLC (KHDC), an affiliated entity of the Howard Hughes Corporation, finalized its plans for the redevelopment of the Kewalo Charter Building and NOAA Lot. KHDC was the sole respondent for both parcels when HCDA issued a Request for Proposals (RFP) for developing the sites in December 2015. The HCDA executed a Development Agreement (DA) with KHDC for both parcels on March 14, 2017.

However, in the seven years since then, KHDC notes its plans for redeveloping the area have changed. KHDC allowed the DA to expire in December 2023 and is now examining plans for the adaptive reuse and lease of only the Kewalo Charter Building.

III. DISCUSSION

As an interim use, Kewalo Makai LLC requests an extension of RL 21-01 for an additional one year to continue utilizing the Charter Building and NOAA Lot as commercial retail and office space. This will allow time for Kewalo Makai LLC and the HCDA to reach a long-term agreement for the future development and lease of the Charter Building. Kewalo Makai LLC's request letter is attached hereto as Exhibit 2.

Under the existing license, Kewalo Makai LLC pays the HCDA a total of \$1,900 a month for both buildings, plus all utilities and maintenance costs associated with the Charter Building. This rent amount has not changed since RL 21-01 was executed in 2021.

HCDA staff notes rent typically increases at least 3% annually. Kewalo Makai LLC proposes paying \$2,185 per month, or a 15% increase for the duration of the extension period. Kewalo Makai LLC would also continue to pay for electricity and maintenance of the NOAA Lot Harbormaster building and Charter Building, including upkeep of the boater's restroom located in the Charter Building.

The existing license includes a mutual termination clause that allows either the HCDA or Kewalo Makai LLC to terminate the License without penalty with at least 60-days written notice to the other party. The proposed amendment does not change this termination option. All other terms and conditions of RL 21-01 shall remain unchanged.

IV. RECOMMENDATION

It is recommended that the Board Authorize the Executive Director to Amend the Non-Exclusive Temporary Revocable License No. 21-01 Dated June 22, 2021, with Kewalo Makai LLC, a Hawaii Limited Liability Company, for the Use of the Kewalo Charter Building and a Portion of the NOAA Lot at Kewalo Basin Harbor, Located at 1125 Ala Moana Boulevard, Honolulu, Hawaii, Tax Map Key Nos. (1) 2-1-058:133 and (1) 2-1-058:135 (por.) Respectively, for Commercial Retail and Office Purposes, to Extend the Term for One Additional Year Until June 30, 2025 and Increase the Rent and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:

Exhibit 1 – Executed Revocable License No. 21-01, as Amended

Exhibit 2 – Kewalo Makai LLC Request Letter Dated May 21, 2024

Prepared By: Lindsey Doi, Asset Manager



Reviewed By: Craig Nakamoto, Executive Director





WARD VILLAGE

HONOLULU, HI

May 21, 2024

[VIA EMAIL (lindseydoi.leaverton@hawaii.gov and dbedt.hcda.contact@hawaii.gov) ONLY]

Ms. Lindsey Doi
Asset Manager
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

Re: Extension Request for Kewalo Makai LLC License 21-01

Dear Ms. Doi:

Kewalo Makai LLC (“Licensee”) respectfully requests a one (1) year extension of the Non-Exclusive Temporary Revocable License No. 21-01 (“Revocable License”) issued by the Hawaii Community Development Authority (“HCDA”), to Licensee with an effective date of June 22, 2021, as amended, for the premises as defined in Item No. 1 and Exhibit A of the Revocable License. Licensee requests an extension period of July 1, 2024 through and including June 30, 2025 (unless earlier terminated). Licensee proposes a 15% increase in the license fee to \$2,185.00 per month during the extension period. This extension will permit continued subleasing of the premises.

Thank you for HCDA’s consideration of this extension request, and please contact Chelsea McKay, Development at chelsea.mckay@howardhughes.com with any questions.

Very Truly Yours,
Kewalo Makai LLC

Ka'iulani K. Sodaro, AICP
Authorized Signatory

EXHIBIT 1

FIRST AMENDMENT TO NON-EXCLUSIVE TEMPORARY REVOCABLE LICENSE 21-01

This First Amendment to Non-Exclusive Temporary Revocable License 21-01 (“**First Amendment**”) is executed this Jun 26, 2022 (“**Execution Date**”), by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY** (“**HCD**A” or “**LICENSOR**”), a body corporate and a public instrumentality of the State of Hawaii, and **KEWALO MAKAI, LLC** (“**LICENSEE**”), a Hawaii limited liability company, whose principal place of business and mailing address is 1240 Ala Moana Blvd, Suite 200, Honolulu, Hawaii 96814 (collectively referred to as “**the Parties**”).

RECITALS

WHEREAS, the Parties entered into a Non-Exclusive Temporary Revocable License 21-01 on June 22, 2021, with an effective date of July 1, 2021 (hereinafter, the “**License**”), a copy of which is attached hereto and incorporated herein as Exhibit “A”;

WHEREAS, at its Board meeting held on May 4, 2022, the HCD A Board (the “**Board**”) authorized the Executive Director to amend the License to: (1) correct the square footage of the Premises (as hereinafter defined) and (2) extend the term of the License for an additional two (2) years;

WHEREAS, the Parties desire to correct the Premises which are subject to the License; and

WHEREAS, the Parties desire to extend the term of the License for an additional two (2) years to continue the temporary use to activate the area until its further development;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. Section 1 in the License is hereby replaced in its entirety as follows:
 1. **Premises:** That approximately 13,030 square foot area containing that certain real property and 14 adjacent parking stalls commonly referred to as “Kewalo Charter Building” located at Kewalo Basin Harbor, Honolulu, Hawaii, and identified by Oahu Tax Map Key No. (1) 2-1-58: 133, and that approximately 10,000 square foot area of that certain real property commonly referred to as “Kewalo NOAA Building” located at Kewalo Basin Harbor, Honolulu, Hawaii, and identified by Oahu Tax Map Key No. (1) 2-1-58: 135 (por.), as identified on the map attached hereto as “Exhibit A-1”.

2. Exhibit A attached to the License, is hereby replaced in its entirety with “Exhibit A-1”, attached hereto, and incorporated herein.
3. Section 2 in the License is hereby replaced in its entirety as follows:
 2. **Purpose:** Allow Licensee to license the Premises to third parties for commercial retail and office purposes.
4. Section 6 in the License is hereby replaced in its entirety as follows:
 6. **Termination Date:** June 30, 2024
5. Sections 1 and 19 in Exhibit B attached to the License are hereby replaced in their entirety as follows:
 1. **TERM.** The License is effective from July 1, 2021, through June 30, 2024.
 19. **TERMINATION.** Either party may terminate this License at any time upon not less than sixty (60) days prior written notice to the other in accordance with the provisions of Paragraph 20 Notices.
6. This First Amendment, upon execution by the Parties, shall be effective as of the date stated above. This First Amendment fully and completely expresses the agreement of the Parties and shall not be modified or amended except by written agreement executed by each of the Parties hereto.
7. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.
8. This First Amendment constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations or agreements, both verbal and written, between the Parties regarding the amendment of the License.
9. Except as amended and/or modified by this First Amendment, all other terms and provisions of the License shall remain in full force and effect, unaltered and unchanged by this First Amendment. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the License are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

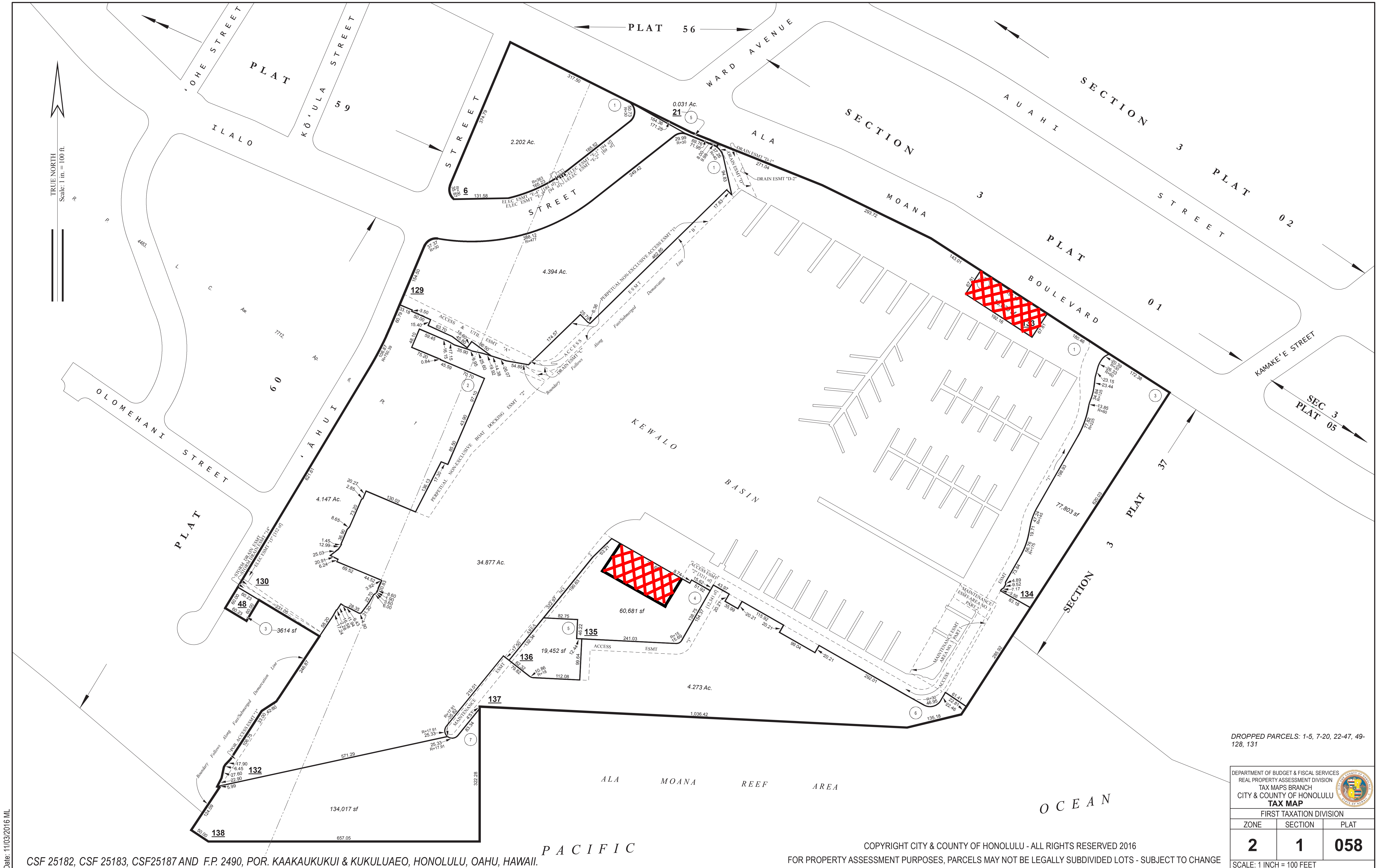
By: *Craig K. Nakamoto*
Craig K. Nakamoto
Executive Director

KEWALO MAKAI, LLC

By: *Doug Johnstone*
Doug Johnstone
Authorized Signatory

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General



DROPPED PARCELS: 1-5, 7-20, 22-47, 49-128, 131

DEPARTMENT OF BUDGET & FISCAL SERVICES REAL PROPERTY ASSESSMENT DIVISION TAX MAPS BRANCH CITY & COUNTY OF HONOLULU		
TAX MAP		
FIRST TAXATION DIVISION		
ZONE	SECTION	PLAT
2	1	058
SCALE: 1 INCH = 100 FEET		

Date: 11/03/2016 ML

CSF 25182, CSF 25183, CSF25187 AND F.P. 2490, POR. KAAKAUKUKUI & KUKULUAEO, HONOLULU, OAHU, HAWAII.

PACIFIC

COPYRIGHT CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2016
FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGALLY SUBDIVIDED LOTS - SUBJECT TO CHANGE

Exhibit A

KEWALO MAKAI LLC LICENSE 21-01

NON-EXCLUSIVE TEMPORARY REVOCABLE LICENSE NO. 21-01

This Non-Exclusive Temporary Revocable License (“**License**”) is entered into as of June 22, 2021 (the “**Effective Date**”) between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY** (“**HCDA**” or “**LICENSOR**”), a body corporate and a public instrumentality of the State of Hawaii, with its address at 547 Queen Street, Honolulu, Hawaii 96813, and **KEWALO MAKAI LLC** (“**LICENSEE**”), a Hawaii limited liability company, whose principal place of business and mailing address is 1240 Ala Moana Blvd, Suite 200, Honolulu, Hawaii 96814 (collectively, “**Parties.**”)


Licensor grants to Licensee a non-exclusive temporary revocable license to use the premises described in **Item 1** below and highlighted on Exhibit A attached hereto and made a part hereof (the “**Premises**”), for the sole purposes as set forth in **Item 2** below. Licensee is responsible for communicating and explaining the terms and conditions of this License to all Permitted Persons and ensuring compliance with such terms and conditions. Any capitalized terms not defined herein shall have the meaning set forth in Exhibit B.

For each calendar month, Licensee shall pay the amount specified in **Item 3** below (a “**License Fee**”), and shall perform all other obligations imposed upon Licensee by the terms and conditions set forth in Exhibit B attached hereto, incorporated herein and made a part hereof.

This License shall be valid from the Effective Date through the Termination Date set forth in **Items 5 and 6** below, unless terminated earlier as provided herein.

- 1. Premises:** That approximately 2,565 square foot area containing that certain real property and 14 adjacent parking stalls commonly referred to as "Kewalo Charter Building" located at Kewalo Basin Harbor, Honolulu, Hawaii, and identified by Oahu Tax Map Key No. (1) 2-1-58: 133, and that approximately 4,266 square foot portion of that certain real property commonly referred to as "Kewalo NOAA Building" located at Kewalo Basin Harbor, Honolulu, Hawaii, and identified by Oahu Tax Map Key No. (1) 2-1-58: 135
- 2. Purpose:** Lease the Premises to third parties for commercial retail and office purposes
- 3. License Fee:** \$1,900.00 per month
- 4. Improvement Allowance:** \$8,100 credit to be applied toward Licensee’s payment of the monthly License Fee after satisfactory completion of roof and heating, ventilation, and air conditioning repairs on the Premises and HCDA approval of receipts
- 5. Effective Date:** July 1, 2021
- 6. Termination Date:** June 30, 2022

**HAWAII COMMUNITY DEVELOPMENT
AUTHORITY**

By: 

Deepak Neupane, P.E., AIA
Executive Director


"LICENSOR"

APPROVED AS TO FORM:

Kelly Suzuki

Deputy Attorney General

KEWALO MAKAI LLC

By: 

Doug Johnstone
Authorized Signatory

"LICENSEE"

EXHIBIT A



EXHIBIT B
TERMS AND CONDITIONS

1. **TERM.** The License is effective from the Effective Date, July 1, 2021, through the Termination Date, June 30, 2022.

2. **LICENSE FEE.** LICENSEE shall pay the HCDA one thousand nine hundred dollars (\$1,900.00) per month (a "**License Fee**"), without notice or demand, on the first (1st) day of each month for the ensuing month during the term of this License, subject to the terms set forth in Section 3 below. If the first (1st) day falls on a weekend or State holiday, LICENSEE shall tender payment of the License Fee on the first business day immediately following the weekend or State holiday. Without prejudice to any other remedy available to the HCDA, LICENSEE shall, without further notice or demand, pay to the HCDA a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid more than ten (10) days after its due date on the first of the month.

3. **IMPROVEMENT ALLOWANCE.** LICENSOR may offer up to \$8,100 in improvement allowance credit for LICENSEE to repair or maintain the Premises. LICENSOR and LICENSEE must agree on the scope of work in advance of commencing work, and LICENSEE must provide invoices or payment receipts for the improvements before applying the credit to the License Fee due for that month. After LICENSOR approves of the work completed and the invoices or payment receipts presented, LICENSEE may deduct up to a total of \$8,100 from LICENSEE's future payments of the monthly License Fee. LICENSOR and LICENSEE agree and acknowledge that the contemplated repairs do not involve any major expansion or major change of use beyond that previous existing for the Premises.

4. **USE OF PREMISES.** LICENSEE its members, employees, officers, directors, representatives, agents, invitees, guests, leasees, licensees, subcontractors and independent contractors (collectively, "**Permitted Persons**") shall use the Premises for the sole purpose of sub-licensing the Premises for commercial retail and office purposes to third parties consistent with the previous use of the Premises by LICENSOR. LICENSEE acknowledges this License is granted solely for the use specified in this Section 4, and any change in use may result in a violation of Hawaii Revised Statutes (HRS) Chapter 343 and Hawaii Administrative Rules (HAR) Title 11, Chapter 200. LICENSEE shall not obstruct or impede access to Kewalo Basin Harbor and any of the associated parking lots. LICENSEE shall not block the use of any parking stall. Vehicles parked in non-designated spaces for any reason, or otherwise obstructing ingress and egress, including impeding driveways, entrances and exits, will be subject to removal by towing at LICENSEE's sole expense.

5. **ACKNOWLEDGMENT OF USE BY OTHER PERSONS.** LICENSEE acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified in Section 4 above, LICENSEE shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

6. **DUE CARE AND DILIGENCE.** At all times during the term of this License, LICENSEE shall exercise due care and diligence in entering upon the Premises and shall not unreasonably disrupt or disturb in any way or manner whatsoever the activities or operations of the HCDA, the HCDA's agents on the Premises, or other persons or entities who have the right to enter/or use the Premises with the approval of the HCDA, and LICENSEE shall exercise due care for public safety. At all times during the term of this License and upon the termination of this License, LICENSEE shall be responsible for: (a) removing any debris or trash deposited on the Premises; (b) repairing any damage to the Premises caused by LICENSEE's or Permitted Persons' use or the actions of third-persons due to LICENSEE's or Permitted Persons' actions or inactions in securing the Premises; and (c) restoring the Premises to substantially the same condition it was in at the time of LICENSEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this License.

7. **RELEASE AND WAIVER BY LICENSEE.** LICENSEE expressly acknowledges and agrees that LICENSOR assumes no responsibility for any damages to person or property arising out of LICENSEE's use of the Premises as set forth in this License. Any items left on the Premises, whether owned and/or operated by LICENSEE or Permitted Persons, are at the sole risk of the LICENSEE. LICENSEE expressly agrees that LICENSOR shall not be responsible for any loss or damage to any persons or property, including but not limited to collision, fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other Permitted Persons or any other individual unless directly caused by the willful misconduct of LICENSOR.

8. **LICENSOR'S LIMITED LIABILITY.** Notwithstanding Section 7 herein, LICENSOR shall take responsibility to the extent permitted by law, for damage or injury caused by LICENSOR's officers and employees in the scope of employment, further provided that LICENSOR's liability for such damage or injury has been determined by a court of law, or agreed to by LICENSOR. LICENSOR shall pay for such damage and injury provided that the funds are appropriated and allotted for the purpose. This provision shall survive the termination of this License.

9. **INDEMNITY.** LICENSEE shall defend, indemnify and hold harmless the HCDA and the State of Hawaii, and its respective officials, directors, members, employees, and agents (collectively the "**Indemnified Parties**") from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with: (a) LICENSEE's breach of this License; (b) LICENSEE's or any Permitted Person's tortious conduct or violation of law; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission relating to or arising out of LICENSEE's entry and use of the Premises under this License (collectively, "**Covered Claims**"), unless directly caused by the willful misconduct of LICENSOR. LICENSEE shall also reimburse the Indemnified Parties for all costs and expenses, including reasonable attorney's fees, incurred in connection with the Indemnified Parties defense of any Covered Claims. This provision shall survive the termination of this License.

10. **INSURANCE.** (a) LICENSEE shall obtain on an occurrence basis and maintain at all times during the term of this License, at its own expense, insurance coverage of the kinds and in amounts not less than those set forth below:

Commercial General Liability:

\$1,000,000 Per Occurrence and \$2,000,000 in the Aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal and Advertising Limit

Umbrella Liability:

\$2,000,000 Aggregate (optional, if other limits cannot be met)

Worker's Compensation:

Coverage A: As required by the laws of the State of Hawaii
Coverage B: Employer's Liability:
\$1,000,000 Bodily Injury by Accident Per Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Per Employee

Automobile:

\$2,000,000 Combined Single Limit OR
\$1,000,000 Bodily Injury Per Person, \$1,000,000 Bodily Injury Per Accident, and
\$1,000,000 Property Damage Per Damage

- (b) Prior to LICENSEE's first entry onto the Premises, LICENSEE shall provide to the HCDA a certificate of insurance to evidence compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by LICENSEE in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (d) LICENSEE shall notify the HCDA at least thirty (30) days prior to the termination, cancellation, or any material change in LICENSEE's insurance coverage.
- (e) LICENSEE shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of LICENSEE or Permitted Persons in connection with LICENSEE's use or occupancy of the Premises.
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit LICENSEE's liability under this License or to fulfill the indemnification provisions and requirements of this License. Notwithstanding

said policy or policies of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of LICENSEE or the Permitted Persons connected with this License.

- (g) LICENSEE shall keep such insurance in effect and the insurance certificate(s) on deposit with the HCDA during the entire term of this License. Upon request, LICENSEE shall furnish a certificate of insurance evidencing that HCDA is included as an additional insured in the above limits.
- (h) Failure of LICENSEE to provide and keep in force such insurance shall be regarded as a material default under this License and the HCDA shall be entitled to exercise any or all of the remedies provided in this License for default of LICENSEE.
- (i) The HCDA is a self-insured State agency. LICENSEE's insurance or self-insurance required herein shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute toward insurance provided by LICENSEE.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's discretion, the above insurance does not provide adequate protection for the HCDA, it may require LICENSEE to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

11. **CONDITION OF PREMISES/ ASSUMPTION OF RISK.** LICENSEE hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by LICENSEE. LICENSEE agrees that all property, approved improvements, and equipment of LICENSEE kept or stored on the Premises during the term of this License shall be so kept or stored at the sole risk of LICENSEE. This provision shall survive the expiration or earlier termination of the License.

12. **COMPLIANCE WITH LAWS AND REGULATIONS.** LICENSEE shall, at all times during the term of this License, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises.

13. **NO HAZARDOUS MATERIALS.** LICENSEE shall not cause nor permit the escape, disposal or release of any hazardous materials except as permitted by law and as specified in Section 4. LICENSEE shall not allow the handling, storage or use of such materials, nor allow to be brought onto the Premises any such materials, except with the prior written consent of the HCDA and in accordance with Section 4. If any governmental agency should require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then

LICENSEE shall be responsible for the reasonable costs thereof. In addition, LICENSEE shall execute affidavits, and other documents from time to time at the HCDA's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released thereon by LICENSEE.

For the purpose of this License, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. **PROHIBITED USE.** Any use of the Premises not authorized in Section 4 shall constitute a material breach of this License. Upon such breach, the HCDA may terminate this License and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give LICENSEE notice thereof and afford LICENSEE forty-eight (48) hours to cure such breach.

15. **IMPROVEMENTS.** LICENSEE may make repairs to the roof and heating, ventilation, and air conditioning (HVAC) system of the Kewalo Charter Building as necessary at its sole expense, except for an improvement allowance credit of \$8,100 as referenced in Section 3. These repairs involve only a minor change of use beyond that previously existing pursuant to Hawaii Administrative Rules Section 11-200.1-15(c)(1). LICENSEE shall not construct any other improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by LICENSEE shall remain the property of LICENSEE. LICENSEE shall have the right, prior to the termination or expiration of this License, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises. In the event the LICENSEE shall fail to remove the improvements prior to the termination or expiration of this License or within an additional period, the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and any storage to LICENSEE. This provision shall survive the automatic expiration or earlier termination of this License.

16. **NO LIEN.** LICENSEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

17. **NON-TRANSFERRABLE.** This License or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the HCDA's express prior written consent.

18. **ADDITIONAL TERMS AND CONDITIONS.** Any additional terms and conditions or modifications to this License must be approved in writing by all Parties.

- (a) LICENSEE shall, at its own expense, keep and maintain the Premises and all improvements in a condition similar to that which existed on the Effective Date, ordinary wear and tear and damage by acts of God excepted.
- (b) LICENSEE shall pay for electricity usage associated with the Premises.
- (c) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized by Section 4 herein.
- (d) LICENSEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this License.
- (e) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary, provided that: (i) written notice of any such additional terms and conditions shall be provided to LICENSEE not less than thirty (30) days prior to their effective date in accordance with the provisions of Section 19 Notices below and (ii) any such additional terms and conditions shall not materially interfere with or impair LICENSEE's rights of use under Section 4 of this License.

19. **TERMINATION.** The parties may terminate this License prior to the end of the term by a termination agreement signed by both parties.

20. **NOTICES.** Any notice, request, demand, or other communication required or permitted to be given or made under this License by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address provided below:

Hawaii Community Development Authority
Attention: Lindsey Doi, Asset Manager
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: dbedt.hcda.contact@hawaii.gov

Kewalo Makai LLC
Attention: Doug Johnstone
Address: 1240 Ala Moana Blvd.
Honolulu, Hawaii 96814
Telephone: (808) 591-8411
E-mail: doug.johnstone@howardhughes.com

21. **HEADINGS/CAPTIONS.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.
22. **GOVERNING LAW.** This License shall be governed by and construed under the laws of the State of Hawaii.
23. **REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES.** Each person signing this agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
24. **NO JURY TRIAL.** The Parties hereto waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other with respect to any matters whatsoever arising out of or in any way connected to this agreement.
25. **COUNTERPARTS.** This License may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.
26. **ENTIRE AGREEMENT.** This License constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This License cannot be modified except by a written instrument signed by both Parties.

[END OF EXHIBIT B]